

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT NYANYA- ABUJA

THIS TUESDAY THE 14TH DAY OF NOVEMBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFIA

SUIT NO: FCT/HC/GWD/PET/18/2024

BETWEEN:

MRS. NNORUKA NKEMDILIM ANAZOGINI.....PETITIONER

AND

MR. JOHN NWA-JESUS.....RESPONDENT

JUDGMENT

By a notice of petition for decree of dissolution of marriage with Suit No. FCT/HC/GWD/18/2024 dated the 26th day of April, 2024 seeks for the following reliefs:

- 1. A declaration that since the marriage the respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with the respondent.*
- 2. A declaration that the respondent's conduct, to wit, using of fake identity to secure travel documents to Spain is a threat to the security of the stay of the petitioner in Spain as an immigrant as a wife to the respondent who has travel records.*
- 3. A declaration that the petitioner and the respondent have lived apart for a continuous period of more than one year immediately preceding the presentation of this petition.*
- 4. A declare of dissolution of marriage on the ground that the marriage has broken down irretrievably.*

Accompanying the notice of the petition is an affidavit verifying the facts of the petition deposed to by one Chinedu Emmanuel Nnoruka of Apo Resettlement,

Abuja the elder brother of Mrs. NnorukaNkemdilimAnazogini the petitioner of 7 paragraphs and a witness statement on oath of Chinedu Emmanuel Nnoruka.

Before the presentation of the notice of petition, the petitioner/applicant filed a motion *ex parte* with motion no. GWD/M/281/2024 for an order granting leave to the Petitioner/Applicant to effect the service of the originating processes in this suit herein and other subsequent processes on the Defendant/Respondent by substituted means to wit: by pasting same on the respondent's email address chinaza@gmail.com the motion dated the 26/04/2024. The motion was moved and the reliefs sought therein was granted dated the 03/05/2024 and the matter was adjourned to 13/06/2024 for hearing and adjourned to 14/06/2024 for hearing.

On the 14/06/2024 upon the court being satisfied that the respondent was served with the order of this court granting substituted service on the respondent, the court ordered the petitioner to proceed with the hearing of the petition.

PWI, one Chinedu Emmanuel Nnoruka, a businessman, a brother to the petitioner in his evidence stated that, the petitioner is his junior sister same father and same mother.

That on the 26th April, 2024 made a statement on oath. The said statement which the petitioner identified same through his name and signature. That he wants the court to adopt the said statement on oath as his oral statement before the court. Furthermore referred to paragraph 5 of the statement on oath that the respondent fake the marriage certificate which contain the name of his sister (the petitioner) Mrs. NnorukaNkemdilimAnazogini. The marriage certificate having been identified by PWI, was admitted in evidence as exhibit A. (the marriage certificate dated the 14/03/2019 conducted at the marriage registry of Anambra East L.G. Aotuoha). That he wants the court to dissolve the marriage between the petitioner and the respondent because the respondent used a fake name to contract the marriage between the petitioner and the respondent. The matter was adjourned to 11/07/2024 for cross – examination of PWI by the respondent.

On the 11/07/2024, when this matter came up for cross – examination, the respondent was not in court despite the hearing notice.

Counsel to the petitioner applied to the court to foreclose the respondent from cross – examining the petitioner. This the court granted and the respondent was foreclosed and the petitioner closed it's case and the matter was adjourned for defence to the 19/07/2024.

On the 19/07/2024, counsel to the petitioner was in court while the respondent was absent; the petitioner was represented by one Chinedu Emmanuel Nnoruka. In the absence of the respondent, counsel to the petitioner applied that the respondent be foreclosed from defending this action having been served with hearing notice. The oral application for the foreclosure of the right of the respondent made by the counsel to the petitioner was granted.

Counsel to the petitioner informed the court that he was waving their right for address, and the matter was adjourned to 10th October, 2024 for judgment.

Before I proceed with this judgment I will first and foremost refer to Section 15 (1) of the matrimonial causes Act, 2004 which provides as follows:

“A petitioner under this Act by a party to a marriage for a decree of dissolution of marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down”.

Section 15 (2) provides

“The court having a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably , but only if the petitioner satisfies the court of one or more of the following facts:

- a. That the respondent has woefully and persistently refused to consummate the marriage.***
- b. That since the marriage, the respondent has committed adultery and the petitioner finds it unfavourable to live with the respondent.***
- c. That since the marriage, the respondent have 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 Year immedatelyprededing 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 two years immediately preceding the presentation of the petition.***

- g. That the other party of the marriage has for a period of not less than one year failed to comply with a decree for restitution of the conjugal rights made under this Act.***
- h. That the other party to the marriage has been absent from the petitioner to such time and in such circumstances is to provide reasonable grounds for presuming that he or she is dead.***

On this wish to state that, Section 15 (1) of M. C. A provides that:

“....a decree of dissolution of marriage may be presented to the court by either party to the marriage....”

The word “MAY” in Section 15 (1) of the M. C. A under the interpretation Act, 1987, Section 9 (1)

“In any actor instrument, the word “May” is used to confer a power, indicates that the power may be exercised or not of discretion. The word “May” is an expression of possibility, a permissive choice to act or not and ordinarily implies some degree of discretion”.

