

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA- ABUJA**

**THIS THURSDAY THE 4<sup>TH</sup> DAY OF MAY, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFIA**

**SUIT NO: FCT/HC/PET/126/22**

**BETWEEN:**

**OBINNA ANYINA.....PETITIONER**

**AND**

**EBERE ANYINA.....RESPONDENT/CROSS PETITIONER**

**JUDGEMENT**

By the notice of petition dated the 25<sup>th</sup>- 2 2023 filed dated the 7-03-2023 with suit number PET/NI/126.2022. the petitioner seeks for the following reliefs:

- 1. Adecree of dissolution of the marriage between the petitioner and the respondent contracted at the marriage Registry of the Abuja Municipal Area council (AMAC) on the 15<sup>th</sup> October, 2011 on the ground that the marriage has broken down irretrievably and that the respondent has behaved in such a way that the petitioner could not reasonably be expected to live with her.**
- 2. The custody of the 1<sup>st</sup> child of the marriage and joint custody of the 2<sup>nd</sup> child of the marriage**
- 3. And for such further orders as the court may deem fit to makein this circumstances.**

these are the claims of the petitioner against the respondent.

Attached to the petition is an affidavit verifying petition, notice of address of Service, Certificate relating to reconciliationunder section 15 of MCA and

the marriage certificate between ObinnaTheopholusAnyina and Ebere Loretta Ofodite conducted at AMAC Registry Abuja dated the 15-10-2011 WITH No: 2048.

Upon the filing of the petition, the Respondent was served with the process and he acknowledged same personally dated 04-05-2022 and in turn filed Answer and cross-petition of 41 paragraphs and two grounds which are:

- a. That the respondent has been cruel to the cross-petitioner and has behaved in such a way that the cross-petitioner cannot reasonably be expected to live with the respondent.**
- b. The respondent deserted the cross-petitioner for a continuous period of over one(1) year immediately preceding the presentation of this cross-petition and the particulars of the cruel behaviour and desertion of 16 paragraphs the proposed arrangement for the children of 5 paragraphs, custody and maintenance of the children of 5 paragraphs,**

The respondent/cross petitioner seeks the following orders from this Honourable Court: the order sought are as follows:

- a. An order dismissing the petition.**
- b. A decree of dissolution of the marriage between the respondent/ cross petitioner and the petitioner/respondent.**
- c. Contracted at the marriage Registry of the Abuja Municipal Area Council (AMAC) on the 15<sup>th</sup> day of October, 2011 on the grounds that the marriage has broken down irretrievably, the desertion for over a period of one (1) year and cruelty of the petitioner/ respondent towards the respondent/ cross-petitioner she cannot reasonably be expected to live with him.**
- d. An order of this Honourable court granting the respondent/Cross-petitioner sole custody of the children of the marriage who are minor to wit**
  - 1. Chigozlem Xavier NwabuezeAnyina (9 years).**
  - 2. Nneka Zoe AdannaAnyina 7 years until the children attain the ages of Eighteen (18) years and can decide which parent to stay with.**

- e. **An order of this Honourable court that the petitioner/ respondent shall have visitation rights of every last Saturday of the month to see the children of the marriage.**
- f. **An order of this Honourable Court that the children of the marriage shall spend their long vacation holidays with the petitioner/ respondent if he so desires and shall return the children immediately to the respondent/cross petitioner at the end of their holiday.**
- g. **An order of this Honourable court mandating the petitioner/ respondent to play the school fees of the children of the marriage up to their university Education.**
- h. **An order of this Honourable court mandating the petitioner/respondent to pay the sum of one Hundred and Fifty Thousand Naira (N150,000.00 monthly to the respondent/ crosspetitioner for the welfare of the children of the marriage until they attain adulthood.**
- i. **An order of this Honourable court mandating the petitioner to pay the sum of Two Million Five Hundred Thousand Naira (N2,500,000.00) to the Respondent/ Cross Petitioner as rent for a three (3) bedroom flat accommodation for the children of the marriage.**
- j. **And for such further (orders) as this Honourable court may deem fit to make in the circumstances.**

Attached to the answer and cross-petition is an affidavit verifying answer/cross petition deposed to by EbereAnyina of Block 65, flat 8 Gaborone Street Adjacent No:1 Hotel Wuse Zone 2 Abuja of 5 paragraphs and a certificate of marriage dated the 15-10-2011.

