

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI-YUSUF
DELIVERED THE ON THE 30TH NOVEMBER, 2023
FCT/HC/PET/425/2022

BETWEEN
MRS. ESTHER IKE – OKAFOR PETITIONER

AND

MR. IKEMEFUNA OKAFOR RESPONDENT

JUDGMENT

By a Notice of Petition and other accompanying processes filed the 02/08/2022, the Petitioner seeks for the following reliefs:

- a. A Decree of dissolution of the marriage on the grounds that the marriage has broken down irretrievably;
- b. Monthly maintenance at the sum of #150,000.00 (One Hundred and Fifty Thousand Naira) only;
- c. The baby's creche and education fees whenever he starts school and his medicals whenever the need arise;
- d. Annual rent sum of #1,200,000.00 (One Million Two Hundred Thousand Naira) only;
- e. Any Further Order or Orders as the Hon. Court may deem fit in the circumstances.

The Petitioner relying on s. 15 (2) (c) MATRIMONIAL CAUSES ACT for the court to dissolve the marriage between her and the Respondent, stated inter alia, that parties in this case became man and wife on 4th August, 2018; that the child of the marriage was given birth to on 9th February, 2021. It is her evidence that since the marriage was contracted, the Respondent has behaved in a manner she cannot be reasonably expected to live with him.

she asserts that the Respondent was fond of keeping malice with her for months; that the Respondent has deep feeling of resentment against her and doesn't give her attention and care. Testifying further, she stated that due to the conduct of the Respondent towards her, she believes that it contributed to her having severe complications which kept her in the hospital during the last three months of her pregnancy. She continued that the Respondent has not been supportive in terms of child/family care; that the Respondent bullies and keep malice with her for months causing her emotional trauma; that the Respondent has a violent temper and had on about three occasions violently kicked doors open at home and in one of those occasions, the Respondent forcefully confiscated her mobile phone, smashed it on the floor; that also, the Respondent sleeps out for days, drinks and smokes to point of being drunk and he is also in the habit of leaving the matrimonial home at will. She states that the Respondent moved out of the matrimonial home on 5th March, 2022, that since the Respondent left home, he does not communicate well with her and has further humiliated and punished her by reducing the monthly upkeep allowance he gives her from #120,000.00 to #80,000.00; that she had, had to leave her work as a banker with UBA Bank at the behest of the Respondent, so as to be able to take care of the family. She stated that, the Petition, she wrote against the Respondent to the Social Development Secretariat of the FCT was frustrated by the Respondent using his high-ranking office, as a Policeman. It is equally in evidence, that the Petitioner lodged a complaint to the National Agency for the Prohibition of Trafficking in Persons (NAPTIP).

Furthermore, the Petitioner in her evidence in chief stated that the Respondent works in the highest echelons of the Nigeria Police, thus, has a means to keep the Petitioner and the child of the marriage comfortable as he has various sources of income outside of his normal police salary; that the Respondent owns properties where he draws rents annually. In conclusion, the Petitioner stated that the conducts of the Respondent have adversely affected her both socially and psychologically that she can no longer be

reasonably expected to be in the marriage. The following documents were tendered by the Petitioner.

1. Certificate of marriage dated the 4/8/2018 marked as Exhibit A;
2. The Petition against CSP Ikemefuna Okafor to the Secretary Social Development Secretariat, Federal Capital Territory Administration dated 30th May, 2022 marked exhibit B.

Under cross examination, the Petitioner admitted that they have been married for three years; that her husband is a Chief Superintendent of Police. She doesn't have any evidence reflecting what the Respondent earns as salary. She stated under cross examination that when she got married to the Respondent, they got married to support each other to be a team, thus the aspect of the economy never crossed her mind. She stated that she has given her best to the marriage; that once the Respondent comes back home from work, she asks him what to prepare for him and how his day went; that the Respondent receives unofficial payments from other bodies; that the payments do not come through the official route.

Above is the case of the petitioner.

