

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS MONDAY, 8TH MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFIA

SUIT NO: FCT/HC/GWD/PET/22/22

BETWEEN:

FALADE OLUWAFEMI SAMUELPETITIONER
AND

AKANBI ABIODUN MARIAM.....RESPONDENT

JUDGMENT

The petitioner filed a notice of petition for the decree of dissolution of marriage Between the petitioner (FaladeOluwafemi Samuel and AkanbiAbiodun Mariam) dated 12th September, 2022 with a verifying affidavit of 18 paragraphs deposed to by FaladeOluwafemi Samuel of No 8623 Annapris Road, Apt 202, New Carrollton, 20784, United States of America, including certificate relating to reconciliation attached to the certificate of marriage, witness statement on oath of FaladeOluwafemi Samuel dated 13th September, 2022 and an additional witness statement on oath of Mr, FaladeOluwafemi Samuel dated the 14th November, 2022. The petitioner seeks for the following order:

- a. A decree of dissolution of marriage between the petitioner and the respondent on the grounds that the marriage has broken down irretrievably due to facts that**
 - i. The petitioner and the respondent have been continuously living apart for a period of three years.**

ii. The respondent has behaved immediately after the marriage in a way and manner that no reasonable person would be expected to live with or tolerate.

b. Such further order or orders as the honorable court may deem fit to make in the circumstance in favour of the petitioner.

On being served with the petitioner process, the respondent filed the respondents answer and cross petition dated the 1st November, 2022 a verifying affidavit of AkanbiAbiodun Mariam of 3 paragraphs dated the 1st November, 2022, attached to is the witness statement on oath of AbiodunAkanbi Mariam of 24 paragraphs.

The petitioner counsel filled a reply to the answer and answer to the cross petition of 29 paragraph dated the 14th November, 2022.

The counsel to Respondent/ cross petitioner/Applicant filed a motion for leave to grant the petitioner/cross respondent/ applicant for hearing of the testimony of the petitioner/cross respondent first witness through remote hearing dated the 14/11/2022. The motion was moved and granted on the 28th November, 2022.

On the same date the petitioner gave his evidence, this court summarizing the evidence of the petitioner thus: that he is a special police officer who lives at 8623 Annapolis Road, Apt 202 New Carrollton 20784 US of America that he made the statement before the court, the statement which he identified and adopted same.

That in paragraph 3 he referred to CTC the Certificate of marriage between himself and the respondent. That the said Certificate of marriage carries the name of himself and that of the respondent which both signed it. The certificate of marriage was tendered and admitted in evidence as Exhibit A.

That in paragraph 5 of the reply to answer of the cross petition he referred to some pictures taken during the honey moon in Lagos. The pictures which he selected 7 that contained the respondent and himself, the said pictures were tendered and admitted in evidence as exhibit B1-B7. Also in paragraph 23 and 27 he referred to some financial transcript from two different financial institutions, from Sendwave and the other from Boxypay, the two financial or statement of account one from Sendwave dated the 17th October, 2022 admitted in evidence exhibit C1 and C2. That paragraph 22 of the respondents reply to the answer he referred to some WhatsApp Messages which has his chat and that of the respondent. The said WhatsApp's messages were admitted in evidence as exhibit D1-D6.

That he equally has a disc which contains his conversation with the respondent reference to paragraph 20. The said CD that contains the conversation between the petitioner and the respondent was admitted in evidence and marked exhibit E.

The petitioner who then prayed to the court to answer his prayers and to dissolve the marriage between himself and the respondent.

Under cross examination that he knows the respondent who is his wife, that they got married with the respondent at Ikoyi Federal Court House on the 29th November, 2018. That after the marriage they went to a hotel where they stayed for 5 days and after that relocated to the Family House and from there went to his place of work.

