

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI –ABUJA**

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE:-11TH NOVEMBER,2022

FCT/HC/PET/116/2016

BETWEEN:

MR. ALAAFIALOJU ADEGOKE

PETITIONER

AND

ABIKE EUNICE ADEGOKE.....

RESPONDENT

JUDGMENT

This Petition for Decree of Dissolution of Marriage was filed by Mr. Alaafialoju Adegoke (hereinafter called the Petitioner) on the 17th of February, 2016, for the relief set out in the face of the Petition as:-

- (a) A Decree of Dissolution of the marriage on the ground that the Respondent has behaved in a way that the Petitioner could not be reasonably expected to live with.'
- (b) A Decree of dissolution of marriage on the ground that the marriage has broken down irretrievably.
- (c)A decree of Dissolution of the marriage on all other grounds specified in this petition.
- (d) Full custody of the Children.

The grounds upon which the Petitioner rely on for the relief of dissolution of marriage as can be gleaned from the pleadings and evidence of the Petition is the fact that the petitioner has live apart from the Respondent for a continuous period of more than two years before filing the petition; that the respondent denied the petitioner his conjugal rights from April 2012 till date without any reason; that the respondent has consistently

defamed the petitioner by calling him, a ritualist and accusing him of attempting to use her and her children for money rituals.

The Respondent filed a reply and cross petition to the petition for dissolution of marriage on 15th April, 2016, wherein she accused the petitioner of neglecting his marital obligation towards the respondent and their children, and being cruel to the petitioner. She sought the following reliefs against the Petitioner:-

- A. A decree of the dissolution of the marriage between the petitioner and the respondent on the grounds that the marriage has broken down irretrievably as a result of the Petitioner's intolerable behavior.
- B. By way of Maintenance for the Respondent;
A lump sum maintenance payment of Twenty Five Million Naira (N25, 000,000.00) only
- C. Upkeep for the three children of the marriage in the sum of N60, 000.00; N40, 000.00 and N35, 000.00 per month for the 1st, 2nd and 3rd child respectively.
- D. Custody of the three (3) children.
- E. Settlement of the property at 15 Mahfas Sunshine Housing Estate, Kurudu Area, Abuja by deed on the Respondent and the children of the marriage.
- F. An Order of Perpetual Injunction restraining the Petitioner either by himself, agents, privies or through anybody or person howsoever from evicting the Respondent or selling or alienation of the family property situate at 15 Mahfas Sunshine Housing Estate, Kurudu Area, Abuja.

The petitioner filed an Answer to the Respondent's Cross Petition on 27/11/2020, wherein he denied neglecting the Respondent and averred that the property at 15 Mahfas Sunshine Housing Estate, Kurudu Area, Abuja, is not a family property, and that the title in the said property, which he alleged was bought through a mortgage arrangement, has not yet passed to the petitioner. He averred that the property not being a family property and having not acquired a legal estate over the property, he cannot transfer same to the Respondent.

Petitioner testified as PW1 as called no other witness. PW1 adopted his depositions in his Witness Statement on as his oral testimony in support of the Petition. In the course of the Examination-in-Chief of PW1, the marriage certificate issued by the Marriage Registry Somolu Local Government, Lagos on 21st May 2009, evidencing marriage between the Petitioner and Respondent was tendered and admitted as Exhibit "1". He was cross examined and he closed his case.

The Respondent too testified on the 25th May 2022 and tendered a picture, she was cross examined the same day and she closed her case.

At the conclusion of hearing, the Petitioner filed a final written address dated 23rd June, 2022. The Respondent did not file a file written address.

Counsel to the Petitioner in his final written address raised three issues for determination to wit:-

- i. Whether the marriage between the petitioner and the Respondents have broken down irretrievably and on the strength of whose case?
- ii. Whether based on the evidence of both parties, the Respondent has made a good case for an order of settlement of property to entitle her to her prayers e & f of her cross petition?
- iii. Whether based on section 70(4) of Matrimonial Causes Act the Respondent is entitled to order of custody and maintenance without having complied with Order XIV Rule 4(4) (a) to (g) of Matrimonial Cause Rules?

Arguing on issue 1, counsel submitted on behalf of the Petitioner that the Marriage between the Petitioner and the Respondent has broken down irretrievably under section 15 (2) (c), (e) & (f) of the Matrimonial Causes Act, that from the pleadings and evidence of the parties, the respondent has behaved in such a way that the petitioner is not reasonably expected to continue to live with her as a result of irreconcilable differences. Counsel cited the fact that cohabitation has ceased since May 2013 before the petition was presented on 17th February, 2016, as a ground to prove that the marriage has broken down irretrievably.