On the 31/5/2023, the Respondent, Ikemefuna Okafor under oath testified as Dw1. He is a Public servant, resides in Abuja. The Respondent denied the facts pleaded by the Petitioner for a decree of dissolution of marriage; that contrary to the assertions made by the Petitioner, he avers that he bought a car for the Petitioner to make her comfortable during their affluent period, that the Petitioner showed him love, which he always reciprocated; that he was transferred to different offices within the Police Force; that he is under the Office of the Force Secretary of the Nigeria Police Force, Force Headquarters, Abuja, where he now deals majorly with files, thus money no longer flows in like before. He continued that his finance reduced drastically as most of the sources or channels of income were no longer available, that surprisingly, the Petitioner's attitude, love and respect towards him changed as the Petitioner started nagging, complaining and

abusing him; that there are times, he had to borrow the car of the Petitioner to go to work, but had to stop borrowing the car as the Petitioner was always complaining against it; that the Petitioner failed to understand the state of things as she became aggressive, unsympathetic, troublesome, disrespectful and uncaring to him. he continued that due to the conducts exhibited by the Petitioner, he always tried to avoid physical confrontation, fight or escalation of the situation, which led him to keepoff from the Petitioner; that he kept off from the Respondent to see, if, her temperament would subside after sometime and not that he was not ready to show her love; that he never kicked the door open or did anything of sort, that he never touched, confiscated or smashed the Petitioner's phone.

Again, the Respondent states that he always tries his best to care and provide for the Petitioner and the child of the marriage; that he gives the Petitioner #120,000.00 monthly apart from providing other necessities such as fueling the Generator, steady subscription of lights and cables network and provision of eatables/food and clothing; that as thing got harder, he reduced the monthly upkeep to #80,000.00 and also provided other household and family needs. He equally outlined in paragraph 27 sub paragraph xii – xxii of his witness statement on Oath, his present source of income which he stated is his monthly salary as a public servant and thereafter, further narrated how it is been expended.

He stated that he has never beaten the Petitioner. He admits that he does smoke, however most of his colleagues do not know he smokes and as a responsible Police officer, he doesn't and cannot drink himself to stupor; that the Petitioner had on three occasions slapped him, not minding that he is her husband. He admits that the Petitioner reported him to NAPTIP and when he was called, he asked NAPTIP to make it formal; that he was surprised that, the matter was reported to the Gender Department of the Nigeria Police Force. He admits that the Petitioner was a staff with UBA, but that it was the Petitioner who voluntarily resigned, stating that she couldn't cope. He said, he pleaded with her not to resign, but the Petitioner did resign without his knowledge and consent; that

even when she discovered, he still continued to cater and provide for her and his family.

Testifying further, he said that, he opened a logistics business for the Petitioner and bought two (2) motor cycles for the dispatch business, to which they make returns to her; that each motor cycle cost #400,000.00. The Respondent states that he cannot afford the sum of #150,000.00 per month, as he can only afford #40,000.00. He accepts to take care of the child's education, health and any other decision concerning the child's well-being. He states that he cannot afford to pay a rent of #1,200,000.00 as his current salary is over burdened with financial obligations. He, equally wants access and visitation rights to the child of the marriage.

Under cross examination, the Respondent stated that he was eased out of his matrimonial home sometime in March; that he has not gone back to the house since he left; that the rent of the house expires sometime in June, 2022. He admits he didn't renew the rent, as he doesn't live there; that he didn't make any alternative accommodation arrangement as he couldn't reach the Petitioner. He stated under cross examination that his reasons for wanting to reduce the upkeep to #40,000.00 is that he has other dependents and that asides from his salary, most of the money are from friends, that there is no clear cut to it, thus, he has to put a benchmark. He says he is not aware, that the child of the marriage is in school.

The Respondent tendered the following in evidence.

1. Copies of Transfer receipts dated January 10, 2022; Feb 28, 2022 marked Exhibit Dw1;
2. Copies of Transfer receipt dated March 31, 2022; May 10, 2022 marked Exhibit Dw2;
3. Copies FGN employee pay slip dated May & June 2022 marked Exhibit D3;
4. Certificate of Identification dated 31st October, 2022 marked exhibit D4;
5. Transfer receipts (9) marked exhibit Dw5;

6. Documents tagged Consumer loan for tier 2 public sector employees (6) marked exhibit Dw6.

In response to the Respondent's Answer, the Petitioner filed a Reply on 23/1/2023. The Petitioner denied the counter assertions of the Respondent. She however admits that the Respondent bought her a Honda CRV 2008 model; that she already had a Hyundai Tucson which she bought for herself; that she sold same for #1,000,000.00 which she gave the Respondent as a show of gratitude for the car he bought for her. She reiterates that the Respondent is financial competent; that upon enquiry, the office of the Force Secretary is the engine room of the Police as no document gets in and out of the IGP's office without the input of the respondent, including postings to lucrative positions within the Nigeria Police Force; that things are not difficult for the Respondent at any point as he in fact began to live larger than life when he started working at the force headquarters. She added that it was when he began keeping late nights and spending days in hotels that he started maltreating her. In addition, she stated that as a result of the posting of the Respondent to the office of the Force Secretary, his income increased to the extent that the Respondent bought a Mercedes E-class; that while the Respondent was awaiting the delivery of the benz car, he made use of her Honda car; that the Respondent was inconsiderate and selfish as he returns the car over the weekend, without fueling the car. She reiterates that she has been a supportive wife and has lived in mortal fear of the Petitioner who is hot tempered and has assaulted her severally to the extent of

