

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT 28 GUDU - ABUJA**  
**ON THURSDAY THE 28<sup>TH</sup> DAY OF JANUARY 2021.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI**  
**SUIT NO: FCT /HC/PET/054/2019**

MARTINA IJEOMA NWABUEZE -----PETITIONER

AND

NNAEMEKA NWABUEZE -----RESPONDENT

**JUDGMENT**

The Petitioner filed this petition on the 8<sup>th</sup> day of November 2019 on the ground that the marriage has broken down irretrievably and praying this Court for the following orders:

- A. A decree of dissolution of marriage on the ground that the marriage has broken down irretrievably in the sense that since the marriage, the respondent has been behaving in the manner that the petitioner cannot reasonably be expected to live with the Respondent; and the Respondent has been committing adultery and that the Respondent deserted the Petitioner for a period exceeding two years; and that the petitioner finds all the above stated actions of the Respondent intolerable.
- B. Order that the petitioner continues to be in custody of the children of the marriage;
- C. Order the Respondent to pay monthly allowance of hundred thousand naira for the general upkeep of the children of the marriage with effect from October, 2019.

- D. Order the Respondent to reimburse the petitioner the sum of Five Million Naira (N5,000,000.00) being the cost of the general upkeep of the children of the marriage;
- E. Order the Respondent to cease from assaulting and disgracing the petitioner any time the Respondent sees the petitioner;
- F. Order the Respondent to cease from trespassing on the person and property and chattels of the petitioner;

Along with the Petition, Petitioner filed verifying affidavit, her witness statement on oath and five other witness statements on oath. The Petitioner opened her case on the 11<sup>th</sup> day of February 2020, wherein she testified and called another witness. Petitioner adopted her statement on oath as her evidence in this case and it is Petitioner's evidence that on the 8th day of May 2015 the Petitioner and the Respondent celebrated their marriage under the Act at the Abuja Marriage Registry. That the marriage between the Petitioner and the Respondent has been blessed with three children namely, **Goodluck Nwabueze**, **Martins Nwabueze** and **Angel Nwabueze**. That sometime in 2015 when the petitioner was pregnant, the Respondent left the matrimonial home without any just cause and went to Onitsha Anambra State where the Respondent cohabited with one Chika Ejim. That all entreaties by the petitioner to the Respondent to come back home proved abortive. That during the time Petitioner was pregnant with the last child, the petitioner needed the affection, love, care and company of the Respondent and made a lot of calls to the Respondent but the Respondent failed to avail himself. That as a result of the physical pain and psychological trauma in which the petitioner was subjected to, Petitioner fell sick. That the Respondent ordered that no person including Petitioner's relatives are allowed to come to the house. That for fear of being beaten-up for disobeying the

Respondent's order, the Petitioner did not invite any relative to come help her. That the health condition of the Petitioner deteriorated as a result of suffering alone while pregnant and caring for the other children. That the baby came out premature as a result of the physical pain and psychological trauma the Respondent exposed the Petitioner to and that in order to save the life of the baby the Respondent was called to donate blood but the Respondent failed to come. That there was no money for the Petitioner to take care of the medical conditions of both her and the baby and as a result, the Petitioner applied and got a loan in order to take care of the blood transfusion and the medical bills. That the Petitioner stayed more than three (3) weeks in the hospital without being visited by the Respondent and that the day the Petitioner was discharged from the hospital, the Respondent finally came to the hospital and started beating, disgracing and accusing Petitioner of going to sleep with a man in the hospital when he didn't see the Petitioner in her hospital room as she went to appreciate members of staff who took care of her. That the petitioner had to take the Respondent to the places where the petitioner had gone to thank the staff of the hospital who bore witness that the petitioner did not go to sleep with any man in the hospital.

That Respondent is a violent man who is fond of beating up the petitioner. That in December 2018, the petitioner went to the home town of the Respondent to complain to the parents of the Respondent what the Respondent had been doing and the Respondent's mother informed the petitioner that the petitioner had married another woman by name Chika Ejim whose address is in Onitsha, Anambra State. That few hours after the petitioner had known that the Respondent was cohabiting with another woman, the Respondent came to the Petitioner requesting for the

Petitioner's ATM card which the Petitioner refused to give the Respondent and Respondent forcefully collected the ATM card and beat up the petitioner in the presence of the Respondent's family members. That Respondent had tried to kill Petitioner on several occasions without success and had threatened to kill her at all cost. That Petitioner has ceased communicating with the Respondent. The Petitioner further testified that sometime in October 2019, the Respondent came to the Petitioner's place of work and started beating the Petitioner, took her bag and also took her International passport for no just cause. That this incident attracted the attention of the Nigerian Police at Wuse Zone 3 who came and tried to calm both parties. That the police arrested the Respondent as a result of the assault.

