

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

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 24
CASE NUMBER: SUIT NO. FCT/HC/PET/287/2020
DATE: 30/5/2023

BETWEEN:

CHINENYE ANTHONIA OKORO.....PETITIONER

AND

ONYEKACHI KINGLSEY ASOGWA.....RESPONDENT

APPEARANCES:

Okorie Michael Okorie Esq for the Respondent

JUDGMENT

The Petitioner filed this Petition on the 10th day of June, 2020 and subsequently filed an Amended Petition on the 9th day of October, 2020, seeking for the following relief.

“(a). A decree of dissolution of the marriage contracted between the Petitioner and the Respondent at the Federal Marriage Registry, Area 10 Abuja, Federal Capital Territory, on the 21st day of January, 2017, on the ground that the Petitioner and the Respondent have lived apart for a continuous period of at least two (2) years preceding the filing of this Petition and that the said marriage has broken down irretrievably.”

The facts relied upon by the Petitioner as constituting the grounds of the Petition are as follows:-

- “(a). The Petitioner and the Respondent got married on 21st January, 2017 and the Petitioner moved in with the Respondent and started cohabitation as man and wife.***
- (b). That before the said marriage the Petitioner and the Respondent performed traditional marriage rites on 30th May, 2016 in accordance with Igbo custom and tradition and the Respondent paid the traditional bride price to the Petitioner’s family. Cohabitation between the Petitioner and the Respondent commenced after the traditional marriage rites.***
- (c). At the time of the Petitioner and Respondent got married, the Petitioner was a medical student at University of Abuja.***
- (d). Soon after the marriage, the Respondent became unreasonable abusive and hostile to the Petitioner and her relations.***
- (e). As a result of the abusive and hostile attitude of the Respondent towards the Petitioner, there were incessant quarrels and serious disagreements between the Petitioner and the Respondent, which the families of the couple intervened on several occasions but were unable to resolve.***
- (f). On two occasions, the situation became so serious that the Respondent moved Petitioner’s things from the room being used by the couple to another room.***
- (g). On several occasions the Respondent threatened to throw the Petitioner out of their matrimonial home.***
- (h). On yet another occasion, when the Petitioner was in her final year in medical school the Respondent attempted to disrupt the Petitioner’s final medical examinations and threatened the Petitioner that “it is either he (the***

Respondent) dies and the Petitioner becomes a medical doctor or the Petitioner does not become a medical doctor and he (Respondent) lives.”

- (i). As result of these attitudes of the Respondent the Petitioner suffered serious physical, mental and psychological abuse and trauma and found it intolerable, unreasonable and impossible to continue to cohabit with the Respondent.**
- (j). Consequently, the Petitioner was constrained to move out of the matrimonial home before the situation degenerates into grave physical abuse and the Petitioner carries out his threats.**
- (k). The Petitioner therefore moved out of the matrimonial home since 10th December, 2017 because of irreconcilable disagreements and differences with the Respondent.**
- (l). That after the Petitioner was constrained to move out of the matrimonial home, the Respondent demanded for a refund of the bride price he paid to Petitioner’s family and the bride price has been returned to the Respondent.**
- (m). Based on all the above, it has become practically unreasonable and impossible for the Petitioner to live together with the Respondent.**
- (n). Cohabitation ceased and the Petitioner and the Respondent have lived apart since 10th December, 2017, a period over two and a half years.**
- (o). The consummation of the marriage between the Petitioner and the Respondent ceased even before 10th December, 2017 when Petitioner and the Respondent separated.**
- (p). Since the Petitioner and the Respondent separated on 10th December, 2017, the only child of the marriage (who is now 2 years and 10 11months old) has been residing with the Petitioner who has solely been responsible for his**

education, social and moral upbringing, health and maintenance generally at her expense without any contribution by the Respondent.

(q). Based on all the above, the Petitioner reasonably believes the marriage between the Petitioner and the Respondent has broken down irretrievably.”

The Petition equally contains proposed arrangement for the only child of the marriage.

