



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY 27TH SEPTEMBER, 2023
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

PETITION NO: FCT/HC/GAR/PET/01/2022

BETWEEN

HENRY AMOBI OFFOR

PETITIONER

AND

IFEOMA FLORENCE OFFOR

RESPONDENT

JUDGEMENT

The petitioner/cross-respondent filed a Notice of Petition on the 09/11/2022 seeking the following reliefs:

- a. The marriage between the Petitioner and the Respondent has broken down irretrievably.**
- b. That the Petitioner and the Respondent have lived apart for a continuous period of two years immediately preceding the presentation of this petition.**
- c. That since the marriage, the respondent has behaved in such a way that the petitioner cannot be expected to live with her.**

The petitioner/cross-respondent in support of the petition attached the marriage certificate, a verifying affidavit dated 24th October, 2022 and a certification relating to reconciliation dated 8th November, 2022.

THE FACTS IN SUPPORT OF THE PETITION ARE AS FOLLOWS:

- a. The petitioner/cross-respondent and the respondent/cross-petitioner got married at the Federal Marriage Registry, Abuja on 12th March, 2020. They cohabited as a couple at Old Redeem by Babangida Federal Housing, Lugbe, Abuja.

- b. The marriage produced no child.
- c. The marriage has broken down irretrievably.
- d. The parties have lived apart for a continuous period of over two years immediately preceding the presentation of this petition as cohabitation ceased in August, 2020 and up till date, the parties have never resumed cohabitation.
- e. That the petitioner/cross-respondent has suffered exceptional hardship occasioned by exceptional depravity, and that this marriage has broken down irretrievably.

Upon service of the said petition, the respondent/cross-petitioner, filed a 3 paragraph answer to the petition and cross-petition on 11/1/2023 along with a verifying affidavit dated 11/01/2023 and a certificate relating to reconciliation dated 10/01/2023.

The petitioner/cross-respondent as PW1 testified on 19/4/2023 and urged the court to grant the reliefs sought therein.

In her answer to the petition the Respondent/Cross-Petitioner stated the following:

1. The respondent/cross-petitioner admitted to paragraph 7 of the petitioner/cross-respondent's averment to the extent that both parties have lived apart for over two years now as a result of the unbearable/violent behavior of the petitioner/cross-respondent against the respondent/cross-petitioner weeks after they got married.
2. The petitioner/cross-respondent is a chain smoker who indulges in smoking some dangerous substance unknown to her which makes him violent after taking the substance.
3. The behavior of petitioner/cross-respondent has made it impossible for the respondent/cross-petitioner to live with him

CROSS PETITION

Respondent/Cross-Petitioner is seeking the following relief;

- a. A DECREE OF DISSOLUTION OF MARRIAGE between the petitioner/cross-respondent and the respondent/cross-petitioner on the ground that the marriage has broken down irretrievably.

PARTICULARS

- i. The respondent/cross-petitioner and the petitioner/cross-respondent started having issues shortly after their wedding when the petitioner/cross-respondent started having affairs with unknown ladies and receiving sex videos and when accosted, he violently assaulted the respondent/cross-petitioner.
- ii. Due to the above, the petitioner/cross-respondent stopped taking care of the respondent/cross-petitioner even when she is sick.
- iii. He locks the respondent/cross-petitioner inside the room in order to answer calls from unknown ladies.
- iv. When he was to travel back to South Korea his base, he deliberately removed his ring as a sign that he is no longer interested in the marriage
- v. Respondent/cross-petitioner has tried to save the marriage and reported the issue to their church catechist Pius Gyang and petitioner/cross-respondent was asked to apologize and he refused.
- vi. Petitioner/cross-respondent is a chain smoker and drinks uncontrollably and becomes violent when accosted about not taking care of the respondent/cross-petitioner
- vii. Communication between petitioner/cross-respondent and respondent/cross-petitioner stopped on part of petitioner/cross-respondent when he travelled back to South Korea on 3rd November, 2020
- viii. Both parties have lived apart for more than two years and respondent/cross-petitioner is not opposed to dissolution of the marriage.