firing his service pistol in the compound, when they had a misunderstanding. She admits that the Respondent was giving her #120,000.00 as upkeep per month and also paid for electricity, DSTV, cooking gas and fuel for generator. She stated that the Respondent reduced the upkeep to #80,000.00 per month and stopped paying for other utilities, that the Respondent told her he would punish her for daring to report him.

Going further, she admits that, she suggested to NAPTIP officer to put a phone call across to the Respondent as she didn't want anything to affect his place of work by making it formal; that it was the Respondent who insisted that he be invited formally; that the Respondent being a senior Police officer frustrated any formal invitation. She states that the suggestion of the Respondent to reduce the monthly upkeep to #40,000.00 shows how devious and wicked the Respondent is, as it is clear that the prices of goods and services have skyrocketed; that the Respondent's income has in no way diminished, his salary, allowances and other emoluments have not reduced; that the Respondent had told her that his present posting is far more lucrative than any position he had ever occupied, thus that the reasons stated by the Respondent are not tenable. She listed the reasons in paragraph 12 sub paragraph I – xi of her reply to the Respondent's answer to the petition. She admits that she left the banking job as a result of the complications she faced at the first trimester of her pregnancy coupled with the neglect and malice which the Respondent subjected her to at that time. She testified to the fact that the Respondent is manipulative and always projects himself as the

victim, that the Respondent is just an average man and if she was after his money, as a banker in Abuja, she could have married a stupendously rich man and not the Respondent. She continued that she enjoys cooking, thus she cooks for her husband; that she on countless times, sends text messages to the Respondent via phone asking him what he will like to eat; that she sold the motorcycles to augment the money for the payment of the house rent following the refusal of the Respondent to pay same; that the sum of #150,000.00 she requested for as monthly maintenance is very reasonable considering the position of the Respondent, who is a police officer and highly connected and for the fact that the Respondent has been able to give her and the child the minimum standard, he cannot abandon them, thus, the #40,000.00 suggested by the Respondent with the current inflation in Nigeria shows how devious the Respondent can be just to punish her. She avers that the sum of #1,200,000.00 is the rent of a two-bedroom flat and that it is reasonable and safe environment within Abuja; that she had always granted the Respondent access to the child of the marriage; however, she will not allow the Respondent have access to the child unsupervised as the child is of tender age and coupled with the fact that she doesn't know the current abode of the Respondent.

At the close of trial, parties filed and exchanged their final written addresses and on the 5/10/2023 both counsel adopted their addresses. Learned counsel to the Respondent Sylvanus C. Uchendu Esq. in the written address formulated a lone issue for determination:

Whether the Petitioner has by cogent and verifiable evidence proved her claims to be entitled to all the reliefs sought from the Court.

The petitioner filed a reply to the respondent's final written address.

Nmerengwa Alozie Esq. settled the final written address of the petitioner wherein raised two issues for determination, that is:

Whether from the facts and circumstances of this case and the evidence on record, the petitioner could be said to have established her case for dissolution of the marriage.

Whether or not considering the age and interest of the only child of the marriage, custody should be granted to the petitioner and the maintenance reliefs granted.

I have carefully considered the facts, evidence presented by the petitioner and respondent as well as the written addresses filed on their behalf by the respective counsel; it is my view that the sole issue formulated by counsel to the Respondent is appropriate in determining this case, that is;

Whether the Petitioner has by cogent and verifiable evidence proved her claims to be entitled to all the reliefs sought from the Court.

The burden of proof rests on the Petitioner to present credible evidence in prove of her case. See Ss 131 – 133 of the Evidence Act; Section 82 Matrimonial Causes Act

(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.