Meanwhile, upon being served with the Notice of Petition, the Respondent herein filed an answer to the Petition on the 7th day of September, 2020, but subsequently filed another answer to the Petition and Cross-Petition on 3rd December, 2021.

The Court has observed that Respondent’s Counsel did not seek leave of Court to amend or substitute the answer filed on 7th day of September, 2020 with the subsequent answer and Cross-Petition filed on the 3rd day of December, 2021.

This issue was raised in the Petitioner’s final Written Address in paragraph 4.3.2 thereof.

In the Respondent’s reply on points of law, it is argued that the answer filed by the Respondent was formerly withdrawn by Respondent’s Counsel before Hon. Justice Talba of the F.C.T High Court sitting at Gudu without objection.

The Court has taken judicial notice of this fact in the record of proceedings of the previous Court. Therefore, the answer filed on the 3rd day of December, 2021 shall be adopted by the Court in determining this Petition.

The Respondent equally raised a preliminary point in his reply on points of law to the Petitioner’s final Written Address.

This borders on the Petitioner filing a Witness Statement on Oath as against giving her oral evidence viva-voce.

Learned Respondent's Counsel argued extensively on this issue and relied on several authorities including the Matrimonial Causes Rules to argue that both the Court and parties are bound by the rules of Court particularly regulating such proceedings.

However, learned Counsel submitted in paragraph 9 of the reply on points of law that assuming but not conceding that the Petitioner by law or the Rules of Court is allowed to file a Witness Statement on Oath, that such ought to be by leave of Court. Counsel cited Order 43(1) of the F.C.T High Court (Civil Procedure) Rules 2018.

Well, I have considered Counsel's argument on this issue and the fact that Order XV Rule 1 of the Matrimonial Causes Rules makes the requirement for the Petitioner to give oral evidence before the Court.

However, the Court has taken judicial notice of the current practice in recent times which is widely accepted almost all over the country for parties to file written statement or depositions on oath for ease, expediency of trial and to save time.

I however agree with Respondent's Counsel that leave ordinarily ought to have been sought and obtained.

Having said that the Court is allowed to adopt Rules of Court in circumstances that warrant departing from technicalities to achieve the ends of justice.

The Court shall rely on Order 5 Rule 2 of the F.C.T. High Court (Civil Procedure) Rules 2018 to treat the non-compliance if any as a mere irregularity which can be waived by the Court. I so hold.

Besides a Court should not allow itself through adherence to technicalities to be used for perpetuating injustice. Cases should be decided on their merit and not on technicalities.

See: ***ANAGBADO V ANAGBADO (1992) 1 NWLR (Pt.216) 207.***

The Court hereby discountenances the arguments of Petitioner's Counsel on this issue.

The Petitioner at trial, testified as Pw1 adopted her Witness Statement on Oath filed on 22nd September, 2022. The Statement on Oath of the Petitioner although dated 23rd, there's no month stated as to which month of 2022 the deposition was made.

However, there's an endorsement made by the Commissioner for Oaths on 23rd day of September, 2022.

In her Witness Statement on Oath, the Petitioner deposed to facts predicating this Petition, which includes the allegation that soon after the marriage the Respondent became unreasonably abusive and hostile to her and her relations for inexplicable reasons.

That there were incessant quarrels and serious disagreements between the couple.

According to the Petitioner she suffered serious physical, mental and psychological abuse and trauma and found it intolerable, unreasonable and impossible to continue to cohabit with the Respondent.

That she was eventually constrained to move out of the matrimonial home.

Now, under and by virtue of Section 15(1) of the Matrimonial Causes Act, Cap M7 LFN 2004, a Court hearing a Petition for dissolution of a marriage, shall hold the marriage to have broken down irretrievably, if and only if the Petitioner is able to satisfy the Court with at least one of the grounds enumerated under Section 15(2) a-h thereof, even if the divorce is desired by both parties.

In the case of **IKE V IKE & ANOR (2018) LPELR-44782 (CA) per EKPE, J. C. A at pages 10-16, paragraphs C-A** where the Court held as follows:-

“For a Petition for the Dissolution of marriage to succeed, the Petitioner has to prove at least one of the ingredients contained in Section 15 (2) of the Matrimonial Causes Act, even if the divorce is desired by both parties”.