REPLY PETITION AND ANSWER TO CROSS PETITION

1. Petitioner/cross-respondent denies having affairs or being sent sex videos and respondent/cross-petitioner.
2. Petitioner/cross-respondent never became violent nor physically assaulted the respondent/cross-petitioner.
3. He has taken care of the petitioner/cross-respondent before the marriage broke down.
4. The petitioner/cross-respondent stole his wedding ring and he did not deliberately leave it behind.

5. When he travelled back to South Korea he was communicating with the respondent/cross-petitioner. The whatsapp messages of their chats is attached.
6. Court was urged to dissolve the marriage between the parties

RESPONDENT/CROSS PETITIONERS REPLY TO THE PETITIONERS/CROSS-RESPONDENTS ANSWER TO CROSS PETITION

1. Respondent/cross-petitioner insists that the petitioner/cross-respondent was having affairs with different ladies and she was using his phone when some videos, sex chats from some women started popping up on the Petitioners/Cross-Petitioners whatsapp particularly BERNIE his class mate in the polytechnic Enugu State (IMT) and Ifykaduna.
2. When petitioner/cross-respondent was asked to apologize over these videos and sex chats and delete them, he threatened to leave the matrimonial home over it
3. Petitioner/cross-respondent admitted to physically assaulting the respondent/cross-petitioner before the catechist Pius Gyang when the matter was reported to him.
4. Petitioner/cross-respondent said he was expecting money from his company and did not have money to take care of the respondent/cross-petitioner, he told her to borrow money from her younger brother MrAfam which he would refund once he was paid but when he was paid he spent it on his girlfriends and his family and never took care of the needs of the respondent/cross-petitioner especially her medicals. The money he used to travel back to South Korea was borrowed from her brother after squandering his money.
5. She did not steal the wedding ring, when she offered to send the ring to him in Lagos he refused
6. Court was urged to dissolve the marriage

On 19th April, 2023, the petitioner (PW1) was examined in chief and the Marriage Certificate dated 12/3/2020 between Amobi Henry Offor and Ifeoma Florence Chukwu was tendered as Exhibit P1.

EXAMINATION IN CHIEF OF PW1 (Petitioner/Cross-Respondent)

The petitioner/cross-respondent got married in court in Abuja on 12/3/2020 and after then co-habitation ceased they have had irreconcilable issues and over 3 years they have been apart. Respondent/cross-petitioner complains over issues and when he tries to explain she never believes him and he finds it difficult to

explain to her. It got to a point she reported him to the catechist of their church and he was asked to apologize and he refused to because she had burnt all their bibles.

She accused him of having extra-marital affairs which he denied and she had access to his phone as they were always together during the lockdown. Her demands and expectations were too high and he could not meet them.

CROSS-EXAMINATION OF PW1

He admitted to have spent 5 months in Nigeria between March 2020 till when he had to go back to South Korea. He denied not taking care of his wife. While he was in Nigeria his company paid him about \$1,200 and it was paid into her account. He gave her the money to manage the family. She told him his parents needed money and she sent money to them. He did not instruct her on what to do with the money. She bought all the things he needed at home as he had no need for money in Nigeria he was comfortable.

When he was in Nigeria, his wife's younger brother gave him N200,000 which was paid back to his wife's account. When he was about to go back to South Korea his wife's younger brother gave him money. Catechist asked him to apologize to his wife because of extra-marital affairs and he refused because she burnt their bibles. He smokes and drinks but not to stupor and he does not get violent and on his way back to South Korea when he had reached Benin Republic he realized he forgot his wedding ring and other things and he told his wife that when any of his friends is coming to Korea she will give him. He denied telling court that she stole his wedding ring and it was a mistake putting that in his statement.

EXAMINATION-IN-CHIEF OF DW1 (Respondent/Cross-petitioner)

She testified to having married on 12th March, 2020 and before then, they had reached agreement on kind of marriage they wanted but after the marriage most of things he agreed to or said about himself were all lies, he is a chain smoker and drinks excessively as against being a social drinker and smoker he claimed. After drinking and smoking he gets irritated and aggressive. He is also always on his phone watching nude videos from numerous women and chatting with them. The women include one of their classmates Uzo. The day she discovered the content of their chats was when she was using his phone for a selfie. She told him to tell the ladies he is married and nude videos they were sending should stop. He said he would never do that. What he is doing is harmless or he will pack his bags and leave. He packed his bags but did not leave and said he will decide at his own time whether to stop the chat or not. He continued and would answer different kinds of calls and lock her inside to go outside to make the calls.

