

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 28 GUDU - ABUJA
ON THURSDAY THE 12TH DAY OF NOVEMBER 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI
SUIT NO: FCT/HC/ PET/248/2019

BETWEEN
AYODELE OMOLE ADEOLA -----PETITIONER
AND
ROSEMARY AGBEBAKU ADEOLA-----RESPONDENT

JUDGMENT

The Petitioner by a notice of petition filed on the 16th day of May 2019 prayed the Court for the following:

1. A decree of dissolution of marriage between the Petitioner and the Respondent on the grounds of Desertion, Respondent's behaviours since the marriage which the Petitioner cannot reasonably be expected to live with and cruelty.
2. Custody of the only child of the marriage, Iremide Peace Adeola (Aged 12 years)

In addition to the application, Petitioner filed verifying affidavit, certificate of reconciliation and witness statement on oath. The grounds which gave rise to this Petition are that:

- a. The Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of this petition
- b. That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her any further.

c. That the Respondent has shown cruelty to the Petitioner.

The Respondent in response, filed her answer and Cross Petition on the 18th of September 2019. The petitioner filed his reply and answer to the Respondent's answer and cross Petition on the 14th of October 2019. Parties also filed their Statement on oath as evidence.

The Petitioner opened his case on the 29th day of January 2020. Testifying as the sole witness, the summary of the evidence of the Petitioner is that sometime in December 2017, the Respondent packed her belongings and left the matrimonial home for no just cause thereby deserting the Petitioner till date.

That the Respondent prior to leaving the matrimonial home, formed the habit of shielding the only child of the marriage from members of Petitioner's family whereas she allows her own family unfettered access to the only child of the marriage and that the Respondent never allowed any member of his family to pay visit to the matrimonial home whereas Respondent allowed her own members of family to even take permanent abode in the matrimonial home. That there has been no love in the marriage and the Respondent has been cruel to him as she never paid any attention to his emotional needs and was instead very quarrelsome, insulting and disrespectful. That the Respondent has for over three (3) years denied him sex and has separated their matrimonial bed for reasons best known to her and had moved into the Guest Room with members of her family. That the Respondent travelled abroad without his consent, permission and authority and that since her arrival from the journey, she had formed the habit of leaving the matrimonial home at will for several days without any excuse until she finally packed all her belongings and went to an unknown destination up till the present time.

That he never assaulted or battered the Respondent and never blamed her for having only a child and that miscarriages and stillbirth suffered by the Respondent was as a result of her flagrant disobedience to medical advice. That his work transfer to Port Harcourt and the long absence from home and coupled with the fact of not being earlier informed of Respondent being pregnant, that another man must have been responsible for the pregnancy. That although friends, family and pastors made several un - yielded efforts to resolve the issues, all these efforts failed due to the lackluster and uncaring attitude of the Respondent. That he is the only one responsible for the upkeep of the family both monetarily and domestically and is a forthright and a religious man of God who is not promiscuous and has never infected the Respondent with Sexually Transmitted Disease or any disease at all and that he never slept with any House help as alleged by the Respondent. That the Respondent did not contribute a dime when he single handedly applied to the Federal Government Staff Housing Loan Board for the Purchase of the matrimonial home through his office and he made all the repayments as regards the purchase of the house neither did the Respondent contribute any sum for the purchase of his Car as the said car is an outright gift from his brother who lives in America. That custody be granted to him as he has cared for the child from birth till now and always been solely involved in his education and upbringing. The petitioner, tendered the following exhibits in proof of his case as follows:

1. CTC of approval for allocation residential accommodation issued by the Ministry of Federal Capital Territory dated 17/12/1999 admitted as Exhibit A1.

2. CTC of form for expression of interest to purchase a Federal Government Housing Unit dated 16/05/2005 admitted as Exhibit A2.
3. Letter written by FCDA to the Petitioner dated 26/01/2005 admitted as Exhibit A3
4. Two copies of original laminated Federal Capital Territory Administration Ad-hoc committee of sale of Federal Government of Nigeria payment of property receipt for the sum of N166,000.00 and N1,494,000 admitted as Exhibit A4.
5. Federal Government Staff Housing licence board approval of Housing loan addressed to Petitioner dated 10/8/2009 admitted as Exhibit A5.
6. Surestart Private School receipt no:0398 dated 12/09/2012 for N5000 admitted as Exhibit A6
7. Surestart Private School receipt no 4027 dated 14/01/2013 for N84,000 admitted as Exhibit A7
8. Surestart private school receipt no.01061 dated 30/04/2013 for the sum of N63,000 admitted as Exhibit A8.
9. Christ High School receipt no:0562 dated 6/1/2018 for N153,050 admitted as Exhibit A9.
10. Christ High School receipt no.1895 dated 2/4/2018 for N168,000 admitted as Exhibit A10.
11. Christ High School receipt no. 2181 dated 08/09/2018 for the sum of N270,000 admitted as Exhibit A11.
12. Christ High School receipt dated 3/05/2019 for the sum of N90,000 admitted as Exhibit A12.
13. Christ High School receipt dated 4/5/2019 for N40,000 admitted as Exhibit A13