On issue 2, counsel maintained that the statutory provisions for settlement of property in matrimonial causes is only available to party who has possessory or reversionary interest i.e title over the property. Counsel argued that the Respondent failed to prove that the property was jointly acquired with their joint money i.e through mortgage procedure or outright purchase. Counsel cited section 72(1) of the Matrimonial Causes Act and stated that the power of court to settle property in matrimonial causes only relates to a party who has possessory or reversionary interest in the property. See **ESSIEN V. ESSIEN (2009) 9 NWLR (Pt. 1146) 306 C.A.**

On issue 3, Counsel argued that by virtue of Section 70(4) of the Matrimonial Causes Act and Order XIV Rule 4(4) (a) to (g) of Matrimonial Causes Rules, the Respondent is not entitled to order of custody and maintenance of adult children of the marriage, and her own maintenance. Counsel maintained that an order of maintenance of adult child cannot be made, stating that two of the children of the marriage are above 20 years, while the last child is about 16 years. Counsel argued that the Petitioner being a financially responsible person, and the one who has been providing the children with school fees, feeding allowances and accommodation, is the person best suited to have custody of the last child.

Having carefully considered the evidence, submissions of counsel and the judicial authorities cited, the court finds that two (2) issue calls for determination that is:-

- "1. Whether the Petitioner has successfully made out a case to warrant the grant of the reliefs sought*
- 2. Whether the Respondent is entitled to the reliefs sought by her."*

By virtue of Section 15(2) of the Matrimonial Causes Act, the Court upon hearing a petition for 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 namely:

- a) that the respondent has willfully and persistently refused to consummate the marriage;
- b) that since the marriage the respondent had 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 3 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 of restitution of conjugal rights made under the law; and
- h) that the other party to the marriage has been absent from the petitioner for such a time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

In effect there are eight grounds for divorce and proof of one of these grounds or facts is in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage. See ***IBRAHIM V. IBRAHIM (2007) 1 NWLR (PT. 1015) 383***. A Court cannot dissolve a marriage or declare a marriage to have broken down though it appears the marriage has broken down irretrievably unless one of the listed facts is established by the petitioner. The law requires that the petitioner should state clearly the specific ground or grounds for divorce as listed in Section 15(2) above. See ***IBRAHIM V. IBRAHIM (SUPRA) AND DAMULAK V. DAMULAK (2004) 8 NWLR (PT. 874) 151***.

The law provides that in matrimonial causes, a matter or fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court. Thus in divorce suits, a decree shall be pronounced if the Court is satisfied on the evidence that a case for the petition has been proved.

Looking at all the factual situations cited by the Petitioner to support his contention that the marriage has broken down irretrievably, I find paragraph (e) of Section 15 (2) of the Matrimonial Causes Act, very relevant and applicable in this case.

Paragraph (e) states: "***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”.

Both the Petitioner and the Respondent in this case agreed that they have been living apart since 2013, and the Respondent does not object to a Decree of Dissolution of the marriage being granted, though on a different ground.

The Petitioner in this case also sought for custody of the Children of the Marriage.

As the Petitioner rightly argued, by virtue of section 70 (4) of the MCA, the power of the court to make an order on the maintenance of the child or children of the marriage shall not be exercised for the benefit of a child who has attained the age of 21 years unless the Court is of the opinion that there are special circumstances justifying the making of the order in that direction.

Parties in this proceedings have confirmed that their first two children are up to the age of 21. Adegoke Adekunle Ayomide and Adegoke Kolade Ayomikun, who are about the age of 21, are adults who are matured enough in the eyes of the law to choose who they wish to stay with, and the court cannot make any pronouncement as to their custody and maintenance.

The court is however mindful of the third child, Adegoke Kayode Fiyinfoluwa, who is about 16 years.