He takes the calls by the neighbor's room and they hear his conversations with these women when she advised him to take the calls up their street to an empty land near the house he held her and choked her for 2 mins and that was the beginning of the assault. She had to report him to the catechist. He also neglects her when she is sick and does not take care of her financially, sexually and emotionally. Since he came back to Nigeria in February, 2020 she carried him financially and her brother pitched in when his company eventually paid him he gave her instructions on who to send money to which included his mother, sisters, cousins and numerous women he claims are his relatives apart from buying food they cook she did not partake of the money and when he was leaving the country he took all the money including the money her brother lent to him. When they got to the park on his way back to Korea and she realized he was not with his wedding band she offered to go back home to get it he refused, she offered to waybill it he refused that he will buy a new one in Korea. He left with all the money in the house and they never communicated again.

Every form of communication stopped since November 3rd 2020 that was when she told him that the marriage is not working and everything the Catechist told him to implement he refused. He told her to do as she pleases. Last year May she reached out to him after her birthday to inform him that it is obvious by his silence he does not want marriage again he should file as she does not have his address and she is not financially buoyant. She had this communication via whatsapp and he never responded. Their wedding bands were identical to each other and they were purchased in 2020 and she never documented the purchase and did not tender her own ring.

On 18/5/2023, DW1 was examined-in-chief and cross examined. The following documents were tendered through DW1;

1. Yellow gold band admitted and marked as Exhibit D1
2. Whatsapp messages along with certificate of compliance admitted and marked as exhibits D2 (2/05/2023) and D3

In the respondents/cross-petitioner's written address, U. C. Onuoha Esq. submitted 2 issues for determination, to wit:

- 1. Given the circumstances of this petition, whether the petitioner has been able to prove his case against the respondent to be entitled to the judgment of this court?**
- 2. Whether the respondent/cross petitioner has proved her cross petition before the court?**

In the Petitioners written address, Oloruntoba Elisha Esq 2 issues were formulated;

1. **Whether on the evidence before the court, the petitioner has established his case to entitle him to the reliefs sought in his petition?**
2. **Whether the respondent/cross-petitioner has adduced evidence to be entitled to the judgment of this Honourable court in her favour?**

From the evidence of the parties and the submissions of the learned counsel, the Court adopts issues formulated by the respondents/cross-petitioner which are:

1. **Given the circumstances of this petition, whether the petitioner has been able to prove his case against the respondent to be entitled to the judgment of this court?**
2. **Whether the respondent/cross-petitioner has proved her cross petition before the court?**

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENT/CROSS-PETITIONER:

ON ISSUE 1, Counsel submits that petitioner/cross-respondent relied on **section 15(2) © & (e) of the Matrimonial Causes Act (MCA)** in urging court to dissolve the marriage but has been unable to lead cogent and verifiable evidence to support this claim. The petitioner/cross-respondent failed to show when cohabitation ceased to enable court arrive at the conclusion that parties have lived apart for a continuous period of at least 2 years. However, on the second limb of 15(2) (e) both parties in their prayers are not objecting to the dissolution of the marriage.

Counsel argued that for the petitioner/cross-respondent to succeed, he must plead and prove that the marriage has broken down irretrievably, he does this by giving evidence of any facts contained in **section 15(2) (a) to (h) of MCA**. The petitioner from his testimony has failed to point out certain behavior of the respondent that has made it impracticable for him to live with her. Relying on **Section 136 of the Evidence Act**, the burden is on the petitioner to lead evidence to discharge this burden and failure to do so is fatal to his case as burden is on petitioner/cross-respondent to satisfy the court that section 15(2) (c) & (e) have been satisfied to enable court exercise its discretion in favour of the petitioner/cross-respondent.

