

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS TUESDAY THE 20TH DAY OF SEPTEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/PET/201/2022

BETWEEN:

MRS VIVIAN OGBONNA.....PETITIONER

AND

MR. MICHAEL OGBONNA.....RESPONDENT

JUDGEMENT

This judgement is on notice of petition with No: 201/2022 dated the 8-4-2022 filed the same date.

The said notice of petition seeks the following:

- 1. A DECREE OF DISSOLUTION OF THE MARRIAGE contracted on the 30th day of October, 2015 between the petitioner and the Respondent on the ground that the marriage has broken irretrievable in that the petitioner and the Respondent have lived a part for a continuous period of at least three (3) years immediately preceding the presentation of the petition.**
- 2. AN ORDER granting the petitioner the custody of the child (Destiny Chidubem Michael) with right of access to the Respondent at least**

once every month at agreed time and spending vacations with him as may be agreed.

3. AN ORDER directing the Respondent to set up an account accessible to Destiny Chidubem Michael where the Respondent can deposit the sum of N150,000.00 (One Hundred and Fifty Thousand Naira only) monthly for his Education and maintenance and or pay the petitioner the sum of N150,000.00 (One Hundred and Fifty Thousand Naira) monthly for the Education and maintenance of Destiny Chidubem Michael.

4. And for any such further order(s) that this Honourable court may consider just and equitable in the circumstance.

This are the claim of the petitioner against the Respondent. Attached to the said notice of petition is a verifying affidavit deposed to by Mrs Vivian Ogbonna of House 10, Etab Estate, Lokogoma Abuja FCT, of 7 paragraph and Annexed to the said affidavit are annexure marked A1, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10 & B11 and a certificate Relating to Reconciliation in accordance to section 15 of the MCA. dated the 7-4-2022, notice of address for service dated the 7-4-2022 and the acknowledgement of service dated the 7-4-2022.

On the 20-5-2022, the petitioner filed before the court a motion ex-perte, for an order for substituted service, which saidmoved and the said order sought for was granted dated the 7-6-2022.

Upon the service of the order by substituted service, an affidavit of service dated 21-06-2022, was filed before this court and attached to the said affidavit of service are the proof of service by DHL shipment Notification. 4519914302 dated the 7/6/2022 and the online massages sent to the Respondent attached thereto.

This matter was mentioned on the 07-06-2022 where the motion was moved for substituted service and the case adjourned to 14-06-2022 for hearing.

On the 14-6-2022 parties were absent in court while the petitioner counsel one T.G. Okechukwu who appears for the petitioner apologise for the

absence by the petitioner and the matter adjourned to 29-06-2022 for report of service.

On the 29-06-2022, the petitioner was present in court with his counsel one T. G. Okechukwu, and one Clifford Kalu representing the Respondent who equally apologise for the absence of the Respondent who he said is currently out of the country, who then applied for another date for hearing and possible settlement and this matter was adjourned to 5-07-2022 for report of settlement.

On the 5-7-2022 parties were absent in court, but both counsels were present. The Respondent counsel who informed the court that Parties have reached a compromise in respect of relief 3 (three) in the petition, but were unable to file the terms before the court and sought for as adjournment.

This the petitioner counsel did not object and the matter was adjourned to 14-07-2022 for hearing.

On the 14-7-2022 the petitioner was in court with her counsel Barr. T. G. Okechukwu while the Respondent was not in court neither his counsel. The business of the day being for hearing the petitioner counsel presented his first witness one Vivian Ogbonna as PW1, who gave her evidence and tendered some documents in proof of her case and the matter was adjourned for cross-examination of PW1 by the respondent or for adoption of terms of settlement against 20-09-2022.

On the 20-09-2022 both counsels were in court whereof they moved the court to adopt the terms of settlement dated the 19-09-2022 and file on the 20-09-2022 as the consent judgement of this court.

It is to noted that a consent judgement is a final judgement as it determines the final rights of the parties and binds them. It extinguishes the original cause of action and diverse the court of jurisdiction to hear the same subject matter if re-litigated upon by the parties. Consent judgement also refers to judgement where the provisions and terms are settled and agreed to by parties to the action and due effect is given thereto by the court. Given that the Nigerian judicial system allows and encourages parties to resolve disputes between them amicably, the terms agreed upon by parties in settlement discussions are usually set down in writing as terms of settlement. These terms of settlement are filed in court and upon the application of the parties, become the judgement of the court in that case.

In the case of **Vulcan Case Ltd Vs Okunlola(1993)2NWLR(PT.274)142** the court held that a consent judgment presupposes out of court settlement reached by the parties, and that the terms of the said settlement or agreement are furnished to the court, and form the basis of the court judgement in the suit. Such judgement is intended to put an end to further litigation between parties just as much as if the judgement was the result of a decision of the court after the matter had been fought to the end.

Similarly, in **D.T.T. Ent. (Nig) Co Ltd V Busaris (2011) 8 NWLR (PT. 1249) 387** the Supreme Court held that consent Judgement are not like the regular judgement of the courts entered after a trial is conducted by the court either summarily or upon a full trial. It is not dependent upon exchange of pleadings or calling of evidence.

In view of the above decision of the Apex court and the adoption of the terms of settlement by the parties I shall accept the terms of settlement filed dated the 20-9-2022 as the consent judgement of this court and order as follows as agreed by the parties.

- a. A DECREE OF DISOLUTION OF THE MARRIAGE contracted on the 30th day of October, 2015 between the petitioner and the respondent on the ground that the marriage has broken down irretrievably in that the Petitioner and the Respondent have lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the petition.**
- b. AN ORDER granting the petitioner the custody of the child (Destiny Chidubem Michael) with right of access to the Respondent at least once every month at agreed time and place and spending vacations with him as may be agreed.**
- c. AN ORDER directing the Respondent to pay into the Petitioner's bank account (0018408238; Access Bank Plc) the sum of N50,000.00 (Fifty Thousand Naira) Monthly for the education, Medical and Maintenance of the child of the marriage (Destiny Chidubem Michael) and to take effect from November, 2022.**

This is the judgement of the court dated 20-09-2022

SIGNED

HON. JUDGE

APPEARANCE:

1. T. G. Okechukwu for the petitioner
2. Clifford Kalu for the Respondent