See also: **AKINBUWA V AKINBUWA (1998) 7 NWLR (Pt.559); IBRAHIM V IBRAHIM (2007) 1 NWLR (Pt.1015) 386; BIBILARI V BIBILARI (supra)**, the Court **per Galinje JSC held at PP: 33-34, Paras C – A** thus:-

“In a Petition for dissolution of marriage, the Petitioner must plead and prove that the marriage has broken down irretrievably.

In doing this, the Petitioner must be able to bring himself within one or more facts enumerated in Section 15(2) a – h of the Matrimonial Causes Act Cap 220 LFN, 1990 before he can succeed in the petition.”

In the instant case, the Petitioner in paragraphs 22, 25 and 7 of her Witness Statement on Oath deposed among other things that she moved out of the matrimonial home since 10th December, 2017. That cohabitation of the marriage between the Respondent and the Petitioner has since ceased and that they have lived apart since 10th December, 2017 when Petitioner and Respondent separated. Petitioner equally relies on other facts grounding the Petition as listed earlier.

Petitioner further deposed that she reasonably believes that the marriage between her and the Respondent has broken down irretrievably.

It is the case of the Petitioner that she and the Respondent got married in 2017 and that shortly after the marriage; the Respondent became unreasonably abusive and hostile to the Petitioner and her relations. As a result of the abuse and hostile behaviour of the Respondent towards the Petitioner, there were incessant quarrels and serious disagreements between the Petitioner and the Respondent, which the families of the parties intervened on several occasions but were unable to resolve. On several occasions the Respondent threatened to throw the Petitioner out of their matrimonial home. On another occasion, when the Petitioner was in her final year in the medical school, the Respondent attempted to disrupt the Petitioner’s final medical examinations and threatened the Petitioner that ‘it is either he (the Respondent) dies and Petitioner becomes a medical doctor or the Petitioner does not become a medical doctor and he (Respondent) lives. As a result of these behaviours of the Respondent, the Petitioner suffered serious physical, mental and psychological abuse and trauma and found it intolerable, unreasonable and impossible to continue to cohabit with the Respondent.

Consequently, on the 10th of December, 2017, the Petitioner was constrained to move out of the matrimonial home before the situation degenerates into grave physical abuse and the Petitioner carries out his

threats. And ever since the Petitioner moved out of the matrimonial home, the Petitioner has borne the whole burden of catering for the only child of the marriage solely.

Now, Section 15(2)(e) of the Matrimonial Causes Act (supra) provides:

“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.”

As stated earlier, according to the Petitioner she moved out of the matrimonial home since 10th day of December, 2017 that cohabitation between the parties has since ceased and they have equally lived apart since then.

It is observed that since this Petition was filed on the 10th day of June, 2020, it means that the Petitioner and the Respondent have lived apart for a continuous period of at least two years immediately preceding presentation of this Petition.

Moreso, by the Respondent’s Answer, Cross-Petition and his evidence on oath before the Court, the Respondent is equally seeking dissolution of the marriage. In other words, he does not object to the Decree being granted.

Indeed, learned Petitioner’s Counsel submitted in their final Written Address that the Petitioner has so far satisfied the Court with regards to Section 15(2)(e) of the Act to warrant the Court to grant a Decree of dissolution of the marriage. Counsel relied on the case of ***EZIAKU V EZIAKU (2018) LPELR-46373 (CA)*** as well as Section 18 of the Matrimonial Causes Act (supra).

Although learned Petitioner’s Counsel in the address is of the view that the Petitioner has equally proved intolerable behaviour on the part of the Respondent under Section 15(2)(c) of the Act. It is my humble view that the facts alleged although not controverted or challenged by the Respondent as he failed to appear for cross-examination of the Petitioner and was eventually foreclosed, I find that the alleged intolerable conducts are not grave and weighty enough to constitute intolerable behaviour or the

facts so envisaged under Section 16(1) of the Matrimonial Causes Act. I so hold.