Petitioner/cross-respondent made inconsistent statements in his oral evidence at variance with his evidence before the court. Paragraph 5 of petitioner/cross-respondent reply and answer to cross-petition he said respondent/cross-Petitioner stole the wedding ring but during cross examination admitted that respondent/cross-petitioner is not a thief. Paragraph 6 of reply and answer to cross-petition denied that respondent reported their issues to catechist and he was never asked to apologize but during oral evidence stated that he had issue with her which made her report to her catechist and he was asked to apologize which he refused. Court was urged to discountenance his testimony relying on **SALAMI V AJADI (2012) AFWLR PAGE 247, PART 616 and LAWSON V AFNI CONT. CO. LTD (2002) 2NWLR (PT 752) 585.**

ON ISSUE 2, respondent/cross-petitioner is relying on 15(2) © of MCA to the effect that the petitioner/cross-respondent has behaved in such a way that she cannot reasonably be expected to live with him. The test of the reasonableness or otherwise of the conduct of petitioner/cross-respondent in the marriage is an objective one to be carried out by the court. Relying *on O'NEIL V O'NEIL (1975) 1WLR, 118.*

The test is that of a reasonable man. The petitioner/cross-respondent lied about his lifestyle to the respondent/cross-petitioner he was actually a chain smoker and excessive drinker contrary to what he told her, he gets aggressive when he drinks and has choked her for 2 mins at the slightest provocation in one incident after drinking and she actually saw death and he watches nude videos on his phone sent by numerous women. He is abusive and does not apologize. This has led to parties living apart for a continuous period of 2 years immediately preceding the cross-petition. From the respondents/cross-petitioners paragraph VIII of her claim.

From the reasonable man test applied to this case the petitioner/cross-respondent has behaved in such a way that the respondent cannot be expected to live with him.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER/CROSS RESPONDENT:

Issues 1 and 2 were argued together, counsel submitted firstly, that in order to succeed in a petition for dissolution of marriage petitioner/cross-respondent has to establish the existence of Marriage between himself and the respondent/cross-petitioner. This the petitioner/cross-respondent has done by

the tendering of Exhibit P1 relying on **ADEYEMI V BAMIDELE (1968) ALL NLR 31 @ 34.**

Secondly, the domicile of the petitioner/cross-respondent has to be established referring to **Section 2(1) and (3) of the MCA** and the petitioner/cross-respondent via his verifying affidavit deposed that he is a Nigerian and his wife is resident in Nigeria and this was not challenged. The fact that petitioner/cross-respondent is working in South Korea does not mean he is not domiciled in Nigeria. The wife testified to be resident in Abuja. The petitioner/cross-respondent has thus satisfied the second requirement for the court to exercise jurisdiction over this case and grant the prayers of the Petitioner/Cross-Respondent. Referring to **OMOTUNDE V OMOTUNDE (2000) LPELR-10194 CA.** Counsel submitted that the petitioner/cross-respondent by the pleadings and oral testimony before this court has established grounds upon which this court can grant a decree of dissolution in his petition.

For the petitioner/cross-respondent to succeed in a petition he must prove the existence of one of the grounds specified in section 15(2) of MCA referring to case of **ORERE V ORERE (2017) LPELR- 42160 CA.**

Counsel submitted that petitioner/cross-respondent reliefs are in conformity with the provisions of Section 15(1) and 15(2)© of the MCA.

The averment in paragraph 1 and 8 of petitioner/cross-respondent petition was supported by oral testimony of respondent/cross-petitioner in her examination-in-chief and has satisfied the requirement of section 15(2) © of MCA. respondent/cross-petitioner in her examination in chief testified that petitioner/cross-respondent left Nigeria in July 2020 and co-habitation ceased since he left the country and this buttresses the averment of petitioner/cross-respondent that parties have lived apart for a continuous period of two years immediately preceding the presentation of this petition. The record of the court shows they have lived apart for more than 2 years and the petition is not objecting relying on **GARUBA V OMOKHODION (2011) LPELR 1309 SC.** petitioner/cross-respondent by this has satisfied the requirement of the law in proving his case to be entitled to judgment of this court as per reliefs in the petition.

On the ground that since marriage respondent has behaved in such a way that petitioner/cross-respondent finds it intolerable to live with the respondent /cross-petitioner the categories of intolerable behaviour as captured in section 15(2) © MCA are never closed referring to **OGUNTOYIBO V OGUNTOYINBO (2017) LPELR 42174 CA.** The evidence of PW1 that since marriage it has been one issue after the other and fact that respondent /cross-petitioner is not opposed

to dissolution of the marriage though on other grounds, the petitioner has thus discharged the burden placed on him.

