

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 ON THE 6TH DAY OF APRIL, 2023
FCT/HC/GWD/PET/8/17

BETWEEN
OKAFOR RAYMOND CHUKWUDI PETITIONER
AND
OKAFOR NNEKA PERPETUAL RESPONDENT

JUDGMENT

By a Notice of Petition and other processes filed the 4/05/2017, the Petitioner seeks for the following reliefs:

- a. A DECREE OF DISSOLUTION OF MARRIAGE with the Respondent on the ground of desertion of the matrimonial home since July 2014, incompatibility and that since the marriage, the Petitioner and Respondent have not live together up to six months and cannot at the moment live as such any longer.
- b. Custody of the said child under Marriage for proper parental training and safety as the respondent does not have enough time to teach the child and take a good care of the child being a Civil Defence Corp member whose schedule of work is so stringent for child upbringing.

The Respondent/Cross petitioner [now referred to as the Respondent] filed an Answer and cross petition on the 25/3/2021. The Respondent seeks the following relief;

- a. An Order for dissolution of the marriage between the Cross Petitioner/ Respondent and the Cross Respondent/Petitioner on the ground that the marriage has broken down irretrievably.
- b. An Order of the Court granting custody of the Child of the marriage to the Cross Petitioner/Respondent
- C. An Order of the Court mandating the Petitioner/ Cross Respondent to pay the sum of One Hundred Thousand Naira (₦100,000.00) monthly for the upkeep of their daughter Okafor Irene Obioma.
- d. An Order of Court mandating the Cross Respondent/Petitioner to pay the educational expenses of the Child of the marriage {Okafor Irene Obioma} from henceforth till she obtains her first University Degree.
- e. An Order mandating the Petitioner/Cross Respondent to pay the Cross

Petitioner/Respondent the sum of Two Million Naira only (₦2,000,000.00) being part of the feeding, clothing, school fees and accommodation expenses incurred by the Cross Petitioner in taking care of their daughter from conception till date. On the 28/6/2021, the Petitioner filed a Reply to the cross-petitioner's answer and cross petition on the 28/6/21.

At the trial, the Petitioner testified as PW1, while the Respondent testified as RW1. The witnesses were duly cross examined by their respective counsel.

The highlights of the testimony of the PW1, is that he is a public servant working with the FRSC and resides in Gwagwalada;

that the Respondent is his wife, they got married on the 21st April, 2014 at St. Mark Catholic Church, Obinofia Nduino, Enugu State; immediately after the marriage, the parties came back to Abuja and cohabited at Gwagwalada Area Council, FCT- Abuja.

Shortly after the marriage, the Respondent complained about the apartment they living in; that it was not good enough for her and also the Petitioner was not up to the man that were supposed to marry; that if the Petitioner cannot meet up with her demands then he should get a divorce; that the Respondent became awkward and cruel and also didn't give him peace of mind which made him seek refuge at the office; that at a point her cruelty led her to smash a bottle on his left leg. That the Respondent left her matrimonial home on the 3rd July, 2014; that since she left his house on the 3rd July 2014, they have not been together till date; that the Respondent has been sending him threat messages and one of her brothers in Abidjan also sent a message to him, threatening that if he remarries, he will lose his life.

That sometime in either October 2014 or thereabout, his Dad called to inform him that the Respondent was pregnant; that his Dad told him, he would like to bring the Respondent down to Egbe, Kogi State where the Petitioner was born and raised; that the Respondent stayed with his parents, till the delivery of the child of the marriage i.e February 2015 to July 2015; that while the Respondent was living with his parents, she terrorized his parents and eventually absconded with the baby to her father's house; while the Respondent was still with her in-laws, the Petitioner had informed his kinsmen that he can no longer with the Respondent, thus, they should do what the culture demands so that he can be free; the Respondent sometime in 2015 or 2016 broke into the Petitioner's house, destroyed his laptop, furniture, windows and doors. The Petitioner reported the incident to his kinsmen and sometime in August 2016 his family went to the Respondent's family house in

the village and it was resolved that both parties should go their separate ways.