That his family lives at pine line in IdoShage. That his matrimonial home is No. 21 Pine line Street Tajudeen bus stop Idushage. That when he went back to US, he left the wife at the family house in her mother's place, that his wife escorted him to the airport from there to the mother's house, that they have lived together for a period of a months and two weeks. That it was in the year 2018 where he spends two weeks with her and in 2019 he equally spent 2 weeks.

That he adopted two witness statement on oath that in paragraph 7 of the said statement on oath, he stated that his wife suddenly changed, that was in the year 2019 and before he arrived in August, and after his return in 2019 where she started nagging all over 2020.

That on noticing the sudden change he discovers that she is so much in contact with her ex-boyfriend as such they did not talk like a week from there he reported her to her brother who came to settle them.

That after his departure from Nigeria on the 8th November, 2018 he visited again in the year 2019 August for a wedding and that after they talked and because of pandemic he could not travel out of the country but later came back again in 2020 November.

That before then they had no verbal agreement as things were not working so that both should go their separate ways.

That he normally sends his wife feeding money (upkeeps). That the last time he sent her upkeep was sometimes 2020 on the 11-27-2020. That after the verbal

agreement, she asked if he can still assist her financially and he told her no problem, that he promised to do his best not until she came across a new guy.

After the visit in 2020, he came in briefly twice, it is November and ending September, the reason of his visit in November was because he was told that there was a document he was to sign which he had to take the advantage to come down with one of his brother. That he made the said two witness statement on oath by himself and he signed before a commissioner of oath who happens to be a lady. No re-examination.

DW1, in her statement, she stated that she used to be an actress and a model before she got married but now she is unemployed. That she knows the petitioner who is her husband. That they have been married for four years, plus, got married on the 29/11/2018 at the Federal Registry IkoyiLagos. That she deposed to a witness statement on oath in November, 15th2022. The said which she reconfirmed by her signature and urge the court to use it as her evidence before this court.

That in paragraph 5 of her affidavit she mentioned that her marriage to the petitioner has become irretrievably, that herself and the petitioner have really not lived together. But only lived together like one month, that is two weeks during their marriage and two weeks during the sister's wedding in 2019. She lived in the husband family house for 9 good months between September 1st 2019 to May, 29th, 2020.

That when the husband came for the sister's wedding in 2019, himself and Father met with her father and said they want her to start leaving in his family house, but her dad opposed to it because of the security reasons AS the house was empty. That HIS husband and father promised getting a family member from the village to come and live with her.

That when she moved into the house, she was there alone for a week until a stranger from the village who is not a family relation came over to the house, this she found out after they arrived. That they started living together with the stranger in the boy's quarters of the family house, which has two room to one toilet and one bedroom which she shared together with a family of 5 and herself. That the main house where the husband stays when he comes back from abroad was locked because of her and was restricted from things in the house.

That throughout her 9 months in the house she was emotionally touched, she was abandoned and feeling lonely, which made her nearly commit suicide that the husband made her to stop being a model and an actress. That the husband stopped supporting her financially in the year 2020 July and have been living on her own and not having a good job.

That she wants the court to dismiss the petition of the petitioner and uphold her petition by dissolving the marriage, and the court to award the sum of #10,000,000.0 (Ten Million Naira) against the petitioner.

Under cross-examination by the counsel to the petitioner, that before he married his wife she is aware that he lives in U.S. That after the marriage they were in the hotel for 2days and not 5days, and after the 2days in the hotel they were in the father's house for a week in the same room as a newly wedded wife. That they had a plan that they will relocate to U.S. That she's equally aware that her husband will not be relocating to Nigeria anytime soon.

That when they got married, the father and the mother of her husband was not present and have never met with her parents. That she told her husband that what she expected was his family to know her family and to know where his wife comes from which is very important. The parents only saw us two days before her husband travelled back to the U.S, to inform her that she was going to stay in the empty family house.

That she lived in the family house for 9months and before she lives the house she sought for the consent of her husband, who save her money to take a cab. That she can't remember having an agreement in 2020 that they should go on their separate ways. That it has been a while she called the husband because he blocked her from his phone and he unblocked her sometimes last year 2022.