14. Christ High School receipt dated 7/6/2019 for N37,000 admitted as Exhibit A14.
15. Eight Federal Government Employee pay slip for the period of January 2017, December 2017, January 2018, April 2018, December 2018, January 2019, September 2019, December 2019 admitted as Exhibits A15 to A22
16. Original Marriage Certificate between parties with no.928/99 dated 16th September 1999 admitted as Exhibit A23.
17. Three photographs of Matrimonial Home featuring the toilet, bathroom and the front door admitted as Exhibits A24 to A26.

The Petitioner under cross examination in summary reiterated his evidence that the Respondent deserted him finally in July 2019 but that she had not been living in their house long before then. That prior to the final desertion of the Respondent, she had deprived him of food and sex and there was never peace in the home. That he had not seen their child since February 2019. That he has been contributing to the welfare of the child and that he paid the fees of the child's third term of JSS3.

On the other hand, the Respondent filed her answer and cross Petition wherein the Respondent sought the following reliefs:

- a. The Decree of dissolution of marriage between the Cross Petitioner and the Cross Respondent contracted on the 16th day of September 2019 on the ground that the marriage has broken down irretrievably and that the Cross Respondent has behaved in such a way that the Cross Petitioner cannot reasonably be expected to live with him.
- b. An Order granting custody of the only child of the marriage IREMIDE PEACE ADEOLA to the Cross Petitioner.

- c. An Order for the maintenance, upkeep, school fees and medical expenses of the only child of the marriage IREMIDE PEACE ADEOLA to the tune of N100,000.00 (One hundred thousand Naira) monthly, to be paid by the Cross Respondent.
- d. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

On the other hand, it is the case of the Respondent/Cross Petitioner from her statement on oath that she did not desert the Petitioner. That Petitioner has shown her constant hatred and abuses her emotionally and physically at the slightest provocation. That the Petitioner is quick to anger and owing to his repeated violence towards her she lives in constant fear and that Respondent forced her out of the house and after she came back in February, 2019 he had changed the locks to their matrimonial home, that she never deprived the Petitioner of his emotional needs and has been a faithful wife. That due to the advice of doctors not to have more children as a result of the previous caesarean sections performed by the Respondent, the Petitioner was always castigating her that he would have more children from other women if she was incapable of having more children. That she had never denied members of the Petitioner's family access to the child. That she contributed over N400,000.00 to the payment of the house they both lived and also contributed the sum of N300,000.00 to the purchase of the family car. That the Petitioner is fond of telling the child unprintable things about her to make the child hate her. That prior to their separation they had been taking care of the child jointly, but she is now solely responsible for the welfare of the Child and has rented a two-bedroom apartment for herself and the child. That there is no love in

the marriage and the marriage has broken down irretrievably. That custody of the only child of the marriage be granted to her.

In proof of her case, the Respondent/Cross Petitioner tendered a rent receipt no. 0129 of “Solomon Abel” Baba” issued to Oluwabunmi Adeola, for the sum of N350,000.00 dated 24/08/2019 admitted in evidence as Exhibit A27.

Under cross examination, the Respondent/Cross Petitioner restated that she left the matrimonial home in January 2019 to stay with a family friend also known to the Petitioner who lost her husband but that she came back in February 2019 to discover that the keys to the door had been changed. That she is a part owner in the property Petitioner stays and she is entitled to benefit from the rent derived therefrom.

At the close of the case, the Court adjourned the case for parties to file their written addresses. The Petitioner filed his written address and raised three issues to be determined by this Court as follows:

- a. Whether from the evidence adduced and the circumstances of this matter the Petitioner/Cross Respondent is entitled to judgment dissolving his marriage with the Respondent/Cross Petitioner same having broken down irretrievably.
- b. Whether the evidence adduced and the circumstances of this matter the Petitioner/Cross Respondent is entitled to the custody of the only child of the marriage, Iremide Peace Adeola?
- c. Whether the Respondent/Cross Petitioner is entitled to the award of maintenance, upkeep to the tune of 100,000 monthly to be paid by the Petitioner/Cross Respondent.