The Petitioner states that every contribution he tried to make in respect of the baby was rejected by the Respondent. He had earlier instituted an action against the Respondent, but was struck out for want of jurisdiction. That the baby is the most important to the Petitioner; that the baby's upbringing in her present environment is in doubt, as the locality do not good medical center, the school in the area is substandard. The baby's upbringing will be jeopardized if she is allowed to remain in her present environment. The Petitioner states that he has made adequate arrangement with his parents for the baby to be raised by them, so that she can attend a good school at low rate and have access to medical care when the need arises; that the Respondent shall have access to the child anytime she likes and he is willing to provide her the transportation fare. The Respondent refused to accept his idea and also refuse him access to the child of the marriage. The Petitioner prayed the court to dissolve the marriage between him and the Respondent due to the cruel and intolerable behaviour of the Respondent.

The Petitioner in his further evidence reiterates his earlier testimony and states that the Respondent threatens him vide text messages; that sometime in 2018, the Respondent sent a message to him, which prompted him to visit the Civil Defence Headquarters to complain. The Respondent was summoned; however, he was surprised that their statements were not taken.

The following documents were admitted in evidence;

1. Photocopy of the certificate of marriage.
2. Receipt No. 88251 marked as Exhibit B1
3. Receipt No. 49940 marked as Exhibit B2
4. Receipt No. 49940 marked as Exhibit B3
5. Receipt No. 88251 marked as Exhibit B4
6. Receipt No. 43693 marked as Exhibit C1
7. Receipt No. 78992 marked as Exhibit C2
8. Receipt No. 81770 marked as Exhibit C3
9. Receipt No. 43909 marked as Exhibit C4
10. Receipt No. 78838 marked as Exhibit C5
11. Receipt No. 41429 marked as Exhibit C6
12. Receipt No. 79024 marked as Exhibit C7
13. Receipt No. 87516 marked as Exhibit C8
14. Receipt No. 4448 marked as Exhibit C9

The Pw1 was cross examined, there was no reexamination.

The Respondent admits that both parties cohabited at Gwagwalada after the marriage; that immediately after the marriage, the Petitioner was very cruel to her; that the Petitioner was in the habit of not providing food for the family and always ensures they spend her money on everything that was needed to be done in the House; that she had some savings from her previous employment before the marriage and the Petitioner being aware of the situation complains of not being financially buoyant despite the fact that he was working in Federal Road Safety Commission at the time; that when they went for the marriage ceremony of the Petitioner's sister, the Petitioner told her to remain in Enugu to continue with the tailoring training so that she can have a means of supporting the family; She continued that she did not unilaterally leave the matrimonial home as it was the Petitioner who made her stay back at Enugu with the explanation that he was going on a three months course; that the Petitioner did not know when the child of the marriage was born and also did not contribute anything before and after she gave birth; that the Petitioner denied being the father of the child; that at all material time she was in Enugu, the Petitioner never sent her money for upkeep; that when she told the Petitioner she was pregnant while in Enugu, the Petitioner said he was not responsible for the pregnancy and stopped taking his calls and did not also respond to messages sent to him; that she was in a dilemma as she was sure the Petitioner was responsible for the pregnancy, so sometimes in September 2014, she sent a message to the Petitioner informing him of her coming to Abuja; that the Petitioner called to instruct her not to come as he has been transferred to Osun State. The Respondent, believed the Petitioner and then remained at Enugu. She states that the Petitioner continued in his usual wicked and conscienceless character by not speaking with her again after making her stay back at Enugu; that she really wanted to be with her Husband at that time so he can care for her and the unborn Child; that at times like that, no woman wants to stay apart from her husband; that the Petitioner never wanted them to be together as a family; that she had on several occasion sent messages to the Petitioner to plead for mercy and forgiveness if she had done anything to warrant the treatment being meted out to her but the Petitioner failed to respond to the messages; that when she called the parents of the Petitioner, they equally denied knowledge of the petitioner and the unborn child; that sometimes in November 2014, she travelled to Osun State to see the Petitioner since he was not taking her calls and also not responding to text messages; that when she got to Osun State, she went to the Federal Road Safety Office to ask for the Petitioner but got the shock of her life when she was told the Petitioner was never transferred to Osun State; that because she was heavily pregnant the senior Officer there empathized with her, the office