That she is not aware that there was a recording conversation between her and the husband that was tendered before the count. That she will be surprised to know that the content of the conversation was to the fact that both of us should go on our separate ways.

That when they were together they had several intercourses.

No re-examination.

Upon the close of the case, parties filed in their final written address which was adopted on the 13/03/2023.

The respondent final written address was dated the 14/02/2023 and filed on the same date where in the said final address a sole issue was distilled for the courts determination;

“whether the petitioner is entitled to the grant of an order for the dissolution of the marriage”

While the petitioner/cross-respondent counsel final written address was dated the 22-2-2023 filed on the same date, where two issues were distilled for determination of the court:

- a. Whether from the circumstance of this suit, the honorable court ought to grant decree of dissolution of marriage.**
- b. Whether the respondent/cross-petitioner is not entitled to maintenance.**

I have carefully gone through the issues so formulated for determination. Issue one of the respondent case, issue one of the respondent/cross-petitioner case speaks the same. Hence the two issues will be merged together, while issue two of the petitioner/cross-respondent shall be answered. Hence we shall decide this matter based on two issues;

- 1. Whether the petitioner is entitled to the grant of an order for the dissolution of marriage.**
- 2. Whether respondent/cross petitioner is not entitled to maintenance?**

On the 1st issue is of whether the petitioner is entitled to the grant of an order for dissolution of marriage.

This the respondent in it's final written address submitted that, it is the law that 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 fact contained in section 15(1) and (2) a-e of the MCA 1970. That from the facts as pleaded by the respondent, the ground upon which the petition is brought is separation and living apart. The petitioner who stated that the respondent and himself have separated from each other and lived separately apart for a continuous period of 3years before the presentation of this petition. The respondent who does not object to the decree of dissolution from

being granted. Submitted that all other pleadings and evidence seeking to rest the blame, fault and default on one or the other go to no issue in the case as far as the law is concerned.

Section 15(1) of the MCA provides thus;

- 1. A petition under this act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage ha broken down irretrievably**
- 2. 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 parties to the marriage have lived apart for a continuous period of the last two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted.
 - b. that the parties to the marriage have lived apart for a continuous period of the last three years immediately precedingthe presentation of the petition.

Submitted that the pleadings and evidence of the petitioner and the respondent that parties have lived separately and apart from August, 2019 to September 2022 when the petition was presented covers a period of over 3years and is sufficient for the court to decree on dissolution of marriage even on that score alone. The respondent in its evidence stated that upon the marriage herself and the petitioner did not live together as husband as wife, but rather kept the respondent at the petitioner family house of 21 pipeline street Tajudeen bus stop, Idu-shaga Lagos.

The respondent/cross-petitioner on issue one submitted that it is clear from the evidence of both parties that the petitioner/cross-respondent and respondent/cross-petitioner have lived apart and separately for more than 3years. Went furtherand submitted that this was also established by the legal argument of counsel to the respondent/ cross-petition and wish to adopt the argument of the counsel to the respondent/cross-petitioner and urge the court to grant decree of dissolution of the marriage between the parties.

Further that, admission basically puts an end to the need for prove in pleadings. See the case of Steel LTD V. N.D.I.C (2015)1 NWLR (PT. 1441)570 submitted

that the respondent /cross-petitioner conclusively admitted in the answer/cross-petition, respondent's witness statement on oath and particularly in her counter, final written address filed on 14th February,2023 that she and the petitioner/cross-respondent have lived apart and separately since August 2019, and the fact that this petition was filed on 12th September,2022 proved that parties have immediately before the presentation of the petition have apart for a continuous period of 3year due to intolerability.

That the petitioner/cross-respondent further stated in paragraph 8 (K)on (l) as follows;

(k). that the last time the respondent and the petitioner lived together was in August 2019 during the petitioner's cousin's marriage in Lagos.