Please see **OGUNTOYINBO V OGUNTOYINBO (2017) LPELR-42174 (CA); BIBILARI V BIBILARI (2011) LPELR-4443 (CA); AKINBUWA V AKINBUWA (1998) 7 NWLR (Pt.559); IBRAHIM V IBRAHIM (2007) 1 NWLR (Pt.1015) 386.**

On the contrary, it is the Respondent's contention while denying the Petitioner's allegations against him, that it is Petitioner's own intolerable behaviour that led to the breakdown of the marriage.

The Respondent gave a detailed account of what transpired between himself, the Respondent his wife, her mother and siblings and how she left the matrimonial home.

This is better appreciated when one considers his evidence on oath. This is an extract of Dw1's evidence - in-chief thus:-

"My response to the allegations in the Petition is that all the allegations from 7d – 7q are all pack of lies.

The truth of this matter is that after my wedding with the Petitioner, we were living in marital bliss. I married her because I love her not minding she was a student. I took the responsibility of her medical training. We were happy up till her mother joined us in a post natal period to do what we call Omugwo. The mother of the Petitioner moved into our home and refused to leave. She spent four months in my home and I didn't complain. My only complaint is that she started controlling my home. She started abusing me in my home. She will enter my bedroom without my permission. She will stop me from kissing my wife. It got to a point, that the mother of the Petitioner warned me to stop having sex with my own lawfully married wife. That the daughter is a small girl. Severally, while having sexual intercourse with my wife, she barges into my bedroom on the guise of picking one baby item or the other. Her unholy behaviour became so unbearable. I called my wife several times to ask her mother to grant us our peace and privacy.

The mother of the Petitioner interferes in every aspect of my married life. A newly married couple. Her attitude became so much that on a particular dated 6th December, 2017 I decided to leave my home to check into a hotel so that I can have my peace, because she overran my home.

My wife was still a student. I always took her to hospital. I slept in the hotel and still came back to take her to school. That he her final medical school programme. She was in final year then.

On returning back, the moment I parked my vehicle and opened my parlour to enter my house, the mother of the Petitioner pounced on me, held me by my neck, I was wearing native clothes that day. She held me and demanded that I explain to her where I passed the night. In the presence of my five months old baby sitting on the floor.

My mother in law gave me five dirty slaps. In a compound where I was the care taker and a respected tenants, he humiliated me. It took the intervention of my neighbours. Mr. Segun, the security man Mohammed, my neighbour, Mr. Precious before the hand of my mother-in-law was removed from my neck. While all these was happening I never said anything to the Petitioner's mother because I have never seen such a situation since I was born.

After I was rescued from her, I told her that I have never set hands on my mother and you cannot be in my house where I pay rent and be molesting me. And that I have never set my hands on my wife or any woman since I was born. I now asked her to leave my house between 7th December, 2017, a Thursday to 10th December, 2017 a Sunday to leave my house.

While all this drama was going on, my wife the Petitioner, never uttered a word. She left for school that morning feeling unconcerned. While the mother-in-law held me and demanded for the particulars and keys of our car, a wedding gift. I quietly handed the car keys to her and she went into my bedroom by herself to get the vehicle particulars. I allowed that because I

had three cars before our wedding. The wedding gift was the fourth car.

When normalcy and sanity was back in my house by those neighbours, I left work. When I came back from work, I discovered that mother of the Petitioner has left my home. But, she left her properties in the quest room she was occupying. She didn't leave with her properties. I thought the danger was over. On 10th December, 2017, a Sunday, three days after my mother-in-law had left, at about 10am in the morning, I discovered that my wife was having series of calls which she would go outside to answer. By that time, the younger brother to the Petitioner, Mr. Onyeka Okoro, he stormed my house with two thugs in my parlour, he barged in and was saying he will not be alive and anyone will insult his mother.

While these people were raining abuses on me in my house, the Petitioner's mother, stormed my house with other thugs. Those thugs beat me black and blue, broke my former medicated glass I was using. They broke it in my eyes. Dragged me out of my house, on our street, and treated me like a common criminal. They tore my white T-shirt which I was wearing that day and put me in a circle. The elder sister of the Petitioner Mrs. Chidinma Okoro Chukwu said that because I insulted her mother, she will be the last to humiliate me before they leave my house. While I was in that ring, Chidinma slapped me five times while the thugs were watching the show.