Section 71 MCA (1) provides that "In proceedings with respect to the custody, guardianship; welfare, advancement, education of children of a marriage, the Court shall regard the interests of those children as the paramount consideration, and subject thereto, the Court may make such order in respect of those matters as it thinks proper"

The third child of the couple in this case, is an adolescent closely approaching adulthood. Going by the statement of the petitioner, he has gotten admission into Ambrose Ali University at Ekpoma. This means that he may not be staying with either of the parents most of the times. As an adolescent, the child needs the care, discipline and support of both parents. Considering the age of the child and other factors, I strongly believe that either of both parents should not press for exclusive custody of the child. While the Child can continue to reside at 15 Mahfas Sunshine

Housing Estate, Kurudu Area, Abuja with the Respondent until he attains the age of 21, at which age, he may decide where and who to stay with, the Petitioner must be allowed unfettered access to him; also, the child must not be restricted from going to stay with the petitioner for as long as he may wish. I so hold! This is very important, considering the fact that the petitioner is the one providing the child with school fees, feeding allowances, on and off campus accommodation.

I must add that custody of children is an on-going exercise akin to recurrent decimal. It is a day to day or revolving affair. Whenever any of the spouses discovers that conditions have changed or altered for the worse in respect of the interest, benefit and welfare of the children or child in the custody of another person or spouse/ he or she can apply to the Court to review the custody order. The Court upon hearing the parties would reach a decision in the best interest of the child or children as the case may be. Therefore, all is not lost, as both either the petitioner or respondent still reserves the right to approach the Court for a review of the order for custody of the child in deserving circumstances. See **AYEGBA V. AYEGBA (1979) 3 LRN 232 at 235** (per Idoko, J. as he then was, now of blessed memory) citing in support Lord Merriman. P., in **Hayes v. Hayes (1948) 1 WN 361**, where the learned lord said: "Custody is a matter which can be dealt with from day to day; there is no finality about an order for custody in any Court."

Attention is now turned to the Cross petition of the Respondent.

The Respondent demanded in her cross petition for a lump sum maintenance payment of the sum of N25, 000,000 (Twenty Five Million Naira). While not disputing the right of the Respondent to such claim, it is however instructive to note that the procedure outlined in Order XIV Rule 4 (4) of Matrimonial Causes Rules, ought to have been complied by the Respondent. The Respondent however failed to give particulars of her income and that of the Petitioner, which would have aided the court in reaching a fair and just decision on whether the Respondent is entitled to the maintenance payment sought. I therefore rule that the Respondent has not sufficiently prove her entitlement to the maintenance payment of N25,000,000 sought by her. I so hold!

On the issue of settlement of property, there is no doubt that the property at 15 Mahfas Sunshine Housing Estate, Kurudu Area, Abuja was solely acquired by the Petitioner through a mortgage arrangement, and the Respondent is not a joint owner of the property.

Nevertheless, Section 72 (1) of MCA states that:

"The Court may, in proceedings under this Act by order require the parties to the marriage, either of them to make for the benefit of all or any of the parties to, and the children of the marriage, such a settlement of property to which the parties are, or either of them is entitled (whether in possession or reversion) as the Court considers just and equitable in the circumstances of the case."

The above section bestows upon the Court, the power to exercise its discretion in a just and equitable way. It is not a strict law that a spouse who was not a joint owner of a property is not entitled to benefit therefrom, after a decree of dissolution has been made.

Unless the petitioner is willing to make alternative accommodation arrangement for the Respondent and the Children (particularly the third child), I am of the view, that it would be unjust and unconscionable for the Petitioner to deprive the Respondent and the children of their current accommodation.

Consequently, it is hereby ordered as follows:-

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated on the 21st May 2009, between the Petitioner MR. ALAAFIALOJU ADEGOKE, and the Respondent, ABIKE EUNICE ADEGOKE.
2. An Order granting the custody of the third child of the Marriage, Adegoke Kayode Fiyinfoluwa, to the Respondent on the condition that the Petitioner must be allowed unfettered access to him; also, the child must not be restricted from going to stay with the petitioner at any time and for as long as he may wish.
3. An Order that the Petitioner shall be responsible for the education and maintenance of the children of the Marriage, according to his ability.
4. An Order restraining the Petitioner either by himself, agent, privies or through anybody or person howsoever from evicting the Respondent and their children from 15 Mahfas Sunshine Housing Estate, Kurudu

Area, Abuja, unless an alternative accommodation is provided for the Respondent and the third Child, Adegoke Kayode Fiyinfoluwa, by the Petitioner, or until the 3rd Child attains the age of 21.

5. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three months from the date of this order, unless sufficient cause is shown to the Court why the decree nisi should not be made absolute.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

M.B Abdulazeez:- Holding the brief of Ademola Oyedaku.

Oluwatoyin Aladegbami:-For the Respondent.