I brought the interpretation of the word “MAY” because; the petitioner throughout the proceedings did not give evidence nor present any statement on oath. The only statement on oath presented is that of the brother to the petitioner who acted or represented the petitioner in this proceedings. The question then is it proper for PWI to act on behalf of the petitioner? That is the question that needs an answer from the counsel to the petitioner or whether the MCA vests authority on the PWI to represent the petitioner in this instant suit. Notwithstanding, the facts leading to this petition.

By the notice of the petition it is clear that, the petitioner was born on the 14/01/1981 while the respondent was born in 1980 born in Nigeria of Nigerian parents and has been resident in Nigeria since her birth and later relocated to Spain. It is also clear that, the petitioner currently hails from Isinye village, NnandoAnambra East L.G.A of Anambra Nigeria, but currently lives in Spain.

It is also in the notice of petition that, after the marriage the petitioner and the respondent cohabited for about two years before they started having issues and that the marriage between the petitioner and the respondent provided two issues to wit:

1. ChinazaPrecious Nnoruka 20 years old
2. Chibuike Miracle Nnoruka 20 years old

And the facts leading to this petition are stated in paragraph 10 of the notice of the petition, 10 I - XXXV reproduced below.

i. The petitioner were into relationship and the respondent got the petitioner pregnant sometime in 2004 and because the petitioner was afraid and did not want people to know, the petitioner migrated to Spain where she gave birth to twins by name Chinaza Precious Nnoruka (20 years old) and Chibuike Miracle Nnoruka (20 years old).

ii. The petitioner and the respondent were torn apart because of distance, the respondent subsequently travelled to Angola in search of greener pasture and life went on as normal.

iii. After a while, the petitioner and the respondent reconnected and started courtship afresh and as at the at time the respondent was residing in Angola but was not doing well because his job was not paying well.

iv. The respondent has been bitterly complaining to the petitioner of hardship and the petitioner and the respondent had an agreement for the respondent to move down to Spain to meet the petitioner.

v. The petitioner and the respondent concluded plans and both of them travelled back to Nigeria in 2019 to conduct their marriage.

vi. The petitioner and the respondent agreed to celebrate their marriage under the Act at the marriage registry of Anambra East LGA, Otuocha dated the 4th day of March 2019, in accordance with the provision of the Marriage Act is hereby pleaded and shall be relied upon at the course of trial.

vii. Immediately after the marriage the petitioner and the respondent have enjoyed cozy marriage and every day was honeymoon.

viii. The respondent was jobless as at the time they celebrated their marriage thus the petitioner decided to earmark some amount of money which was projected for the respondent to do business.

ix. The petitioner and the respondent cohabited before the petitioner travelled to Spain while the two children Chinaza precious Nnoruka now 20 years old and Chibueke Miracle Nnoruka also 20 years old were living in Spain.

x. Based on the plans for the respondent to move down to Spain, the petitioner spent a lot of money to ensure that the respondent secured visa to travel to Spain.

- xi. The petitioner spent over nine thousand Euros after making several attempts before she succeeded.*
- xii. The effort made by petitioner yielded the required result as the respondent was able to travel to Spain through the sponsorship of the petitioner.*
- xiii. As at the time the respondent arrived Spain in December 2021, the respondent was jobless and the petitioner was the one feeding, sheltering and sponsoring the respondent before he could secure a job.*
- xiv. The trouble that ended this marriage started in the same December 2021 shortly after the respondent set his foot in Spain, when the respondent high handedness manifested in full, the respondent would always insult and beat the petitioner at the slightest provocation.*
- xv. Since December 2021 when the marriage between the petitioner and the respondent was going through crises, the respondent has conducted himself in a manner that has made it difficult for the petitioner to live with him.*
- xvi. The respondent started behaving in a strange way to the surprise of everyone that even the 2 children of the marriage where dumbfounded because of the character the respondent that they sometimes wonder if the respondent is their biological father*
- xvii. The petitioner took the responsibility to ensure that the respondent secures all necessary documentation, the petitioner spent three hundred Euros for six consecutive years as tax for the respondent.*
- xviii. During the subsistence of the marriage, the respondent kept amorous relationships with other women outside and the respondent refused to consummate the marriage.*
- xix. The respondent became callous, despotic and had no fear, regard or any iota of respect for the petitioner*
- xx. Cohabitation ceased in the same December 2021, when the respondent removed his things out of his matrimonial home to an unknown place.*
- xxi. The respondent deliberately made himself inaccessible to the petitioner.*
- xxii. The respondent, in order to keep away from the petitioner, decided to move away from the petitioner to an unknown place which was glaring that the respond has achieved his aim of moving to Europe and nothing more..*

xxiii. At a point in time the petitioner became so frustrated and had to resort to other means whether she can draw the attention of the respondent but to know avail.

xxiv. The respondent has not been caring for the children of the marriage let alone the petitioner herself who laboured tirelessly and spent a huge amount of money to bring the respondent to Europe.