On being served with the respondents/cross-petition & Answer, dated the 14-06-2022, the petitioner/respondent filed a motion on notice for an order of extension of time within which the petitioner/ respondent may file his reply and answer to the cross-petition out of time and a deeming order dated 12-9-2022 and filed dated the 13-9-2022 and accompanied with the petitioner's reply and answer to cross-petition of 14 paragraph.

The motion was moved and the relief sought there was granted without an objection from the cross-petitioner.

On being served with the petitioner's reply and answer to cross-petition, the Respondent/cross-petitioner filed the cross-petitioners reply to petitioner's answer to cross-petition dated the 12-9-2022 and filed on the same date, attached thereto with SMS messages or communication between the petitioner and the Respondent.

Upon the filing and exchange of papers, the matter commenced for hearing.

This court will summarize the evidence of PW1 and that of DW1 and DW2.

PW1 gave his evidence on the 1-11-2022 and 4-11-2022.

PW1, one Obinna Anyina Theophilus 47 years of age from Ebonyi State, a middle level manager with the central Bank of Nigeria where he has served for 18 years, 8 months currently resided at Closter S 2008, Unit I, River Park Estate Lugbe FCT, Abuja.

That on Saturday the 18/2/2012 his marriage to Mrs Ebere Ofordiri was Solemnized and prior to that they went through the legal procedure and the traditional right in December, 2011.

That prior to their marriage, they courted for a period of months and that they agreed not to have any intimate relationship i.e. sexual relation right. That the decision was taken based on their faith as Christian Catholic Moral Conviction.

That on the night of their wedding he noticed from her body language that she wasn't pre-disposed to him intimately i.e. to have sexual relation. That from that night of over 13 months, that is one thing he has been looking for the consummation of the union. That for lack of consummation and poor communication with her had impact on him mentally, emotionally spiritually and that led to the conclusion that he gets married to a woman who does not desire it and that was the major reason he decide to seek for the dissolution.

That in September, 2022 he was introduced by her parents by one Anthony Eze who allegedly claimed he works as an officer of FCDA, and that he intention of that introduction was to establish the process as he was assured by of her parents of legally acquiring the certificate of occupancy of landed space in FCT. That the process ran for close to 7 years and he was defrauded of a relative sum of N15,000,000.00 (Fifteen Million) Naira. The evidence as stated at the Bank Statement. That the process ran to 2019 when he discovered that he was scammed.

That they have two children of the marriage in the course of the union the, first child is a special child on AlterNet child.

That in 2023 when he realises he had suffered a huge set back, he discussed with the mother of the children and her option is to have her and her two children relocated to United Kingdom for three purposes.

- a. Family to set special care for their sons through NHIS in the USA.**
- b. For her empowerment as the mother of their children as she has gotten a master degree which he sponsored to the tune of \$37,000.00 British pounds.**
- c. Improve the failure of the family.**

That when her visa expired, they made moves to get an extension for her to stay in the UK on the hope that she will get a job and also a support from the U.S health service in the United Kingdom. That 19 months after her stay, he got a call from one Mrs OcheOnyeni who happened to be a friend to her mother informing him that the mother of his children had returned to Nigeria

That the resources he expended in paying her school fees and that of the children together with the health care were resources that he borrowed from the Guarantee Trust Bank (GTB) to the tune of about N 7 million as well as resolved that he received on compassionate grounds from his employer i.e. CBN.

That when he was informed of her return and no communication between himself and herself without his consent neither of to any member of his family informed. He then wrote two letters to her:

- a. Request seeking for mediating meeting between ‘his family and her family.**

That the correspondent was if the responded to and evidence of the document with his counsel.

- b. That the second letter was sent to her family expressing her desire to discontinue, but yet for them to discuss on how to raise the children amicably. That the said letter was returned back to his family, and that for him was an expression of disharmony between the two families and that was what made him file for dissolution.**

That he had a conversation with her to establish the situation and welfare of their children and the statement of him that his daughter had already been enrolled in the school and the son has been in home school i.e. took engagement of a therapy to take care of the child.

That in November, 2021 he asked to see the children and to know of their wellbeing, he was absolute sudden of the state of the wellbeing of his children, that but he said that the child was unkempt and malnourished.

In December, 2021, he made enquiries towards, enrolling at the Royal foundation Academy Gwarimpa after he had undergone the appropriate valuation by speech, occupational and behaviour therapy and ascertained his state of well-being, rather than having him stay at home he enrolled him at the Educational institute in January, 2022 where he had been for three terms and now the 4<sup>th</sup> term. That he has been taking responsibility for paying his school fee to the tune of N400,000.00 per, term, and also the service of his speech therapy in the same school by name Ikechukwu who came to the house every circle is engage 12 times and evidence of payment with the counsel. That for the support of his son, he had a window mummy as well as his Aunt, his late father's half-sister, his cousin a female who grew up with him.