DECISION OF THE COURT

Before I proceed, this court will discountenance the argument made by respondent/cross-petitioner on the objection to the admissibility of the marriage certificate raised by the petitioner/cross-respondent during trial as it was a photocopy. The counsel urged court to hold that the issue of marriage certificate is not in contention before this court as the certificate which was sought to be tendered was withdrawn by the petitioner/cross-respondent's counsel. It is academic and this court does not delve into academic exercises and I so hold.

I will take Issues 1 and 2 together. Section 15(1) of the MCA sets out only one ground for divorce or dissolution of marriage. By the said Section 15(1) of the MCA, either party to the marriage may petition for divorce "upon the ground that the marriage has broken down irretrievably". Section 15(2) states as follows: The court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, and only if, the petitioner satisfies the court of one or more of the following facts:-

- (a) That the respondent has wilfully and persistently refused to consummate the marriage;
- (b) That since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (c) That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;**
- (d) That the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;
- (e) That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;**

- (f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition;
- (g) That the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;
- (h) That the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

The petitioner/cross-respondent's petition is in line with sections 15(1) and 15(2) (c) & (e) of the MCA

- **The marriage between the Petitioner and the respondent has broken down irretrievably.**
- **That the petitioner and the respondent have lived apart for a continuous period of two years immediately preceding the presentation of this petition.**
- **That since the marriage, the respondent has behaved in such a way that the petitioner cannot be expected to live with her.**

In matrimonial proceedings the burden or standard of proof required is no more than that required in civil proceedings See section 82 (1) and (2) of the MCA;

1. For the purposes of this Act, a matter of fact shall be taken to be proved, if it is established to the reasonable satisfaction of the court.
2. Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.

It therefore means that for the petitioner/cross-respondent to succeed, he must lead evidence to the reasonable satisfaction of the court that the marriage has broken down irretrievably, that the petitioner/cross-respondent and the respondent/cross-petitioner have lived apart for a continuous period of two years immediately preceding the presentation of this petition and that since the

marriage, the respondent/cross-petitioner has behaved in such a way that the petitioner/cross-respondent cannot be expected to live with her.

In **L7. ADEYINKA A. BIBILARI (RTD) v. NGOZIKA B. ANEKE BIBILARI (2011) LPELR-4443(CA)** the court held;

The Matrimonial Causes Act ascribed a Section to the standard of proof in matrimonial matters or Causes. S.82 (1) and (2) of the Matrimonial Causes Act stipulates as follows: (1) for the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court. (2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact, or as to that other matter. From the above provision, the Court will pronounce a Decree of dissolution of marriage if satisfied on the evidence that a case for the petition has been made. Thus the matrimonial offence must be strictly proved once the Court is reasonably satisfied of the existence of a ground to grant the divorce. The Court will then proceed to hold the marriage has broken down irretrievably. The standard of prove is not on a balance of probabilities or preponderance of evidence as in general civil cases. The standard of proof is on the petitioner but taken as discharged once it is established to the reasonable satisfaction of the Court... "

From the decision above, it is clear that failure of the respondent/cross-petitioner to challenge the evidence of the petitioner/cross-respondent will not shift the burden of proof from the petitioner/cross-respondent. It is thus the law that a petitioner/cross-respondent who desires dissolution of a marriage must discharge the standard of proof stipulated by the MCA and establish in evidence one of the facts set out under **Section 15 of the MCA**.

In this present case, the petitioner/cross-respondent stated that the parties have lived apart for a continuous period of over two years immediately preceding the presentation of this petition as cohabitation ceased in August, 2020 and up till date, the parties have never resumed cohabitation and the petitioner/cross-

respondent has suffered exceptional hardship occasioned by exceptional depravity, and that this marriage has broken down irretrievably.

It can be gleaned from the evidence adduced that the petitioner did not adduce evidence to show that parties have lived apart for a continuous period of 2 years preceding the petition which is his contention. However, the respondent in her examination in chief admitted that since the petitioner left Nigeria in November, 2020 all means of communication ceased.

Examination-in-chief of DW1;

"...he left with every money in the house and we never communicated again only in chat."