(l). that the respondent and petitioner lived immediately before the presentation of the petition lived apart for a continuous period of 3 years due to intolerability.

Further that the respondent answer and cross-petition, and the respondent/cross-petitioner admitted in paragraph one as follows:

“the respondent admits paragraph 1(a)and (b), 2, 5, 8a, 8c, 8k, and 8l”

That the respondent/cross-petitioner having admitted that there is intolerability, cannot become a turn coat by saying there is no proved of same. Submitted that, her admission is positive to the case of the petition/cross-respondent. It needs no further proof. Therefore,urge the court to found in support of the petitioner/cross-respondent and grant his relief. On this referred the court to the following cases.

- 1. Steel LTD v NDIC (supra)**
- 2. Abalan v Amodu (2004)17 NWLR (PT. 902)430.**

From the submission of both counsel before the court, I find the following essential facts as established to wit.

- 1. That parties got married on the 29th November,2018.**
- 2. That the petitioner and the respondent have been continuously living apart for a period of 3years.**

The above piece of evidence which was not challenged by either party. By confluence of these facts, it is clear that this marriage exist only in name. As stated earlier any of the facts under section 15 (2) a-h if proved by credible evidence is sufficient to ground a petition for divorce. The established facts of living apart for up to 3years shows clearly that this marriage has broken down irretrievably and parties have no desire to continue with the relationship. If parties to a consensual marriage relationship cannot live any longer in peace and harmony, then it is better they part in peace and with mutual respect for each other.

It is also necessary to note that the reasons that a petitioner gives for living apart is not held to unreasonable scrutiny by the court. The most important factor is to establish that parties have indeed lived apart for a continuous period preceding the presentation of the petition.

In *Uzochukwu v Uzochukwu* (2014) LPELR-24139 CA, it was held as follows;

“the parties thus lived apart for a continuous period of atleast two years immediately preceding the presentation of the petition. The lower court therefore erred in ending that there was no evidence that the living apart was for a continuous of at least two years preceding presentation of the petition.

I must add that it is immaterial who has between the parties caused them to live apart as it seems to me that section 15(2) (e) of the MCA does not permit the court to go into a fault finding expedition”

See *Omotunde v Omotunde* (2001)9 NWLR (PT.718)525 in which the Court of Appeal expressed a similar view on section 15(2) (f) of the MCA which view is now applicable to section 15 (2) (e) of the MCA.

In view of what I have said and what has been stated therein, I shall order Decree Nisi.

On the second issue being the maintenance of the respondent by the petitioner:

“Whether the Respondent is entitled to maintenance”

On this it is the submission of the Respondent that maintenance is intended to provide for the need of the wife and the children of the marriage if any. This

referred to section 70(1) and (2) of MCA which enjoins court to grant maintenance of a party to a marriage.

On this I wish to state that, in making an order for maintenance, the court must always have regard to the means, earning capacity and in fact the conduct of the parties to the marriage and their relevant circumstances.

Section 70(1) of the Matrimonial Causes Act provides:

“Subject to this section, the court may in proceeding with respect to the maintenance of a party to a marriage, or of children of the marriage other than proceeding for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regards to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstance”

By virtue of the above provision, the court seized of a petition has the discretionary power to make in order that it reasons proper for the maintenance of a party to the marriage, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances must be gathered by the court itself from the pleadings and evidence of the parties at the trial. The relevant consideration in award of maintenance of a wife is the background of the standard of life which the husband previously maintained before he and the wife parted.

On this it is the submission of the respondent/cross-petitioner that there is no single evidence before the court put forward by the Respondent cross-petitioner which qualifies her to the grant of maintenance of the sum of #10,000,000.00 (Ten Million Naira). That the respondent’s claim for maintenance ought to fall like park of cards, that looking through the Respondent/cross-petitioner pleadings and evidence before the court, there is no atom of convincing evidence to grant her claim. This he relies on the case of Laminu VMaidugu (2015)7 NWLR (PT.1458)289 where he held as follows.