While the Petitioner joined them in raining verbal abuses on me. They gave me injuries on my body. They gave me a red spot on my eyes. When they were done, the mother of the Petitioner told the Petitioner in front of everybody that since I have asked her to leave, she asked the Petitioner to pack her things. She said: "Chinenye pack your things let go."

They all entered a vehicle including the Petitioner, my in laws and the thugs and entered the car that was our wedding gift. They went away with my washing machine, my tabletop deep freezer, and every other small property that the car could contain, mostly our wedding gifts. They went away with my five

months old baby, at that time to an unknown destination. I was devastated, frustrated, confused, I was beaten up and down. The only thing that came to my mind was to go to the Police and incident a report. I went to Police Station Gwagwalada, Market Road, against the Petitioner and her family. The Police asked me if I wanted an arrest and I told Police no, because I didn't want to compound the fate of my innocent son, as my estranged wife was still suckling but I wanted the report to be in the Police Station. After that, I went to the hospital to treat myself. Exactly two months after that date on 10th February 2018, after Petitioner deserted her matrimonial home, I was sleeping in my house around 5am, Mr. Emeka Okoro, the elder brother of the Petitioner, the Petitioner herself and the same set of thugs that came on 10th December, 2017, I don't know their names, because I don't know them, and also Onyeka Okoro younger brother of the Petitioner, came banging on my door. When I woke up, from the window, I asked them what they wanted. They were trying to force themselves into my house banging the front door as well as the back door of my flat. When they could not make entrance inside my house, they went to the Police to arrest me. But, as God will have it, the Police Station they went to coincidentally, was where I laid my complaint about the attack. When Police came to my house they asked the Petitioner why are you disturbing this man? What do you want? She said she wanted to pick some of her items from the house. The Police gave her a sheet of paper to write what she needed to take from my house and she couldn't write one item she forgot. They were only in my house to attack me a second time.

Since the Petitioner left my house in December, I was still buying my baby milk, pampers and all necessaries. I was giving our mutual friend, her course mate Dr. Patrick because I didn't know where my baby was. I also gave him money to give her and also transferred money to her account. I was doing that because I had no issue with my innocent son. The Petitioner threatened me on several occasions.

My Statement of Account in Zenith Bank printed and signed in my presence shows the transactions I referred to. I also have text messages and chat messages of confirmation of receipt of

funds, they are in this Court. Printed from my smart phone and my HP printer that I use in my ordinary business.

I had visited my son, since I started having access to my son on several occasions in my venue that Petitioner would choose herself from Enugu to Abuja, take the Petitioner and my son for shopping, buy them baby necessities cartons of milk, pampers, different things and still given them money I took pictures of my visit with my son with my smart phone and printed out. The pictures are in Court.

The Police after the incident, told the Petitioner not to come to my house again and she sent me several text messages. In one of the messages she said, she has the power to destroy my life.

My phone containing those messages is here in Court. I have never one day threatened the Petitioner. I cook for her because she is in school. I have never abused the Petitioner. My son Onyekachi Rabuni Onyekachi was born on 5th July, 2017 and at birth, the Petitioner and I gave him that name.

His birth certificate issued by the University of Abuja Teaching Hospital is here with me.

The Petitioner in various text messages has threatened me that she must change the name of our son. The Christian Baptism of our son still bears the name we gave him.”

The above account of the Respondent as to the facts and circumstances of this case, clearly shows that Respondent went through a hellish ordeal at the hands of not the Petitioner but particularly his mother in law, Petitioner’s mother and her siblings.

Several Exhibits were tendered in evidence including Exhibit I, his torn shirt. He lived in fear of his life and his dignity was stripped no doubt. This is clearly a violation of his right to dignity as a human person guaranteed under Section 34(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Though not entirely the fault of the Petitioner. Her family practically took over the matrimonial home and eventually broke up the marriage. Dw1's evidence was not contradicted or controverted in any way on this issue. I so hold.