xxv. At the very most the petitioner gets calls from home (Nigeria) that the respondent is at home without actually knowing his whereabouts in Spain or his movements from Spain to Nigeria or within Spain.

xxvi. The attitude of the respondent has thrown the petitioner and the two children into a serious predicament and financial quagmire because before the marriage of the petitioner and the respondent and the eventual movement of the respondent to Spain, the petitioner was living well but the coming of the respondent to Spain has put the petitioner into a serious financial, social and security burden.

xxvii. Now because of this ugly development the Spanish Government has stopped paying for the children's welfare called (BECA) a student scholarship owing to the fact that the Spanish Government perceived that both the petitioner and the respondent being parent of the two children are working.

xxviii. However the respondent shows no care towards the petitioner and the two children by refusing to pay the children's school fees material needs and other basic necessities.

xxix. The respondent manipulated the petitioner just to find his way to Europe and nothing more: this is because the respondent's real name is Ogbonna John Ewudo but because the respondent had already hatched his deceptive plan, the respondent decided to adopt the name "John Nwa-Jesus" to conceal his real identity and the fact that the respondent is married to a woman in Nigeria under Native Law and Custom.

xxx. There is no documentary evidence to show that the marriage between the respondent and the woman he married because the marriage was not conducted under English Law.

xxxi. The petitioner further states that the respondent is married to another woman in Nigeria and is cohabiting with her anytime he comes to Nigeria,

thus the petitioner cannot be reasonably be expected to live with the respondent since the marriage has broken down irretrievably.

xxxii. The respondent is diverting all the money he is receiving from the Spanish Government that is meant to take care of the children of the marriage but instead the respondent is sending the money to the other wife and children he married in Nigeria.

xxxiii. The petitioner sent financial requirements for the preparation of the respondent's travel documents to Spain while she was in Spain not knowing that the Respondent adopted a fake name to prepare the documents and to deceive the authorities both in Nigeria and Spain on his true identity. The petitioner shall rely on the international passport of the respondent and other travel documents bearing the name Mr. John Nwa-Jesus instead of his true name Ogonnaya John Ewudo.

The next question is whether the affidavit verifying the facts of the petition was proper to be deposed to by Chinedu Emmanuel Nnoruka who is a brother of Mrs. NnorukaNkemdilimAnazogini? Under order 5 rule 10 (1) of MCA provides that:

A petitioner shall by an affidavit written on the petition and sworn to before his petition is filed.

- a. Verify the facts stated in his petition of which he has personal knowledge; and
- b. Depose as to his belief in the truth of every other facts stated in his petition.

OodusoteVsOodusote (2012) 3 NWLR (Pt 1288) 478 at 497 where Garba JCA held at page 497 to 495 thus:

“Filing a verifying affidavit with a petition is a condition presented to the filing of the petition in the sense that the affidavit must be sworn by the petitioner before the petition is filed. The petition must contain the affidavit sworn to by the petitioner before it is or can be properly The use of the word “Shall” in a statute ordinarily means that the provisions are mandatory because the word is used to express a command or directives which does not admit of discretion”

In this instant petition, the verifying affidavit is that of the brother to the petitioner and not the petitioner itself which is contrary to the provision of order 5 rule 10 (1) of the MCA as stated above.

By this provision can it be said that, the verifying affidavit of the brother, Mr. Chinedu Emmanuel Nnoruka is worthy to be given consideration in this instant suit? The answer is capital NO.

Assuming but not conceding that the court is inclined in considering the verifying affidavit of Chinedu Emmanuel Nnoruka, this suit falls short of the evidence given by the PWI as the PWI failed to provide evidence of the respondent's international passport and other travel documents bearing the name Mr. John Nwa-Jesus instead of his true name Ogonnaya John Ewudo as alleged in his evidence of the respondent presenting a fake document. The none production of the international passport of the respondent is the ultimate failure of this petition. Reference to paragraph XXXII of the facts as stated in the notice of the petition where PWI stated thus:

“The petitioner sent financial requirements for the preparation of the respondent’s travel documents to Spain, while she was in Spain not knowing that the respondent adopted a fake name to prepare the document and to deceive the authorities both in Nigeria and Spain on his true identity. The petitioner shall rely on the international passport of the respondent and other travel documents bearing the name Mr. John Nwa-Jesus instead of his true name Ogonnaya John Ewudo”.

The none production of the international passport of the respondent by the witness to the petitioner PWI is the failure of this petition on the second arm of this petitioner apart from known complying with the provision of order 5 rule 10 (1) of the MCR.

In effect for non-compliance with the above provision of order 10 (1) of the MCR, as I said earlier is the failure of this suit including the none presentation of the international passport of the respondent before this court to enable the court to have a glance as to whether the allegation of the petitioner that the respondent used a fake passport.

From the foregoing, i hold that, this petition lacks merit as the facts disclosed by the petitioner through PWI is not enough to grant the reliefs sought. Hence this petition is hereby dismissed for lacking in substance.

This is my judgment.

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Hon Justice A.Y. Shafa

Appearance:

1. H. O. Oyaje for the Petitioner.