“By the provision of section 135(1) of the Evidence Act 2011 (as amended), he who asserts the existence of a fact must prove same”

Submitted further that, where a party to an action in which pleadings are filled and exchanged, fails to give evidence, his pleadings is deemed abandoned. This he

referred the court to the case of *Iluyornade v Ogunsakin* (2001)8 NWLR (PT.716)559 and submitted that the respondent cross petitioner did not plead nor lead evidence towards her claim for maintenance.

He referred to Exhibit E, that is the transcription of the conversation between FaladeOluwafemi Samuel and AkanbiAbiodun Mariam and submitted that the exhibit “transcription” is to the effect that the respondent/cross-petitioner has already moved on with her life while searching for another husband. Further submitted that the Respondent/cross-petitioner’s hands are dirty. That she did not come to equity with clean hands. Equity cannot aid her. This is because, he who comes to equity must come with clean hands. A party who has moved on with her life courting and engaging in an act towards a new marriage even before the decree of dissolution is granted by the court should be allowed to go without disturbing the peace of her husband who is incapacitated by her attitude.

Submitted that the guiding principle for the grant of maintenance was initiated by the court in the case of *Hayes v Hayes* (2003)3 NWLR (PT. 648) as follows;

“Maintenance is intended to provide for the needs of the wife and not mar the disapproval of husband’s conduct. In the same case, the misconduct of the wife has been treated as relevant to her claim for maintenance.”

Also in *Hayes v Hayes* (supra) the court held that:

“An applicant with dirty hands maybe granted maintenance if it is adjudged that the interest of the child of the marriage which is paramount compels it.”

Thus he poses a question that whether the marriage is with any child? On This he submitted that the evidence before the court by both parties shows that there is none. Furthermore, while considering the principles guiding the assessment of maintenance in matrimonial proceedings, the court held in *Hayes* case (supra) that:

“The sum to be awarded for maintenance of a party in matrimonial proceedings should be determined by among other factors:

- 1. The station of life of the parties and their lifestyle**
- 2. Their respective means**
- 3. The existence or non-existence of child or children and**

4. The conduct of parties.

In support of the listed items he submitted on point I as follows:

On this he stated that, the respondent gave evidence that she currently lives at No.27 Mokola street off Governor's road, Ikotun Lagos. That no evidence was given as to the nature of where the respondent lives and the standard of the place. Thus he urges the court to discountenance that there was provision of air condition in her former apartment before she moved into the present place. That she has started living in the present place for more than 3years.

Where she lived immediately after the marriage is not where she lived immediately before the presentation of the petition. He Therefore submits that the respondent/cross-petitioner has failed to establish station of life of the parties before the court and urged the court to discountenance the respondent/cross-petitioner's claim for maintenance.

On two above, submitted that, the exhibit on call recording between the parties and that the conduct of the Respondent/cross-petitioner has shown that she has already moved on with her life in order to get a new husband even when the husband was thinking of whether they could resolve the nagging issues between them. That during cross examination, the petitioner/cross-respondent said the respondent/cross-petitioner was relating with her ex-boyfriend even while the marriage subsisted. That the petitioner /cross-respondent further said that the last time he sent money to the respondent/cross-petitioner was on 27-11-2020 and he stated that he was sending money to her until she met a new guy, on this he submits that, the respondent/cross-petitioner has been surviving without the petitioner/cross-respondent. Also that the respondent has moved on with her life to make a new husband and a new home. That all these evidence remains unchallenged and referred the court to the case of Oshafunmi and Anor v Adepoju and Anor(2014) LPELR-23073 (CA).