However, it is my humble view that the petitioner has satisfied the Court pursuant to Section 15(2)(e) of the Matrimonial Causes Act on grounds of living apart that the marriage has indeed broken down irretrievably. I so hold.

I shall now consider the Cross-Petition of the Respondent, who relies on the facts stated in paragraph 3 (I - XLIII) of the Answer and Cross-Petition to equally seek dissolution of the marriage.

Indeed, the Respondent has painted a most horrendous picture of the ordeal he suffered at the hands of his mother-in-law and his wife's siblings which largely in my view immensely contributed to the breakdown of this marriage. It is most unfortunate. Without even dwelling on the facts raised so far by the Respondent which speaks volumes in this case, let me state that it is obvious that both the Petitioner and Respondent have so far satisfied the Court that the marriage is in tatters, it is irredeemable and irretrievably. This is clear from the whole history of this case. Let me equally consider other grounds of the Cross-Petition i.e custody/maintenance of the sole child of the marriage and the issue of settlement of property, and the order for Perpetual Injunction sought against the Petitioner restraining her from changing the name of the only child of the marriage.

Let me first of all state that while the Petitioner seeks custody of the only child of the marriage who was born on the 5th of July 2017, the Respondent on the other hand going by paragraph c of the Reliefs sought in the Cross-Petition, merely seeks an Order of Court granting him unlimited access to his child in the custody of the Petitioner.

Therefore, there's no contention as to the issue of custody in this Petition.

On Respondent's Relief (d) on the Injunctive Order, he alleged in his cross-Petition and in his oral evidence before the Court that the Petitioner in various text messages to the Respondent has threatened to change the name of their son. According to the Respondent in his testimony –in-chief,

on one of his visits, his son told him his name is not Onyekachi Rabuni Onyekachi, which is the name given to their son on his Baptism and in the Birth Certificate issued on his son's naming.

Moreso, Respondent equally stated that his son had informed him that his mother has changed his name in his school records to Onyekachi Onyekachi Kingsley. The Respondent Cross-Petitioner equally tendered several Exhibits in evidence including Exhibits E1, E2 and E3, which are three Certificates of Birth, Baptism and one issued by the Supreme Grand Lodge, Abuja on 24th September, 2019 in respect of the child of the marriage Onyekachi Rabiuna Onyekachi.

In fact Dw1's evidence on this issue was unshaken during cross examination. He not only re-iterated that his son told him Petitioner changed his name, Dw1 the Respondent added that even the Petitioner confirmed it herself when she informed him that she has the power to do that because her elder sister works in National Population Commission. Respondent said, he warned the Petitioner never to do that.

In my view, Respondent/Cross-Petitioner has been able to prove this allegation against the Petitioner and is therefore entitled to the injunctive relief sought. I so hold.

On reliefs (e) and (f) sought by the Respondent/Cross-Petitioner, he testified that the Petitioner carted away several items when she left the matrimonial home including their car which according to the CrossPetitioner is jointly owned by them as it was a wedding gift.

Dw1 in his evidence testified that he could identify the car particulars since he personally registered it which bears their names as joint owners. He gave the Registration No. GWA 535 SA.

He further testified that the Petitioner's mother took the original particulars. The photocopies of the car particulars were admitted in evidence as Exhibits D.

I have looked carefully at the car particulars and it shows that the car in question is registered in the name of Mr. and Mrs. Onyekachi .K. Asogwa, clearly proving that it is jointly owned by the parties in this case.

During cross examination when Petitioner's Counsel put to the Respondent that the car was a gift from Petitioner's family, Dw1 maintained that it was a wedding gift just like other gifts.

Moreso, he has successfully proved to the Court that the property ie the car is jointly owned by the parties herein. I so hold.

On the issue of having unlimited access to the child of the marriage, it is contended by the Respondent among others that the Petitioner had previously initiated a proceedings seeking to restrain him from having access to his only son as she filed a restraining order in the FCT Customary Court at Yangiji, but that the proceeding failed in the Court and he later started having access to their child. A certified true copy of the Court proceeding was tendered in evidence as Exhibit C.