at Osun ensured that the Petitioner was reached in Abuja and was mandated to send money for her transport back to Abuja, but he insisted that she return to Enugu; that she collected the money and took the next available car to Enugu; that the officer is still alive and will be called to state what transpired in Osun State; that while at Enugu, she still did not hear from the Petitioner as promised; that it was the petitioner's father who came and told her to follow him to Kogi State, so that she could live with them; that she rather informed her Father in law that she needed to see the Petitioner, to find out why she has to go to Kogi State, and not Abuja. According to the Respondent, she came to Abuja, but was not allowed into their matrimonial home by the Petitioner as the Petitioner told her that she has no place in the house anymore; that she did not take his cruelty to heart as she believed whatever was making the Petitioner treat her badly will change so she stayed in the matrimonial home all the same. That from the time she arrived the matrimonial home, she was virtually on her own. She provided everything for herself and the unborn child. The Petitioner did not care what happened to her and was always in the habit of making life unbearable for her in the Home; that she was managing and taking care of herself but the Petitioner still wanted her out of the house; that he told her severally to leave so that no harm will befall her but she was hell bent on living with her husband so she endured the pains, hatred, betrayal and all the misgivings of the Petitioner; that the Petitioner in December 2014, finally forced her out, despite her condition from their matrimonial home; that he took her to peace park, paid the fare to Enugu and told her never to come to his house again; that she was adamant and wanted to return home after he had left the park but some persons who witnessed the scenario advised her to go back to Enugu as no one can be too sure what the Petitioner will do next; that she got to Enugu and was all by herself until she was again advised to take further step in salvaging the marriage by going to give birth at the Petitioner's parents' home in Kogi State; that she went to Kogi State; that she suffered the most as the parents of the Petitioner did not care for her as their daughter in law; that she was made to suffer untold hardship till she gave birth to her daughter; that after the Child was born, the Petitioner did not come to see her and the baby; that she was not allowed to leave the house alone; that each time she talks about the Petitioner, the parents of the Petitioner told her never to think of going to Abuja; that she continued in this state of quagmire and was close to having depression before she picked her things and told the parents of the Petitioner, she was leaving for Enugu so as to save herself and the child but the parents did not believe she was actually going to Abuja; that it took the intervention of an NGO before she was allowed to board an Enugu bound bus and never heard from the Petitioner;

that when she arrived Enugu, she still made arrangement to see the Petitioner in Abuja; that she went to plead with the Petitioner even though she had done nothing wrong all in a bid to save their marriage but she was shocked to meet another woman in their matrimonial home; that the Petitioner and the woman together with some thugs engaged by the Petitioner gave her and her daughter the beating of her life; that she was injured and forced to sleep outside the house and the next day, she found her way back to Enugu and did not return to Abuja again; that she did not see or hear from the Petitioner until this Petition was brought to her notice; that the Petitioner has never contributed anything for the upkeep of the Child and he has been an absentee father and will never be able to take care of her little daughter; that the Petitioner is only interested in taking her daughter from her and sending her to his parents in Kogi State; that the Petitioner does not work or live in Kogi State; that she has been the sole care giver of the child of the marriage and has the means to ensure her proper upbringing; that she will fare better in her custody than that of the Petitioner; that the Petitioner only wants custody of their Child so as to continue to punish the Respondent; that it was the Petitioner that abandoned her and their daughter; that he has been wicked to her and their child from pregnancy till this moment; that out of frustration and not getting any support from the Petitioner for the upkeep of the child, she wrote to his office to help her ensure the Petitioner takes care of the child but all efforts proved abortive as the Petitioner never bothered to do the needful; that the Petitioner has behaved with cruelty and hatred towards her in the marriage and she can no longer live with the Petitioner; that she wants to have custody of the Child of the marriage namely Okafor Irene Obioma; that she wants the Child to grow up with her so that she can give her the motherly care she deserves as a minor and she doesn't want the Child to grow without the input of her parents as the child of the marriage will be taken to the Petitioner's parents in Kogi State; that the Petitioner shall have access to the Child during holidays so that she can learn the basic things required for her upbringing.

The following documents were tendered by the Cross Petitioner.