On the third point on means of the parties, he submitted that the respondent/cross-petitioner failed to put anything before the court in order to establish this. On this he submitted that the court does not concern itself with guess or conjecture, court deals with real facts and not guess or conjecture, that the principle is trite, that the trial court is precluded and should not decide a case on mere assumption,

conjecture or speculation. That indeed, courts of law are courts of both facts and law, on this he refers the court to the following cases;

- i. **Adefulu v Okulaja (1996)9 NWLR (PT.473)668.**
- ii. **Orhue v NEPA (1998)7 NWLR (PT.557) 187.**
- iii. **Lawson NnamdiChukwu and Anor V Hon. Lolo Stella C. Chukwu and Anor (2018) LPELR-45482 (CA).**

He Submitted further that, in ordering maintenance in matrimonial causes, the court held in the case of Damulak v Damulak (supra) that:

“Means of the parties refers to where the wife is young with no children, it is impossible to generalize but three examples will illustrate possibilities:

1. **The woman is aged twenty-six years, and has no children. I will take her earning capacity into full consideration and “the wife is aged 33years herein”.**

This he submitted that the assessment of maintenance allowance in a divorce case is within the discretion of the court and as such the earlier decision or precedent would not be of much help. He further submitted that, the respondent/cross-petitioner is still a marriageable lady who is still young and has started preparing for a new marriage already. he referred the court to Exhibit A, which put the age of the Respondent/cross-petitioner as of today at 33years. She was born on 24-12-1989. She still wants to marry; she will need to settle down. Thus referred the court to Exhibit A and E on transcription of their conversation. Also submitted that the petitioner/cross-respondent is also a young man who will desire to settle down with his own wife. That as of today, he has not married or have a child of his and that the court should allow the parties to go and settle separately without unnecessary hurdles called maintenance. Finally submitted that the court should discountenance the claim for maintenance and order the parties to bear their respective costs.

The respondent/cross-petitioner in answer to the claim on maintenance by the petitioner/cross-petitioner submitted that, the basic issues for determination there is the standard of living which the respondent was used to after getting married in 2018 up until the year 2021. Thus he submitted that the petitioner himself supplied the answer to the questions. That according to him in his reply to the respondent answer to the petition and the cross petition of paragraph 15 he stated.

“... the petitioner’s father’s house she resided was with functioning Ac’s, TV, Bed, Big compound, a cook and a gateman including all things that will make her comfortable...”

Again, that a careful look of evidence led in support of the assertion that the petitioner was nice to the respondent to the extent that he gives her monthly financial support shows that the petitioner supported the respondent with not less than 5,253 U.S Dollars (evidenced by the Sendwave Bank Statement tender) and 7,174 U.S Dollars (evidenced by the Boxypay money transfer statement tendered) between January 2019- December 2020. On this he submitted that reasonable maintenance for the respondent should be one that would afford her the opportunity to at least provide for upkeep. That the respondent had left her lucrative job, at the Nigerian movie industry, she currently has no income to provide for her daily upkeep. Thus he stated that this court has a duty to uphold this trend by awarding good maintenance Allowance and in doing so must have regard to the period of neglect which the respondent experienced. That it is obvious in this case that the petitioner is a man of no small means, firstly he has a good job as a special police officer in the United States and secondly going by the amount of money he sent to the respondent for her upkeep between January 2019 to December ,2020, the 5,153 U.S Dollars and 7,124 U.S Dollars respectively. That the petitioner has by his own showing proved that he is a man of no small means with reasonable earning capacity and therefore urged the court to exercise his discretion judiciously and judicially in favor of the Respondent that the court in doing so, takes into consideration the inflationary trend in the country as well as the value of the Nigerian Naira to the USD in making it’s award.

I have carefully and painstakingly considered the argument of both the petitioner and the respondent on the issue of maintenance and have this to say.

- 1. That the Respondent before the marriage was a model and an actress.**
- 2. That the Respondent after the marriage left the modelling and the acting.**
- 3. It is evident from the evidence of both parties that the parties have never stayed together in marriage for more than two weeks and is of that two weeks the parties cohabitated or consummated the marriage is evidence in their testimony on cross-examination.**

These facts were not challenged by the petitioner/cross-petitioner.