However, having considered the submissions of Petitioner's Counsel in paragraph 4:2:29 of their address, I would have to agree that from the facts presented by parties in their respective cases, it shows that the Respondent has access to his child and it therefore means that both parties have a common understanding as it relates to the Respondent having access to their child.

On the issue of maintenance of the child as sought for by the Petitioner in her relief (d) in the amended Petition, I have observed that Petitioner in her Petition and Witness Statement on Oath has contended that she has been solely responsible for the upkeep, school fees, medical expenses and other care and maintenance of the child of the marriage from the time cohabitation ceased on the 10th of December, 2017 till the date of filing this Petition.

On the contrary, the Respondent/Cross-Petitioner stated in his evidence in chief among others that since the Petitioner left his house, he was still buying all necessaries for his son and was giving it to the Petitioner through one Dr. Patrick her course mate because he didn't know where his baby was.

He equally testified that he took the Petitioner and his son out for shopping on several occasions and even took pictures of himself with his son. He tendered the photographs and Zenith Bank Statement of Account in evidence as Exhibits E4, E5, E6 and Exhibit G in addition to Exhibits H1

and H2 the Certificate pursuant to Section 84(2) and (4) of the Evidence Act.

Although Respondent was duly cross-examined on this issue, I find his evidence to be unshaken in that respect. This thereby proves that indeed the Respondent has done his best to take care of his son since Petitioner left the matrimonial home and has continued to do so, even in the face of the prevailing circumstances of this case.

In making any order as to maintenance, since there's no evidence adduced on either side as to the earning capacities of the parties, the Court shall be guided by the provisions of Section 71(1) of the Matrimonial Causes Act (supra) which provides:

“In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the Court shall regard 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.”

See: ***WILLIAMS V WILLIAMS (1987) 2 NWLR (Pt.54) 66; ANYASO V ANYASO (1989) 9 NWLR (Pt.564) 150; OYELOWO V OYELOWO (1987) 8 NWLR (Pt.56) 239; HAYES V HAYES (2000) 3 NWLR (Pt.648) 280.***

In conclusion therefore, having found that this marriage has broken down irretrievably I hereby make the following Orders:-

- (1). The Court hereby grants a Decree Nisi dissolving the marriage between the Petitioner CHINENYE ANTHONIA OKORO and ONYEKACHI KINGLSEY ASOGWA contracted at the Federal Marriage Registry, Area 10, Garki Abuja, Federal Capital Territory, on the 21st day of January 2017. The Decree shall become absolute if nothing intervenes within a period of three months from this date.
- (2). The Petitioner is awarded sole custody of the child of the marriage.
- (3). The Respondent/Cross Petitioner is to have unlimited and unrestricted access to his child at all times with reasonable notice given to the Petitioner before hands.

- (4). The Respondent shall pay 70% of the school fees of the child, while the Petitioner is to pay 30% of same.
- (5). Any choice of school shall be mutually agreed upon by the parties and must be affordable to both Petitioner and the Respondent.
- (6). The Respondent and the Petitioner shall share equal responsibility for the medical bills of the child of the marriage.
- (7). The Respondent is to pay N35, 000 monthly for the upkeep of the child of the marriage.
- (8). The Court hereby grants an Order of Perpetual Injunction, restraining the Petitioner, her agents or privies or any one acting on her behalf from changing the name of the child of the marriage from ONYEKACHI RABUNI ONYEKACHI being the name he was given at birth by the Respondent as the father to Onyekachi Onyekachi Kingsley or any other name whatsoever.
- (9). Relief No. (e) contained in the Respondent's Cross-Petition is refused and dismissed.
- (10). However, being a property jointly owned by the parties during the pendency of the marriage, this Court hereby Orders that the Toyota Corolla Saloon Car with Registration No: GWA 535 SA and Chasis No. 2tibr13c139900 jointly owned by the Respondent and the Petitioner be sold at the current open market value and the proceeds from the sale be eventually distributed to the parties by an official receiver appointed by the Honourable Court.

Signed:

Hon. Justice S. U. Bature
30/5/2023.