The law permits a party to a marriage to present a petition for a decree of dissolution of the marriage upon the ground that the

marriage has broken down irretrievably See s.15 (1) Matrimonial Causes Act (MCA) the success of the divorce petition is the establishment of one of the conditions listed in section 15 (2) a-h of the Matrimonial Causes Act. It is not the law that the Petitioner or the cross petitioner should prove all the conditions listed in section 15(2) (a)-(h); once the court is satisfied that the marriage has broken down irretrievably, then the court can go ahead to dissolve same. The petitioner must however prove one or any of the fact listed in s.15 (2) Matrimonial Causes Act.The introductory part of section 15 (2) of the Matrimonial Cause Act is clear and admits no ambiguity. It reads:

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:

- a. That the respondent has willfully 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 a way that the petitioner cannot be reasonably 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.

Therefore, the literal and simple interpretation of this is that the petitioner needs to prove only one of the facts listed in (a) to (h) to secure the verdict that the marriage between her and the Respondent has broken down irretrievably.

In the instant case, going by the pleadings and evidence led by the Petitioner, it is crystal clear that the Petitioner relies on the fact contained in Section 15 (2) (c) of the Matrimonial Causes Act which provides;

That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

It therefore means that for the Petitioner to succeed, the Petitioner must lead credible and cogent evidence to the reasonable satisfaction of the Court to such particular conduct of the Respondent, which would warrant the relief sought; and the conducts must be weighty and grave in nature to make co-habitation virtually impossible. See the case of Ibrahim Vs. Ibrahim (2007) ALL FWLR (PT.346) 474 & section 15(c) & 16 of the Matrimonial Causes Act. There must be a conduct or act that can be described as a behaviour for which the Court will hold that the Petitioner cannot reasonably be expected to live with. See *LT. ADEYINKA A. BIBILARI (RTD) v. NGOZIKA B. ANEKE BIBILARI* (2011) LPELR-4443(CA)

“The Matrimonial Causes Act ascribed a Section to the standard of proof in matrimonial matters or Causes. Section.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..."

In the case at hand, it is not in dispute that the petitioner and the Respondent celebrated their marriage on the 4th August, 2018 at the AMAC Marriage Registry, Abuja. See paragraphs 2 of the petition; this assertion was equally admitted by the Respondent in his paragraph 3 of his witness statement on oath. See Exhibit A, the marriage certificate tendered by the Petitioner. It is therefore established in evidence that the Petitioner and Respondent became husband and wife on the 4th August, 2018. Going further, the Petitioner states that the child of the marriage was born on 9th February, 2021; that the Respondent moved out of the matrimonial home on the 5th of March 2022. Also, it is admitted in evidence that the Respondent prior to his moving out of the matrimonial home, the monthly upkeep given to the Petitioner was #120,000.00 and after he moved out, he reduced it to #80,000.00. It is further admitted that the Respondent purchased two motorcycles for the dispatch business he opened for the Petitioner. These assertions were not denied by the Respondent. It is trite law, that facts admitted need no further prove. S. 123 Evidence Act

Now, the Petitioner herein have asked the court to hold that the marriage between her and the Respondent has broken down irretrievably, therefore the court should grant a decree of dissolution of the marriage. As earlier stated, the petitioner is relying on section 15 (2) (c) MATRIMONIAL CAUSES ACT that Respondent has behaved in a way she cannot be reasonably expected to live with him; the Respondent is not in agreement with the petitioner. The law is that the Party who relies on this ground must establish by cogent evidence that it would be unreasonable to require her to live with the Respondent. Therefore, the test of whether those behaviors are intolerable to expect the Petitioner to continue to live with the Respondent is objective and not wholly subjective. See BIBILARI v BIBILARI (2011) LPELR 4443(CA). There is every possibility that what the Petitioner terms "intolerable" may not pass this objective test. However, Section 16 (1) (a)-(g) exhaustively listed the various behaviors that qualifies as intolerable behavior that will be unreasonable to require the Petitioner to continue to cohabit with the Respondent under Section 15 (2) (C) Matrimonial Causes Act. Indeed, the operative word in Section 16(1) Matrimonial Causes Act is "shall" and shall implies compulsion and divestment of discretion on the part of the Court. In other words, unless and until any of the conditions listed in Section 16 (1) (a)-(g) exist with credible evidence; the Court shall refuse to make an order of dissolution of marriage.