The Petitioner stated further that on the 19<sup>th</sup> day of October 2019, the Respondent met the Petitioner in the house and started beating the petitioner unprovoked, strangulating, suffocating, biting and threatening to kill the Petitioner and it took the intervention of some neighbors who came to rescue the petitioner from the fierce hands of the Respondent before the Nigerian police from Lugbe who were invited by some neighbors came to intervene and the case was charged to FCT Area Court. That if the marriage between the parties is not dissolved, the Respondent will definitely find occasion to kill the Petitioner and the children of the marriage will greatly suffer for want of care if the Respondent succeeds in killing the Petitioner. The Petitioner tendered a copy of their marriage certificate which was admitted in evidence as Exhibit A.

Under cross examination, Petitioner reiterated that the Respondent deserted her in 2016. The Petitioner called her second witness. The witness, who is the parties' neighbour, adopted her statement on oath and re-echoed the evidence of the Petitioner. The Respondent failed to present

himself or his counsel in court to cross examine this witness and open his defence. The Court, on the application of the Petitioner's Counsel, foreclosed the Respondent and the Petitioner closed her case. The court thereafter adjourned the case for parties to file their respective written address.

The Petitioner's Counsel filed the written address and served same on the Respondent. The Respondent on his part failed to file his written address. Petitioner's Counsel in the written address filed, raised one issue for determination, which is:

Whether from the unchallenged and uncontroverted evidence and circumstances of this case the marriage between the Petitioner and the Respondent has not broken down irretrievably as to warrant a decree of dissolution of marriage sought.

Counsel arguing the sole issue submitted that the facts led by the Petitioner's witnesses, support the situation listed under Section 15(2) (b), (c), (d and E of the Matrimonial Causes Act 2004. Counsel submitted further that from the unchallenged evidence of the Petitioner, the marriage between the parties has broken down irretrievably and the Petitioner is entitled to a decree of dissolution of marriage.

On the issue of custody, Counsel submitted that from the evidence of the Petitioner, it will not be in the best interest of the children for custody to be granted to the Respondent but should be granted to the Petitioner as she has been responsible for the welfare and maintenance of the children.

Counsel urged the Court to grant the prayers of the Petitioner and make deserving consequential orders as the justice of the case may deserve. The Petitioner's Counsel relied the following authorities in the written address.

1. Prince Amah Vs. Mrs. Victoria Amah (2016) LPELR-41087 (CA)
2. Innocent Uqumba Eluwa Vs. Florence Ogadinma Eluwa (2013) LPELR-22120
3. SPDCN Ltd. Vs. Esowe (2008) 4 NWLR (Pt. 1076) 72
4. NBA V. Ekemezie (2008) 12 NWLR (pt.1100) 326.

The Respondent from the record of this Court, was duly served with the Petition and the Petitioner's final address but Respondent failed to file his answer to the petition and his final address. Respondent was duly represented by a Counsel at the initial stage of this case, who cross-examined the PW1 but thereafter abandoned the case. The law is settled that the Respondent, having been served with all the processes and a date for hearing properly communicated to him, the Respondent cannot be heard to complain that he was not granted fair hearing. In this case, the Respondent failed to file an answer although the Respondent and his Counsel were present on the date the Petitioner opened her case and was cross-examined by the Respondent's Counsel albeit on issues not relevant to the Petitioner's case. The Respondent and his counsel failed to appear on the subsequent adjourned dates therefore the Petitioner's depositions are without an answer from the Respondent and it is the well settled principle of law that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the Court ought to act positively on the unchallenged evidence before it. This was the position of the Supreme Court as held by Per Rhoades Vivour J.S.C in the case of Cameroon Airlines V. Otutuizo (2011) LPELR 82-(SC). The evidence of the Petitioner in this case is not challenged or contradicted by

the Respondent. The effect is that the evidence of the Petitioner will be taken as accepted or established.