1. Receipt No. 13472 marked as Exhibit RW1
2. Receipt No. 05512 marked as Exhibit RW2
3. Receipt No. 06103 marked as Exhibit RW3
4. Receipt No. 005472 marked as Exhibit RW4

Above is the case of the Cross Petitioner.

At the close of trial, parties filed and exchanged final written addresses and on the 19/1/2023 Counsel adopted their addresses.

Learned counsel for the Respondent Akharamé Lucky Esq. filed a final written address, wherein a lone issue was formulated for determination:

Whether the Cross Petitioner/Respondent has proven her case on the preponderance of evidence as to be entitled to the reliefs sought against the Petitioner/Cross Respondent.

M. A Alemeru Esq. settled the final written address of the petitioner. He raised two issues for determination, that is:

- *Whether the Cross Petitioner/Respondent has proven her case on the preponderance of evidence as to be entitled to the reliefs sought against the Petitioner/Cross Respondent.*
- *Whether from the pleadings and the evidence adduced by the parties, the marriage between the parties could be said to have broken down irretrievably.*

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 and same shall be relied on where necessary; however, I consider it necessary to streamline the issues formulated by the parties and it is my view that two issues will be appropriate in determining this case, they are;

1. Whether based on the evidence adduced by the petitioner, the petitioner is entitled to the reliefs sought on the one hand or
2. Whether based on the evidence adduced by the respondent, the respondent is entitled to the reliefs sought on the other hand.

The law is that a Petitioner/Respondent who desires dissolution of a marriage, must discharge the standard of prove stipulated by the Matrimonial Causes Act and establish in evidence that the marriage has broken down irretrievably. See s. 15 (2), s. 82 MCA and upon proof of one or more facts set out under S 15 (2 a -h) of the Act, the court can go ahead to dissolve the marriage.

The law as regard the success of divorce petition is the establishment of one of the conditions listed in section 15 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).

The introductory part of section 15 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:

The literal and simple interpretation of this is that the petitioner needs to prove only one out of the facts listed in (a) to (h) to secure the verdict that the marriage between him and the cross petitioner has broken down irretrievably.

In the case at hand, it is not in dispute that the petitioner and the Respondent celebrated their marriage on the 30th April, 2014 at the St. Mark Catholic Church, Obinofia Nduino, Enugu State in Nigeria See paragraph 1 of the petition as well as the evidence led by the Petitioner; this assertion was admitted by the Respondent. See paragraph 1 of the Answer/cross petition and in support of these assertions, the Petitioner tendered the Marriage certificate, marked exhibit A. Thus, the marriage between the parties is established in evidence. The Petitioner and Respondent became husband and wife on the 30th April, 2014.

Now, parties herein have asked the court to hold that the marriage between them has broken down irretrievably, therefore the court should grant a decree of dissolution of the marriage; each relying on different grounds. The petitioner is relying on s.15 (2) (c), (e) & (f) MCA that is, the Respondent has behaved in a manner he cannot reasonably be expected to live with her and also deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition. The Respondent does not agree with the Petitioner. In paragraph 8 of her witness statement on oath, she stated that she did not unilaterally leave the matrimonial home as it was the Petitioner who made her stay back at Enugu with the explanation that he was going on a three months course. The Respondent also sought for dissolution of the marriage between her and the Petitioner on the ground that the marriage has broken down irretrievably. In the case at hand, both parties have raised allegations and counter allegations against each other, however none of the party presented credible and cogent evidence to support the assertion of intolerable behaviour or how the Respondent moved out of the matrimonial home. The argument of the Petitioner's counsel in paragraph 6.5 of the final written address cannot substitute evidence required by law. See S. 82 Matrimonial Causes Act

It is not in dispute that parties started living apart sometime in 2014. See paragraph 7 (b) of the Petition as well as the evidence of the Petitioner and

also paragraphs 5 & 6 of the Respondent's answer and cross petition wherein the Respondent states that it was the Petitioner who asked her to stay in Enugu. Like I said earlier, the assertion and counter assertion on how the Respondent started living apart were not buttressed with credible evidence. What is established here, is that parties started living apart sometime in 2014. Also, there appears to be a consensus ad idem between parties that the marriage between them has broken down irretrievably. See DR. JOSHUA OMOTUNDE v. MRS. YETUNDE OMOTUNDE (2000) LPELR-10194(CA) where it is stated that the provision of s.15 (2) f MCA is mandatory and that the Court has no discretion to exercise otherwise once it is shown that parties have lived apart for the required period. The section has the factor of absence of fault element characteristic of other matrimonial offences -the law behind the Section that is 15(f) as far as the living apart is concerned is not interested in right or wrong or guilt or innocence of the parties. Once the parties have lived apart, the Court is bound to grant a Decree.