Cross-examination of DW1;

"we stopped every form of communication since November 3^d, 2020 that was when I told him that the marriage is not working and everything catechist asked him to implement he refused does it mean he doesn't want marriage he said as it pleases me and that was our last communication 3^d November, 2020. Last year may after my birthday I reached out to him that it is obvious by his silence he doesn't want marriage again if that is case he should file as I don't have his address to file and I am not buoyant too"

The above is a clear admission on the part of the respondent/cross-respondent that parties were no longer in communication since 2020. It is trite that facts admitted need no further proof see **BENSON V. THE STATE (2018) LPELR-48458(CA) (PP. 42 PARAS. C).**

I am confused as to why Exhibit D2 was tendered by the petitioner's lawyer when it goes to reveal that in all the messages sent to the petitioner by the respondent, he did not reply any of them. This buttresses the fact that there was no communication between both parties. The exhibit does not avail the petitioner in any way.

On the evidence of petitioner/cross-respondent, it is accepted common ground, which I also accept that the marriage has broken down irretrievably which falls within the purview of Section 15(1) and 15(2) (c) of the MCA. However, this

court is not convinced that petitioner was able to prove breakdown of the marriage under Section 15 (2) (e) of the MCA. In law if any one of the facts in 15(2)(a)-(h) of the MCA is proved by evidence, it is sufficient to ground a petition for divorce. In this case, the marriage has broken down irretrievably and parties have lived apart for a continuous period of at least 2 years preceding the filing of this petition.

The cross petition in itself is for a decree of dissolution of marriage against the petitioner on the ground that the marriage has broken down irretrievably and the respondent has behaved in such a manner that the respondent cannot reasonably be expected to live with the petitioner. The test of the reasonableness or otherwise of the conduct of petitioner/cross-respondent in the marriage is an objective one to be carried out by the court. See **O'NEIL V O'NEIL (1975) 1WLR, 118**. The test is that of a reasonable man.

The respondent/cross-petitioner has alleged that the petitioner/cross-respondent was receiving sex videos and nudes from different women. That since the marriage, the cross-respondent has continued to behave in such a way that the cross-petitioner cannot be expected to live with the cross-respondent. She has thus hinged her cross petition on section 15(2)(c) of the Matrimonial Causes Act (supra); see section:

15(2) The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts:-

(c) That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

The cross-petitioner has raised varying allegations on the basis of receiving nude videos and chatting with other women but has been unable to substantiate same before this court with substantial evidence. See Paragraph 2a of the respondent/cross-petitioners reply to the petitioner/cross-respondents answer to the cross petition;

The respondent/petitioner still insist that the petitioner was having an affairs with different ladies...

Page 64 of the Black's Law Diction, 11th Edition defined Adultery thus:

'voluntary sexual intercourse between a married person and someone other than the person's spouse.'

In Ibeabuchi v Ibeabuchi (2016) LPELR – 41268 (CA) adultery was defined thus: "Adultery has been defined as consensual intercourse between two persons of opposite sexes, at one of whom is married to a person other than the one with whom the intercourse is had, and since the celebration of the marriage. Thus, to establish adultery, there must be sexual intercourse, the sexual intercourse must be voluntary and at least one of the parties must be married. Adultery must be proved strictly and clearly and the standard of proof is as required in civil cases." Per Abiru, JCA (p.32, paras. C-E)'

The case of the respondent/cross-petitioner is that the petitioner/cross-respondent receives nude videos and chats with various women including particularly BERNIE his class mate in the polytechnic Enugu State (IMT) and Ifykaduna.

The law is clear on how adultery is proved in **ENGR. MADU BELIJE & ANOR V MRS MADU LINDA UCHECHUKWU & ANOR (2022) LPELR-58449 (CA) (P.35, PARAS. B-D)** the Court of Appeal held thus:

"Adultery is an act which can rarely be proved by direct evidence. It is a matter of inference and circumstance. Adultery can be inferred when there is sexual intercourse with the other person other than the spouse. General cohabitation, confession and admission of adultery, frequent visits to hotels...."