In the instant case, the highlights of the conducts of the Respondent which the Petitioner adjudged intolerable is that the Respondent bullies and keeps malice with her for months and this has caused her emotional trauma; that the Respondent has been less supportive in terms of child/family care; that the Respondent has a violent temper, who had on three occasions violently kicked doors open at home in heat of anger and on one of those occasions, violently pushed her on the floor, forcefully confiscated her mobile phone and smashed same on the floor; that the Respondent drinks and smokes heavily; that the Respondent moved out of the matrimonial home on 5th March, 2022. On the part of the Respondent, he denied these assertions. The highlights

of his testimony are that the Petitioner tormented him with her bad, nagging and quarrelsome attitude, thus, he had to keep away from the Petitioner; that he was always trying his best to care and provide for the Petitioner and his child; that he gives the Petitioner #120,000.00 monthly apart from providing other necessities such as fueling the Generator, steady subscription of lights and cables network and provision of eatables/food and clothing, but reduced the upkeep to #80,000.00 because of the reduction in his finances; that he bought a car for the Petitioner to make her comfortable. He gave details on how he sends money to the Petitioner and backed same up with exhibits Dw1 – DW6. He continued that as things got harder, he had to reduce the upkeep to #80,000.00 per month.

I have taken a careful consideration of the assertions and counter assertions of parties, particularly the facts and evidence of the Petitioner vis a vis the provisions of Ss 15 (2)(c) & 16 (1) Matrimonial Causes Act, I do not hesitate to hold and find that the Petitioner failed to substantiate her assertions with regards to the conducts of the Respondent complained of. The Petitioner in her evidence stated thus “that this deep feeling of resentment and malice made the Respondent to lock me out of the matrimonial home overnight during my pregnancy days. This gives me the reasons to believe that it was all the stress and maltreatment that must have contributed to my having severe complications that kept me in the hospital for three months during the last months of my pregnancy.” This assertion was not supported with any documentary evidence from the hospital where the Petitioner was admitted. If indeed the Petitioner was admitted in the hospital, she should have supported her evidence with documents obtained from the hospital. It is an indispensable duty of the petitioner to provide concrete and credible evidence to support her claims, the law is trite that he who alleges a particular fact has the burden to place cogent and credible evidence to substantiate such facts. See section 131 of the Evidence Act 2011 which states that “whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”. It is the duty of the Petitioner to

place material before the court to establish her assertions that she was hospitalized, and that it was as a result of the stress and maltreatment that she was placed on admission. The submission of counsel in paragraphs 6 of petitioner's witness statement on Oath without any substantiation whatsoever, cannot be countenanced. See also section 136 of the Evidence Act 2011 and the case of ISHOLA V. ISHOLA & ANOR (2014) LPELR – 23082 (CA).

The petitioner conceded that the Respondent indeed purchased two motorcycles which he said were to be used for logistics business and financial returns were made to her to augment her monthly allowance but she made the choice to sell them to supplement the funds necessary for paying the house rent following the refusal of the Respondent to pay same. The Respondent, in his defense, has provided this court with several receipts that challenge the Petitioner's assertion that he had relinquished his responsibility for providing for the family. Exhibit Dw3, his pay slip, was tendered in evidence to substantiate his income. He further furnished the court with various receipts as evidence of his financial contributions, encompassing expenses related to their child's clothing, immunizations, and several months' worth of upkeep, as evidenced in Exhibit Dw1, Dw2, and Dw5, respectively.

The petitioner stated in evidence that the respondent has other sources of income from unofficial payments but couldn't provide the source of the unofficial payments made to the Respondent upon being cross examined and this further discredited her testimony before the court. The only evidence before the court to show the true state of the respondent's income is the pay slip of the respondent which he tendered in evidence to prove his earnings. More so, the Respondent testified that he has been re-posted to a new office where he only works on files unlike his previous posting where he was paid some allowances.

The law is that the conduct of the Respondent must be grave and weighty for the Court to conclude that the marriage has broken down irretrievably. See CHIEF WEME OGBUMGBADA v. SAMUEL

CHINDA OGBUMGBADA & ORS (2018) LPELR-44291 (CA) All the facts pleaded as well as the evidence led by the Petitioner were not supported with credible and cogent evidence.

As stated earlier, the Pw1 has a bounden duty to prove that the Respondent has behaved in such a way that she is not expected to live with him. See section 15 (2) (c) & 16, 82 MATRIMONIAL CAUSES ACT. section 16 MATRIMONIAL CAUSES ACT provides thus;

16 (1) Without prejudice to the generality of Section 15 (2) (c) of this Act, the Court hearing a petition for a decree of dissolution of marriage shall hold that the petitioner has satisfied the Court of the fact mentioned in the said section 15(2) (c) of this Act if the Petitioner satisfies the Court that-