That by virtue of his culture as an Igbo man it is custody appropriate that his first son and who bear his father's name to be under his watch and for periodic visit from their mother from time to time so the well and upbringing of the children.

Also that, the mother of the children was because of out of his good will and kind intention for the family and for her, she is a medical doctor and has a master degree on public health that was why their daughter is with her care.

That for the most part of the last two years and because of the loans he collected from GTB his salary accounts has been in debit currently about N374, 000.00 because his salary is little above N500,000.00 is enough for his upkeep and that of his children and for that purport it made him impossible to service the facilities, and it was because he had to seek credit facility for her upkeep and for the sake of the children. That it will take him 10 to 15 years to serve the debit because interest kept occurring on it, if he does not service it.

That he believed that it was an act of disregard to him and to his family that the respondent, the mother of his children took a unilateral decision to return to

Nigeria without seeking his consent because they both gave each other consent before she left. That he also believed that her request for monthly up keeping to the turn of N150, 000.00 per child and N2.5 million as rent is totally unacceptable and wasn't done in good faith. That further, that he believes that a woman he was married to for close to 9 years, never loved him.

That his intention of seeking for dissolution of marriage from this court is in expression of his desire to re-marry and to live a happy and fulfilled life.

That in his testimony before the court he mentioned the following.

- a. Marriage certificate**
- b. Assessment of the child of the first Son of the marriage**
- c. Picture of the child before and after**
- d. The school fees of the child**
- e. The sixty thousand payment to the therapy**
- f. The evidence of his account being in debt about N374,000.00**
- g. The audio of the conversation between him and the petitioner.**

The said document were tendered and admitted in evidence as exhibit

**A, account balance SGTB**

**B, therapy receipt**

**C, school fee receipt**

**D, text messages of account balance from GTB**

**E, pictures of the children as E and E**

Having admitted the document, the respondent/cross petitioner rejected the certificate of marriage, that what is sought to be tendered was a photocopy, argument were taken for and against and the court overrule the objection and admitted the following documentary evidence:

- a. Marriage certificate as exhibit F
- b. Letter of invitation as F1
- c. Receipt of educational evaluationfor AnyinaChizozem as exhibit G.
- d. Photocopy of school fees from Royal school of Educational therapy foundation as exhibit H.

The verbal transaction of the telephone conversation between Mr ObinnaAnyina with No: 08138006919 and Mrs EbereAnyina with Number: 08038443651 recorded on the 13<sup>th</sup> December, 2021 admitted as exhibit I.

That the respondent stated in response to my petition that he was cold to her, this he debunked the statement and in response stated that throughout the period of the marriage he had provided adequately for her and the children in so many ways.

- 1. That the children were given birth in US (United State) and that they opted for an opportunity to social economic empowerment for the children of future. That by virtue of there births they are citizen of United State.**

**That act was enact of love and self-respect because there words, the expression option of having the children been born in Nigeria. That under the medical scheme of the C. B. N. his employer, the children would have been born in Nigeria and the financial burden taken off him. That he singlehandedly financed the process of given birth to the children and he also pay visit while she was there. That this cost him N26,000.00 hence that is not an act of cruelty.**

- 2. That because of her British schedule as a medical doctor, they agreed to take the services of two domestic servant paying N825,000.00 and N15,000.00 respectively. That this was done in good faith to relive her of the convenience of jogging busy work schedule handling the responsibility of the home. That this are not act of cruelty.**
- 3. That he had at two occasions sponsored the respondent in the company of his widow mother on vacation trips abroad, one to the United State and the other to United Arab Emirate while he stays back home alongside with the domestic servants, his cousin to take care of the children. That all this are not act of cruelty.**

Under cross-examination by respondent.

Q can you tell this court the age as at the time you join CBN?

A I was 29 years.

Q that he should tell the court his qualification as the time of employment.

A BA (ED) English from University of Nigeria, Master in International Law and diplomacy University of Lagos obtained in the year 1997/2022 respectively.

Q that had he heard any additional qualification or training from that time of the training?

A yes.

Q that he should tell the court whether there is training in the course of his job?

A that training he had acquired had cut across irrespective of his speciality arrears in communication, strategies communication, public relations, reputation management and quite a number of training and arears.