In this case, the respondent/cross petitioner made allegations of adultery against the appellant but placed it under the umbrella of Section 15 (2) (c) of the MCA instead as can be seen from the case law reproduced above, proof of adultery is rare to prove. Hence respondent/cross-petitioner coming by way of section 15(2) © of the MCA. The question that comes to mind is if the respondent has proven

the requirements under section 15 (2) © of the MCA? Under Cross examination of DW1 respondent /cross-petitioner the following facts emerged;

QUESTION: *The issue of money house rent taking care of you was major issue between you and petitioner?*

ANSWER: *It was not the major issue*

QUESTION: *You told court you saw sex video and nude pictures?*

ANSWER: *Yes and love chats*

QUESTION: *You do not have evidence to show apart from oral evidence?*

ANSWER: *I saw it on his phone evidence is on his phone*

QUESTION: *That phone is not before court?*

ANSWER: *Yes*

QUESTION: *You said you were locked in and your neighbor said they overheard him?*

ANSWER: *The neighbor told me.*

QUESTION: *You never reported any issue of violence drugs to any government authority?*

ANSWER: *No*

From the above it is trite that this court cannot accept hearsay evidence see **FIRST BANK V. AZIFUAKU (2016) LPELR-40173(CA) (PP. 17-18 PARAS. E)**. The neighbor who listened in on the conversations was not brought before the court neither were the chats and nude videos brought before the court.

The respondent/cross-petitioner in order to succeed must prove the grounds upon which the dissolution is based and this court has gleaned from the evidence of the cross-petitioner that the she was unable to prove her case.

It is a well-established principle in law that he who asserts must prove, see **AMAH V AMAH (2016) LPELR-41087(CA)** where it was stated thus: "The law is trite that under our adversarial system of jurisprudence and the law of evidence by **sections 131(1) and (2), 132 and 133(1) Evidence Act, 2011** in particular; the burden of proving a particular fact is upon the party who asserts it and who would fail if no evidence is called on either side regard being

had to the presumptions which might arise from the pleadings of the parties. It is also the law that the onus is not static as same oscillates back and forth on the pleadings until it rests on the party against whom judgement would be given if no further evidence were adduced before the court. In the suit at hand, the assertions of the respondent/cross-petitioner were not proven.

Another question which arose and begs for resolution is whether Pw1 contradicted himself. Under CROSS-EXAMINATION OF PW1;

QUESTION: *You told court this ring your wife stole the ring?*

ANSWER: *I never said so.*

QUESTION: *Let me read paragraph 5 of the reply "in reply to paragraph v of the particulars of answer and cross-petition, the petitioner/cross-respondent avers that it was the respondent/cross-petitioner that stole his wedding ring and the petitioner/cross-respondent searched everywhere to get his wedding ring but could not be found and all this happened to the knowledge of the respondent/cross-petitioner" do you still stand by your statement?*

ANSWER: *That was a mistake*

QUESTION: *Will I be safe to say some of things are mistakes in the reply?*

ANSWER: *No*

QUESTION: *You also told court in Paragraph 6 of your reply that "in reply to paragraph vi of the particulars of answer and cross-petition, the petitioner/cross-respondent states that at no point in time did the respondent/cross-petitioner report the issue to the Church Catechist and the said Church Catechist never asked the petitioner/cross-respondent to apologize to the respondent/cross-petitioner"*

Question; *Is it true? Do you stand by it?*

Answer; *No*

Question; *Catechist asked you to apologize do you still stand by that?*

Answer: *No*

Examination in chief of DW1

"we reported to catechist he admitted to catechist to choking me and other things. At catechist he agreed to things he did he said he should apologize to me which he never did"

The law is trite, where there is material contradiction or inconsistency in the testimony of a witness, the witness cannot be of any credibility, and his testimony cannot carry any weight. A Court of law is entitled not to rely on it in taking a decision." Per BDLIYA,J.C.A in **GARBA V. DALA LOCAL GOVT & ANOR (2016) LPELR-45514(CA) (PP. 34 PARAS. B)**

I resolve issue 1 in the affirmative and in favour of the petitioner/cross-respondent and issue 2 in the negative and against the respondent/cross-petitioner.

This Court on the basis of the foregoing finds for the petitioner/cross-respondent, that his marriage to the respondent has broken down irretrievably and both parties have lived apart for a continuous period of 2 years preceding the filing of this petition, **marriage between the Petitioner/cross-respondent and the respondent/cross-petitioner contracted is hereby dissolved. The decree nisi shall be made absolute after a period of 90 days from the date of this pronouncement, unless sufficient cause is shown to the Court why the decree nisi should not be made absolute.**

HON. JUSTICE NJIDEKA K. NWOSU-IHEME

[JUDGE]

Appearance of Counsel:

Oloruntoba Elisha Esq with Esther Ozowa Esq for Petitioner

Respondent absent and unrepresented