This petition was presented on the 4th day of May, 2017, thus by way of calculation, it means parties have lived apart for three years or thereabout prior to the presentation of the petition. Also, it is not in contention that parties are no longer interested in each other as can be seen from their principal reliefs as well as the evidence placed before the court. The Respondent from her reliefs in the cross petition filed sought the dissolution on the ground that the marriage has broken down irretrievably. She stated in paragraph 43 of her witness statement on oath that the Respondent has behaved with cruelty and hatred towards her in the marriage and therefore she can no longer live with the Respondent. I must say that the exhibit Rw5 tendered by the Respondent cannot be countenanced as there is no evidence that same was received at the Office of the Petitioner. See case law. Thus, no weight can be attached to same. See NWABUOKU V ONWORDI (2006) AFWLR (PT. 331) AT 1252 PARAS C-F

By virtue of s.15 (2) of MCA where it is shown that parties have lived apart from each other for a continuous period of at least three years immediately preceding the presentation of the petition, the court is bound to dissolve the marriage.

As earlier mentioned, before a court can grant dissolution of marriage between a husband and wife, one of the facts must have been established in section 15 (2) (a-h). See OMOGIATE V. OMOGIATE (2021) LPELR-56018(CA). It can be gleaned from the evidence before the court that the Respondent failed to prove how she was treated in a cruel manner. She failed to present credible evidence on the way, the Petitioner informed her of his transfer to

Osun State. She had stated in evidence that the Petitioner informed her vide a phone call conversation that he has been transferred to Osun state, meanwhile under cross examination, she admits that the Petitioner gave her the information vide a text message. This is contradictory and cannot be relied on. Also, the Respondent failed to call the officer whom she met at the FRSC office, in Osun State to corroborate her evidence. See IBRAHIM V. IBRAHIM (2006) LPELR-7670(CA

If anything at all, there is evidence that the Respondent delivered the child of marriage at Egbe, where her parents in law reside and she admit that the hospital bill was paid by her father-in-law. Thus, her assertion that the Respondent didn't contribute before and after the birth of the baby are not true. See exhibits B1- B4 & C1 – C9, the medical bills which further buttresses the fact that the Respondent delivered the child of the marriage at Egbe, Kogi State, the place of residence of her parents in law.

Furthermore, the Respondent states in evidence in paragraph 34 of her witness statement on oath that when she left Kogi State, and arrived Enugu, she still made arrangement to see the Petitioner in Abuja; that she went to plead with the Petitioner even though she had done nothing wrong all in a bid to save their marriage but she was shocked to meet another woman in their matrimonial home; that the Petitioner and the woman together with some thugs employed by the Petitioner gave she and her daughter the beating she has never received in her life; that she was injured and forced to sleep outside the House.

Under cross examination, the Respondent stated thus;

Q: You said you came to his house in Gwagwalada at a time – paragraph 22 Respondent's answer. Is that true?

Answer: Yes.

Questions: At what time did you get to Abuja?

Answer: At about 4pm.

Questions: Was he aware you were coming?

Answer: I sent a text message to him.

Questions: Did you tell him you were coming that day?

Answer: I sent a text message to him that I would come anytime. So, I don't tell him the specific period.