The petitioner’s Counsel arguing the first issue submitted that from the evidence before the Court, it is clear that the Respondent

deserted the Petitioner for more than a year preceding the presentation of this petition and from paragraph 6 to 12 of the Petitioner's witness statement on oath that the conduct of the Respondent is one which the Petitioner cannot be reasonably expected to live with, which shows that the marriage has irretrievably broken down which is a ground for dissolution of marriage as stated in Section 15 (1) (2) (c) & (d) of the Matrimonial Causes Act.

Counsel submitted with respect to the second issue that the Petitioner has a degree of familiarity with the child as stated in the Petitioner's Statement on oath and has been responsible for his education as seen from exhibits A1 to A14. Counsel submitted further that the evidence of the Respondent against the Petitioner are not worthy to form credibility and the Court should consider the interest and welfare of the child in granting custody to the Petitioner, as the Petitioner is capable of taking care of the child being an Assistant Director on level 15 and who has a decent accommodation and urged the Court to grant custody to the Petitioner.

With respect to issue number 3, counsel submitted that Petitioner has been responsible for the welfare and maintenance of the child and the Respondent did not place any material before this Court to entitle her to custody or to the award of maintenance. Counsel in support of his argument relied on the following authorities;

1. ABATAN VS. AWUDU (2004) 17 NWLR (PT 902) 430
2. ADETULE V. ADETULE (2015) 32 WRN37
3. WILLIAMS V. WILLIAMS (1966) NSCC 19
4. UZOKWE V. UZOKWE (2018) 21 WRN 88

5. AMADI v NWOSU (1992) 5 NWLR (Pt. 241) 273.
6. WILLIAMS v. WILLIAMS (1996) ISCNLR 60
7. UGBOTOR v UGBOTOR (2007) 35 WRN 147
8. ARTKINS v. ARTKINS (1942) 2 ALL E.R. 637
9. ALABI v ALABI (2008) 11 WRN 87
10. WILLIAMS v. WILLIAMS (1987) 2 NWLR (Pt. 54) 766
11. NANNA v. NANNA (2006) 3 NWLR (Pt. 966) 1.
12. ADEPARUSI v. ADEPARUSI (2015) 14 WRN 94
13. OTTI v OTTI (1992) 7 NWLR (Pt. 252) 187
14. OBAJIMI v. OBAJIMI (2012) ALL FWLR (Pt. 649) 1168
15. GLEEN v. GLEEN (1900) 17 TLR 62.
16. EWO v. ANI (2004) 3 NWLR (Pt. 861) 610.
17. DOHERTY v. DOHERTY (2009) 30 WRN 96

The Learned Respondent's Counsel filed his written address and adopted same as argument in Respondent's answer to the Petitioner's Petition and Respondent's cross petition. From the written address filed, Counsel raises three issues for the Court's determination as follows;

1. Whether having regard to the testimony led by the Petitioner/Cross Respondent at the trial, the Petitioner's Petition is not liable to being dismissed by the Honourable Court.
2. Whether in view of the evidence led by the Respondent and the cross-Petition filed by the Respondent, the Respondent is not entitled to an Order of dissolution of the marriage between the Respondent/cross Petitioner and the Petitioner.

3. Whether having regard to the totality of the evidence led by the Respondent before this Honourable Court, the Respondent is not entitled to an Order granting her custody of the child of the marriage.

Arguing the first issue, Counsel submitted that the Petitioner has failed woefully to prove all the grounds being alleged on the Respondent as the evidence led by the Petitioner in proof of desertion, unreasonable behaviour, adultery was either discredited during cross examination or not proved at all. Counsel urged the Court to dismiss the Petition of the Petitioner for failure to prove any of the grounds relied on in his petition.

Learned Respondent's Counsel in arguing the second issue, submitted that the evidence of the Respondent was unchallenged all through cross examination therefore, the Court should hold that the evidence of the Respondent that since the marriage, the Petitioner has behaved in such a way that the Respondent cannot reasonably be expected to live with the Petitioner and that the marriage has broken down irretrievably and dissolve the marriage between parties on the grounds stated by the Respondent.