- a. Since the marriage, the Respondent has committed rape, sodomy, or bestiality; or
- b. Since the marriage, the Respondent has, for a period of not less than two years-
 - (i) Been a habitual drunkard, or
 - (ii) Habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation, or has, for a part or parts of such a period, been a habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated; or
- c. Since the marriage, the Respondent has within a period not exceeding five years-
 - (i) Suffered frequent convictions for crime in respect of which the Respondent has been sentenced in the aggregate to imprisonment for not less than three years, and.
 - (ii) Habitually left the Petitioner without reasonable means of support; or.
- d. Since the marriage, the Respondent has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a

- period of five years or more and is still in prison at the date of the petition; of.
- e. Since the marriage and within a period of one year immediately preceding the date of the petition, the Respondent has been convicted of-
 - (i) Having attempted to murder or unlawfully to kill the Petitioner, or
 - (ii) Having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the Petitioner or the intent to inflict grievous harm or grievous hurt on the Petitioner; or
 - f. The Respondent has habitually and willfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the Petitioner-
 - (i) Ordered to be paid under an order of, or an order registered in, a court in the Federation, or.
 - (ii) Agreed to be paid under an agreement between the parties to the marriage providing for their separation; or
 - g. The Respondent-
 - (i) is, at the date of the petition, of unsound mind and unlikely to recover, or.
 - (ii) Since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution.

From the available facts and evidence led before the court, it is clear that the Petitioner has failed to satisfactorily convince the court that the Respondent has behaved in such a way or manner that she cannot reasonably be expected to live with the Respondent and I so hold.

In the final written address of the Respondent, particularly paragraphs 4.15, 4.18, 4.20 & 4.21 S.C Uchendu Esq. argued that

the Respondent is tired of the Petitioner's aggression, insult, abuses, assault and lack of peace, thus, the Respondent does not object to a decree of dissolution. The evidence of the Respondent however, speaks a different thing. In paragraph 15 of his witness statement on oath, he clearly stated that he is always around to live and love his wife and baby but it is the petitioner who is quarrelsome and making love and emotions impossible whenever he came back from work to be with his family. This shows that the Respondent is still interested in the Petitioner.

Now, the law is that where a notice of petition is filed by a party and served on the Respondent, the Respondent has a choice of filing either an Answer or cross petition or both. In the instant case, the Respondent chose to file an Answer. See Order VII R 1(3) Matrimonial Causes Rule [now to be referred to as the MCR] provides; where the respondent or a co-respondent in proceedings instituted by petition, or a person named in a petition, desires to submit to the court that, if it makes an order in favour of the petitioner, that order shall be different from the order sought by the petitioner, he shall, in an answer filed for the purpose, set out particulars of the order that, in his submission, the court should make if it makes an order in favour of the petitioner. It appears the Respondent may pray the court to grant an order different from the order sought by the petitioner. The Answer should contain the particulars of the order the court will make.

The addresses of counsel cannot substitute or constitute evidence upon which the Court can act and cannot replace the credible and cogent evidence required from a witness. See case of MUAZU V. STATE (2018) LPELR-46768 (CA). Going through the Answer filed by the Respondent, there is nowhere, it is shown in the pleadings and evidence of the Respondent that he does not object to the dissolution of the marriage and even, if he had pleaded the fact, it still wouldn't have been sustainable and the reason, is not farfetched. It is shown that the Petitioner instituted this suit on 2nd August, 2022; parties admits that the Respondent moved out of the matrimonial home on 5th March, 2022. Thus, by way of calculation as of the date the suit was instituted, parties had just lived apart for four months or thereabout. By virtue of section 15

(2) (e) of the Matrimonial Causes Act 1970, parties must have lived apart for a period of two years preceding the filing of this suit. What this means is that the marriage is not qualified to be dissolved. And I so hold.

The grouse of the Petitioner against the Respondent borders more on his financial issues as can be gleaned from her sworn depositions in paragraphs 12, 13, and 15, as well as her responses in paragraphs 5, 6, 8, and 12 to the Respondent's answer to the petition. Under cross examination, she stated that she didn't avert her mind to the aspect of the economy when she got married to the respondent. It is clear the Petitioner would have to cut her coat according to her husband's legitimate earnings, more so, having sold the motorcycle that were meant to augment her allowance.

In conclusion and from the totality of the evidence placed before the court by the parties, I find and hold that none of the parties established any of the facts as stated in Section 15 (2) (a-h) of the Matrimonial Causes Act. The suit is hereby struck out.

ASMAU AKANBI – YUSUF

[HON. JUDGE]

APPEARANCES:

S. R Ehinola for the Petitioner;

S. C Uchendu for the Respondent;

Petitioner was present, Respondent absent.