I have examined the evidence and read the final address of the Petitioner's Counsel and this Court will adopt the sole issue raised by the Petitioner's Counsel which is **"Whether from the unchallenged and uncontroverted evidence and circumstances of this case the marriage between the Petitioner and the Respondent has not broken down irretrievably as to warrant a decree of dissolution of marriage sought"**

The fact that a marriage has broken down irretrievably is a sole ground for the presentation of a divorce petition, and the Court cannot make such findings unless one or more facts specified under Section 15(2) of the Matrimonial Causes Act 2004, is or are proved to support the fact that the marriage has broken down irretrievably. The facts as stated in Section 15 (2) of the Matrimonial Causes Act, that can be basis for grounds for dissolution of marriage are as follows:

- a. That the respondent has 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 a way that the petitioner cannot be reasonably 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.

The evidence of the Petitioner in proof of those facts are succinctly stated in the earlier part of this judgment and I find these unchallenged and uncontroverted evidence of Petitioner satisfactory and are in conformity with the Section 15 (2) (b), (c), (d), (e) and (f) of Matrimonial Causes Act 2004 in establishing adultery and such behavior that petitioner cannot be expected to live with also, desertion by the Respondent which are proof that the marriage has broken down irretrievably. The Petitioner, having discharged the burden placed on her to prove the petition, I find merit in her claim and I hereby dissolve the marriage between the Petitioner and the Respondent.

The Petitioner is urging on this Court to grant custody, monthly allowance from October 2019 and reimbursement of N5,000,000.00 (Five Million Naira) as cost of general upkeep of the children.

Under Section 1 of the Child Rights Act 2003 and Section 71(1) of the Matrimonial Causes Act 2004, 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.

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. I have considered the unchallenged and uncontroverted facts and evidence before me particularly the violent and aggressive nature of Respondent and I and find

that the interest, safety and welfare of the children of the marriage would be better served if custody is vested on the Petitioner and I so hold.

With respect to the prayer for the court to award the sum of N100,000.00 as monthly allowance for the upkeep of the children of the marriage from October 2019 and reimbursement of the sum of N5,000,000.00 (five million Naira) as cost of general upkeep of the children of the marriage against the Respondent. By the Provision of Section 21(1) of the Matrimonial Causes Act 2004, 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”*

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), there is nothing before me to show the means and earning capacity of both parties. There is however, uncontroverted evidence before me that the Petitioner has had custody of the children since 2016, when the Respondent deserted the Petitioner and Petitioner has been solely responsible for the upkeep, education and welfare of the children. The Respondent cannot leave the responsibility of raising their children solely on the Petitioner. It is their legal duty to be responsible for the care of their children. The Petitioner having been solely responsible for the day-to-day

care, the welfare and education of the children of the marriage since 2016 is entitled to be reimbursed a lump sum to counterbalance for his part of care of the children in his absence. Having granted custody of the children to the Petitioner, the Respondent ought to pay a monthly sum as maintenance for the education, upkeep and welfare of the children.

The Petitioner is also urging on this Court to grant an order against the Respondent to cease from assaulting and disgracing the Petitioner anytime the Respondent sees the Petitioner as well an order restraining the Respondent from trespassing on the person, property and chattels of the Petitioner. The Petitioner has stated extensively in her evidence, which was unchallenged, the aggressive and violent behaviour of the Respondent towards the Petitioner. To protect the Petitioner from further assault or even being killed by the Respondent, this Court will grant the prayers of the Petitioner.

Consequently, I find this Petition as having been proved. It has merit and it succeeds. I hereby dissolve the marriage and order as follows:-

- i. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **MARTINA IJEOMA NWABUEZE**, and the Respondent, **NNAEMEKA NWABUZE** at the Abuja Marriage Registry at Area 10, Garki, Abuj, Nigeria on the on the 8<sup>th</sup> day of May, 2015.
- ii. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.
- iii. I hereby grant sole custody of the 3 (three) children namely **Goodluck Nwabueze, Martins Nwabueze and Angel Nwabueze** to the Petitioner, till children attain the age of 18 years.

- iv. I hereby Order the Respondent to pay monthly allowance of hundred thousand naira for the general upkeep of the children of the marriage with effect from October 2019.
- v. I hereby Order the Respondent to reimburse the petitioner the sum of One Million Naira (N1,000,000.00) being the cost of the general upkeep of the children of the marriage.
- vi. I hereby grant a restraining Order against the Respondent from harming, assaulting or threatening the Petitioner either at her place of work, at her home or any other place. The Respondent is to stay away from the Petitioner's place of work, property and chattels. The Respondent is further restrained from disgracing, embarrassing or violating the person of the Petitioner in every aspect of her life.

**Parties:** Parties absent.

**Appearances:** No legal representation for both parties.

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE  
28<sup>TH</sup> JANUARY 2021**