Arguing the third issue, it is counsel's contention that from the analysis of the case, it will be in the best interest of the child to grant custody to the Respondent as the Respondent has for the past one year, single-handedly providing for the education, welfare and maintenance of the child. Counsel submitted that the evidence of the Petitioner's claim of being solely responsible for the education and welfare of the child failed under cross-examination. Counsel urged the court to hold that the Petitioner has placed sufficient materials and evidence before this Court which Petitioner has failed to

controvert to be entitled to the grant of custody of the child of the marriage. Counsel relied on the following authorities:

1. Akinbuwa V. Akinbuwa (1998) 7 NWLR (pt.559) 661
2. B. Vs. B (1961) 2 A. B. R. 396
3. Ibeabuchi V. Ibeabuchi (2016) LPELR-41268 use
4. IGBINOVIA & ORS VS. AGBOIFO (2002) FWLR (PT. 103) 505 @ 514
5. OGUNYADE VS. OSHUNKEYE (2007) 15 NWLR (PT. 1057) 218
6. OJO VS OJO (1969) 1 ALL NLR 434
7. OKIKE VS. L. P.D.C. (2005) 15 NWLR (PT. 949) 7
8. ONIFADE VS ODEYEMI & ORS
9. UDEH VS. UDEH SUIT NO: E/ID/7- OF 24/7/1970 (Unreported)
10. WILLIAMS VS WILLIAMS (1987) 2 NWLR (PT. 54) P. 66

I have examined the entire processes filed by the parties in this case, the evidence and documents tendered as well as the written addresses as arguments in this case and the issue to be determined at this point is **“which of the parties have been able to prove his/her case to be entitled to the prayers sought.**

By Section 15 (1) of the Matrimonial Causes Act, a court hearing a petition for the dissolution of a marriage shall grant the relief if the marriage has broken down irretrievably. Sub-section (2) of Section 15 sets out facts upon which the court could hold that a marriage has broken down irretrievably. It states: "The court hearing a petition for a decree of dissolution of 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 wilfully and persistently refused to consummate the marriage;*
- (b) that since the marriage the Respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;*
- (c) that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;*
- (d) that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;*
- (e) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;*
- (f) that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition;*
- (g) that the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;*
- (h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.*

Upon proof of any of the factors stated in Section 15(2) of the Matrimonial Causes Act, to persuade the Court that the marriage

has broken down irretrievably, the Act provides that the Court shall grant a decree of dissolution of the marriage if it is satisfied on all the evidence adduced. The standard of proof in matrimonial matters is as embodied in section 82 (1) and (2) of the MATRIMONIAL CAUSES ACT which provides thus:

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.*

This was also restated in the case of Bibilari Vs. Bibilari (2011) LPELR- 4443 (CA). The onus therefore is on the Petitioner who alleges that the marriage has broken down irretrievably to satisfy this Court by evidence for the grant of the dissolution of the marriage. In this instant case, both parties in their reliefs are seeking for an order of dissolution of marriage. The Petitioners main ground for seeking for the dissolution of the marriage is on the ground of desertion under **Section 15 (2) (d) of the Matrimonial Causes Act** as the Respondent deserted him since July 2019. It is the evidence of the Petitioner from his statement on oath that the Respondent left the matrimonial home in December 2017, however, under cross-examination the Petitioner stated that the Respondent left the home finally in July 2019. I am therefore in agreement with the Respondent's Counsel that at the time the Petitioner filed this petition, the desertion had not taken place. The Petitioner has not also proved to this court from the evidence adduced that the

Respondent indeed constructively deserted the Petitioner. Therefore, the marriage will not be dissolved on this ground. Also, the Petitioner is relying on the provisions of Section 15(2) (C) as the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to live with her. Petitioner from paragraphs 6 to 13 of his statement on oath mentioned the intolerable conducts of the Respondent he cannot be expected to live with. On what constitute intolerable behaviour, the Courts have held that the behaviour or conduct complained of must be grave and weighty in nature as to make further cohabitation virtually impossible. The Court in the case of LT. COL. SHEHU IBRAHIM (RTD) V. MERCY IBRAHIM (2006) LPELR-7670(CA) Per ARIWOOLA, J.C.A (Pp. 24-25, paras. G-G) held

"Behaviour is something more than a mere state of affairs or a state of mind, such as for example, a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating his love, or not being as demonstrative as he thinks she should be. Behaviour in this context is action or conduct by the one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct and in my view, it must have some reference to the marriage." In other words, the conduct of a respondent that a Petitioner will not be reasonably expected to put up with must be grave and weighty in nature as to make further cohabitation virtually impossible. However, before the Court will come to that conclusion, the entire history of the marriage has to be considered.

In other words, the Court must consider the totality of the matrimonial history of the parties to the petition.