- Questions:** You said the Respondent hired thugs to beat you up?
- Answer:** Yes, My Lord. Two guys.
- Questions:** And that it was raining that day?
- Answer:** It wasn't raining.
- Questions:** So, the thugs were the pre-arranged because he is aware you were coming?
- Answer:** I don't know.
- Questions:** When you tried to set the house on fire, who collected the Gas Cylinder from your hand?
- Answer:** Immediately he saw us, he locked the burglary, so I don't have the – He didn't give us the chance to enter inside. I didn't see any cylinder. The kitchen is inside.
- Questions:** So, these two guys, can you describe them?
- Answer:** Two hausa guys.
- Questions:** And they beat you very well that?
- Answer:** Yes, they beat us. My body was full of blood so also my baby.
- Questions:** Do you have that evidence before the Court?
- Answer:** No, I lost my phone.
- Questions:** It means you were not allowed to enter the house?
- Answer:** Yes, I even saw a lady.
- Questions:** How did you see the lady?
- Answer:** I saw the lady, black and tall and her slippers was even outside.
- Questions:** See paragraph 23 the Answer.
- Answer:** I didn't stay there – it is not what I said.
- Questions:** Is it that your statement here is incorrect or the one you are saying through the Witness Statement on Oath?

Answer: I don't understand what you are saying.

Questions: Is it this statement that is incorrect or your evidence in the witness box.

Answer: Maybe it's a mistake.

Questions: In other words, your Answer to the Petition is a mistake.

Answer: It is a typo error.

The essence of cross examination is to test the veracity of a witness. See AMADI V NWOSU (1992) NWLR (PT 241) 273. The answers elicited from the Respondent while being cross examined clearly shows that the testimony of the Respondent cannot be believed. She failed woefully to support her testimony on how the Petitioner arranged some thugs to beat her and the child of the marriage. She admits under cross examination that the immediately the Petitioner saw her, he locked the burglary. So how then, did the Petitioner hire the persons she alleged beat her and the baby up. She equally did not deem it fit to report this allegation to the Police. The established fact here, is that no weight can be attached to the evidence presented by the Respondent and I so hold.

In the matter at hand, it is not in contention that parties are no longer interested in each other as can be deduced from the facts and evidence placed before the court. The Petitioner in this case, having established the fact that parties have lived apart for three years before filing her petition, I find that the marriage between the Petitioner and the Respondent has broken down irretrievably.

Consequently, I hold that the marriage celebrated between the Petitioner Okafor Raymond Chukwudi and the Respondent Okafor Nneka Perpetual on the 30th April, 2014 at the St. Mark Catholic Church, Obinofia Nduino, Enugu State in Nigeria has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the petitioner and the cross petitioner. The Order Nisi shall become absolute after a period of three months from today.

The Order Nisi shall become absolute after a period of three months from today.

On the issues of custody, guardianship, welfare, advancement or education of children of a marriage, the law is quite clear that the court is enjoined to consider the interests of the children of the marriage as paramount, and subject thereto, the court may make such orders in respect of those matters

as it thinks proper. See s.71(1) MCA, s.1 CHILDS RIGHTS ACT 2003 & ENWEZOR V ENWEZOR&ANOR (2012) LPELR – 8554 (CA)

The Petitioner states that the child of the marriage should reside with his parents in Egbe Yagba-West Local Government Kogi State for proper parental training and safety; that he shall be responsible for her school fees, medical bills and others. The Respondent is not on the same page with the Petitioner. See paras 36, 38 and 40 of her witness statement on oath. She states that the Petitioner has failed to contribute reasonably to the upkeep of the child and herself. That she has been the only one taking charge of the welfare of the child. The Petitioner rebutted the Respondent's evidence vide exhibits B1 – B4 & C1 – C9 and further states that himself and his relatives were denied access to the child of the marriage; he specifically stated that he tried on so many occasions to contribute to the welfare of the child but the Respondent refused these gestures.

The Respondent didn't dispute the contents of the exhibits. In her own evidence, she alleged that the Petitioner has been an absentee father and has never contributed to the upkeep of the child of the marriage; that she has been solely responsible for the child and has the means to ensure that the child enjoys proper upbringing. She tendered exhibits Rw1 – Rw4 to support her assertions. These are cash receipts from two different schools. While being cross examined, the Respondent responded to the questions put are thus;

Q: Can you also tell the Court, how old is the child in this marriage?

A: She is 3 years old.

Q: Can you tell the Court, how many schools the child has attended in that 3 years?

Answer: 3 schools.

Questions: Can you list the schools?