On the issue of maintenance, the Black's law Dictionary defines “alimony” as an allowance paid by one spouse to another by order of a court for the maintenance of the other spouse while they are separated during divorce proceedings or after they have divorces. The Matrimonial Causes Act, LFN 1990 (the Act) which is the primary legislation governing matrimonial matters Makes provision for Alimony in Nigeria. The Act does not mention the word “Alimony” but instead uses the word “maintenance” to describe the payment of an allowance to a spouse during and after a divorce.

Maintenance is one of the reliefs available to a party seeking a dissolution of marriage or other matrimonial reliefs. By section 60 of the MCA, an order for maintenance can be made in respect of parties to either valid marriage or void marriage. Point MCA provides generally for the making of orders for maintenance, custody and settlement in favor of a husband, wife, children or adopted children of marriage upon divorce.

From the wordings of section 70 of the MCA, it can be deduced that the order for maintenance can be granted to either party to the marriage suggesting that it could be made in favor of a male spouse. In other words both parties have been placed on the same pedestal in terms of the right to seek for maintenance. The case of *Nakande v Nakande* (supra) is instructive on this position. In this case, the court of Appeal rejected the decision of the lower court and held that under the MCA, the position of the husband and wife are the same and either party is entitled to maintenance from the other, provided the conditions in section 70 of the Act are taken into consideration.

Granting a decree against a spouse, does not disentitle such a spouse from maintenance, for instance, the mere fact that a court rules in favor of the husband, does not mean that the court cannot order him to pay maintenance to the wife. The court is empowered by section 70 of the MCA to make various orders in respect of the maintenance of spouse by virtue of the provision of section 70(1) (2) of the MCA in granting maintenance, the court is required to consider what is just and equitable in the compliance of each case, have regards to the means, earning, capacity, the conduct of the parties to the marriage and all other relevant circumstances.

These factors as it was stated shall include;

- 1. Means of the parties, this includes but is not limited to capital assets, liquid cash, shares in company, investments, contingent and prospective assets of the parties etc.**
- 2. Earning capacity includes the potential earning capacity of parties.**
- 3. Conduct of the parties.**

The court will only take into consideration gross and obvious conduct of the parties such as inflictions grievous body injury on one spouse etc.

Other relevant considerations; this involves the court's discretion to take into consideration the peculiar facts or circumstances of each case, for instance in *Ajakpe v Ajakpe*, the court considered the length of years' parties have spent together as a couple.

By section 73 of the MCA, the court can order that maintenance be paid weekly, monthly, yearly, or even as a lump sum. Lastly it is worthy to note that, maintenance is not a punitive order or one that seeks to share a spouse fortune, but one granted to maintain the standard of living one is accustomed to so far as practicable and as such maintenance will ordinarily not be granted if the spouse claiming this relief has sufficient means and income to maintain him or herself. Thus the applicant earning capacity is an important determinant.

Based on what I have said, I think the respondent deserved to be compensated by way of maintenance order but in doing so the court will use it's discretion or what is just and equitable.

In view of the foregoing I hold that, this court will lean in favor of the respondent to award a lump sum on maintenance of the respondent based on the length of the period of the marriage between the petitioner and the respondent and the position the respondent was before the marriage. Based on the foregoing, I shall award the sum of #2,000,000.00 (Two Million Naira) only in favor of the Respondent against the Petitioner.

Other issues discussed in the address of both the petitioner and the Respondent are not at this point important as those are just mere academic exercises.

In the final analysis, subject to what I have said, accordingly hereby make the following orders:

1. An order of decree Nisi is granted dissolving the marriage between the petitioner Falade Oluwafemi Samuel and Respondent Akanbi Abiodun Mariam on the 29th day of November, 2018.
2. On maintenance I order the Petitioner to pay the sum of #2,000,000.00 lump sum to the Respondent.

This is my Judgment.

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. Chief Dauda Ajadosu with Ahmed Wali-yullahi for the Petitioner/Cross-petition
2. Frank Olawale Ojo for Respondent