In this case, the intolerable acts complained by the Petitioner are lack of sex from the Respondents for 3 years, lack of respect for him and his family members, being quarrelsome and her refusal to cook for him which has led him to constantly buy food from restaurants. I will state at this juncture that the act of cooking is a survival skill that should be known by both genders. There is no rule that cooking should be reserved for a particular gender. In my view, the evidence led by the Petitioner with respect to intolerable behaviour of the Respondent is not grave or weighty to the satisfaction of the court to grant the prayer sought.

The Respondent on her part is relying on Section 15(2) (c) as the ground for this Court to grant the relief of dissolution of marriage against the Petitioner in her cross petition. In proof of same Respondent testified the conducts of the Petitioner she cannot reasonably be expected to live with as follows; that upon return to the matrimonial home after visiting a mutual friend, the Petitioner changed the locks to the entrance of their house, that the petitioner refused to sign consent form for her to be operated and her mother had to travel from Lagos to come sign the form by which time, she lost the child in her womb, that the Petitioner assaults her both emotionally and physically at the slightest provocation. I must state at this point that these pieces of evidence were not contradicted under cross examination by the Petitioner.

From the case of Ibrahim v. Ibrahim (supra), to prove the ground stated under Section 15 (2) (c), the law makes it incumbent on the

petitioner to show: (a) the sickening and detestable behaviour of the respondent; and (b) that the petitioner finds it intolerable to live with the respondent.

It is my considered view that a cumulation of those acts or behaviour of the Petitioner stated by the Respondents are grave and weighty. I agree with the Respondent's counsel that domestic violence in this Country and even the world at large is on the rise and the parties have made it clear that they want the marriage to be dissolved. It would not be in the interest of the parties to remain married, as doing so would lead to resentment towards one another, which could transcend to violence. Therefore, the marriage celebrated between the Petitioner and the Respondent is hereby dissolved.

The next issue to be determined is "whether between the Petitioner and the Respondent, who is entitled to the grant of custody of the child of the marriage.

Under Section 1 of the Child Rights Act and Section 71(1) of the Matrimonial Causes Act, the Court is enjoined in matters of custody of a child of the marriage, to give paramount consideration to the best interest of the child and make such orders as it deems fit.

In this case, the child of the marriage is 13 years old and it is not in dispute the child is currently in the custody of the Respondent. There is no evidence before me that the child presently in the custody of Respondent is being deprived of his basic needs or is under any form of harm. Section 71 of the Matrimonial Causes Act cited above places a wide discretion on the court in the consideration of custody of children of a marriage. And in exercising that discretion, the court must act on facts before it and not on sentiments. I have considered

the facts and evidence before me and find that the interest and welfare of the child of the marriage would be better served if custody is vested on the Respondent till he attains the age of 18 and decide which parent he would want to reside with. However, the child had from birth been in the custody of both parents prior to 2019 and must have a form of attachment to the father, it is important at this stage of the child to have a wholesome and balanced development; the child would need the father figure presence around him. I do not believe that the Petitioner would harm his child, therefore, the child can spend his holidays, with the Petitioner when on school vacation. The Petitioner is also allowed to visit the child in school.

With respect to the prayer of the Respondent for the court to award the sum of 100,000.00 as monthly expenses against the Petitioner for maintenance, upkeep, school fees and medical expenses of the child of the marriage. By the Provision of Section 21(1) of the Matrimonial Causes Act which provides;

“In proceedings with respect to the custody, guardianship, welfare advancement or education of the children of the marriage, the court shall have regard to the interest 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”

There is evidence before me that the Petitioner has not been solely responsible for the payment of fees contrary to his evidence in chief and the last fees he paid was JSS3 third term thereby leaving the maintenance of the child solely on the Respondent for the past year.

The Court stated in the case of NANNA VS. NANNA (2005) LPELR-7485 (CA) that granting an order for maintenance should be guided by a consideration of the following factors:-

(1) Means of the parties (2) earnings capacities of the parties; (3) conducts of the parties; and (4) all other relevant circumstances.

Having considered the entire evidence before me, and the factors stated in Nanna Vs, Nanna (supra), I hereby order that the Petitioner shall be responsible for the payment of education of the child of the marriage and in addition, pay to the Respondent the sum of 50,000.00 monthly as welfare, maintenance and medical expenses for the child, while the Respondent also bears the other half of welfare, maintenance and medical expenses of the child.

Parties: Absent

Appearances: Adrian C. Amadi for the Respondent. Petitioner not represented.

HON. JUSTICE MODUPE R. OSHO ADEBIYI

JUDGE

12TH NOVEMBER, 2020