Answer: Madonna Nursery and Primary School, Nokuadane Nursery and Primary School Enugu and Evergreen Enugu.

Questions: How many months did the child spend in Madonna?

Answer: She started Pre-Nursery, Nursery and primary one, due to my transfer, we left to Enugu.

Questions: Which class is she now?

Answer: Primary 2.

Questions: How many years or month did she spend in a class?

Answer: I can't count it.

Questions: How many terms make a session?

Answer: A term is 3 months.

Questions: Am I correct that she spent those terms in each of the classes?

Answer: Yes, My Lord.

Questions: How is it possible in 3 years to have pre-nursery, nursery and primary one?

Answer: I don't understand.

Questions: How feasible is to attend those classes in 3 years.

A: It depends on the situation of things

Going further, she continued thus;

Q: how much do you pay for the child's school fees;

A: for this term I paid #360,000 and it remains #50,000 to complete it;

Q: per term you pay #410,000

A: it is for 1st term. I don't know how much I will pay the next term;

Q: Am I correct to say that the next your salary is not up to #410,000

A: it is not up to.

I do not hesitate to say again that the Respondent is not being truthful. The mere glance on the exhibits Rw1 – Rw4 clearly reveals the contradictions in the testimony of the Respondent.

Also, the Respondent was further cross examined

Q: So where did you deliver

A: At Egbe

Q: When you mean Egbe, am I correct you mean his parent's place

A: yes, My Lord

Q: Am I also correct to state that it was the petitioner who paid hospital bills

A: it was his father

Q: Do you know who paid the hospital bill

A: it was his father

Q: how do you know it was his father

A: I saw when the father came

Q: where you there when the hospital bill was paid

A: I was not there.

It thus appears to me that the entire evidence presented by the Respondent failed to support her testimony. She found it convenient to change her testimony in chief at the slightest opportunity. There is evidence before the court that the child of the marriage was delivered in Egbe, the place of residence of the Petitioner's parents in law; therefore, it sounds absurd that those who paid for the delivery of the child of the marriage, be it the father-in-law or the Petitioner will now turn around to neglect the mother and child, particularly the child of marriage. The testimony of the Respondent is best told to the marines as I do not believe her one bit!

There is evidence that both the Petitioner and the Respondent are gainfully employed and have the means to cater for the child of the marriage. See the Notice of Petition as well as paragraph 36 of the Answer where she alluded to the fact that she has the means to ensure the proper upbringing of the child and cross examination, the Respondent stated thus;

Q: what level are you now in your place of work;

A: level 7

Q: how much do you earn;

A: I can't answer it

Q: around what figure;

A: how can I expose my privacy

The answer extracted from the Respondent is evidence that she is gainfully employed, even though she refused to disclose her financial status. I have no

choice but to exercise my discretion in determining what the Petitioner would be contributing monthly for the child's upkeep and maintenance. The child of the marriage as stated by the Petitioner was given birth to on the 9th April, 2015 and by way of calculation, she should be eight [8] years old. It means she is still in primary school and having taken a careful consideration of the facts vis a vis the evidence presented before the court by the Petitioner and Respondent, none of the parties placed credible evidence to state his or her financial status, however I am convinced that the interest of the child shall best be served if both parties are allowed to be involved in the upbringing, welfare and advancement of the children of the marriage; both parties must contribute financially to the welfare and maintenance of the child of the marriage.

A Decree Nisi having being granted, it is hereby ordered as follows:

- i. That Petitioner and Respondent shall have joint custody of the child; whose name Okafor Irene Obioma with the Respondent having physical custody of taking care and control of the child of the marriage.
- ii. The Petitioner shall have unhindered access and right to visit the child at reasonable hours and shall be responsible for the school fees of the child of the marriage in a school jointly agreed to by parties. He is further directed to contribute every month, the sum of ₦50,000 for the maintenance and welfare of the child of the marriage and this payment shall be made on or before the last day of every month.
- iii. The Petitioner shall have custody of the child of the marriage for a period of 21 days during the school holidays and 14 days, if the holiday is not up to a month.

ASMAU AKANBI
[HON JUDGE]

APPEARANCES:

M. A Aliemeru Esq for the Petitioner
I. I Akharama Esq. for the Respondent