Q that he will be correct to say that he was well read and travelled?

A yes

Q that his travelled cut across within and outside Nigeria?

Q that he was popularly called the voice.

A some people did

Q that he should tell the court why there called him the voice.

A that his voice is his turn of his empowerment because on several occasions over the years where he worked at the CBN he was privileged to anchor and to facilitate the Bank events.

Q that at what age was his wife before he met her.

A that she was 27 or 28 years.

Q that what was the stage of her education at the time the met her?

A that she was a final year Micro student as at the time he met her.

Q that he will be correct that he was not the one who trained his wife as at the time he met her?

A that for the most part of her medical expenses he was.

Q that can he tell the court the age bracket of his present in law?

A that they are my parents in law and not his parents.

Q that before he married Ebere, you have her consent to marry her?

A that he did get her consent.

Q that how did he obtain her consent?

A that he had formal introduction on part as the Igbo culture at the residence of the parents.

- Q hat he should tell the court the resident of the parent he went for her consent?
- A that it was at Gaborone Street, Wuse Zone 2 FCT, Abuja
- Q that he will be correct to say that his marriage with Ebere was consummated, reason they have two children from the marriage?
- A yes Q that the children of the marriage are minors?
- A yes
- Q that he spoke of being scammed of about N15,000.000
- A yes
- Q that it is not in his evidence before the court that the 15,000.00 he was scam was paid to the accounts of his parents inlaw?
- A that he was mandated by her parents. That is wasn't paid into the account.
- Q that he should tell the court if he was in any such of duress however to do that?
- A he answered he wasn't in any under duress.
- Q that he should tell the court the kind of visa the wife travelled out of the U.K (United Kingdom)
- A it was a student Visa.  
Talfer Visa.
- Q that the Talfer Visa was for her to go and obtain a master degree and not to live permanently in the United Kingdom?
- A yes
- Q that he would be correct that she travelled to the United Kingdom with the children of the marriage?
- A yes she did
- Q that she left the soil of Nigeria on the 31-08-2019 in the company of the two children and himself?
- A yes
- Q that what was the duration of the Visa
- A it is about 18 months.

Q that two weeks he arrived United Kingdom with his family, he comeback in Mid-September, 2019?

A that he wasn't there for two weeks but for 12 weeks.

Q that by virtue of the visa, for 18 months when was the expectation for the wife to return to Nigeria

A on the 31-1—2021

Q that in January 2020 he was in Pywande for a personal holiday.

A yeshe was

Q that when the wife was in U.K. and that she told him she was to come back and have finished her master programme and was to return, what was his response?

A that he reminded her that pursue her master why she was not the sole reason why she travelled to U.K, but also to ensure that their son in particular, gets the much needed care he needs under the NHS and for that reason she should employ the possibility of her extension.

He went further to state that it was correct that she wrote her examinations and she did not make it. That the examination he was to re-sit was based on the extension of her visa and he was aware of it, also he was aware that, her extension was to write the examination and leave the United Kingdom.

Before the 31-3-2021. That in the letter of 30-3-2020., of all extension that she received, she and the children from the immigration office (Home Office) there was a caveat in that document, which states that should they be any reason, she and the children have to stay beyond the period of the extension. She should then apply for further extension.

That it is not true that in there communication his wife had never told him why she had not been able to get a job. That in a bid for them to further stay in U.K he employed the services of one immigration lawyer and not two as alleged and there was an email of the immigration lawyer advising of what is to bed one. And one among the option was that his wife will return to Nigeria apply and does examination to qualify her to practice in the U.K. before she could secure a Job and stay in the U.K. with the children. That from the onset there was no agreement between him and his wife to return to Nigeria with the children as the decision was taken with her parents and her family.

That what determined her stay in U. K. is an agreement.

That since she has no legal papers she cannot legally stay in the U.K, as such we have not been in touch with each other. And that when she returned to Nigeria and she could not reach me, one Mrs UcheOnyenma was asked to inform me that my wife and the children are back and in her parents' house in April, 2021. And that my response to Mrs Uche was that all know was that my wife and children are in the U.K. and he was asking Oguchi to be communicating with her. That he equally told Oguchi to talk to her about the children spending their holiday with him in December, that prior to the 13-12-2020 there was no communication between him and his wife.

That at about 2021, he was residing at Citec Estate Jabi Airport road Abuja and that she agreed that my children be with me for Christmas and was to bring them back on resumption of school in January, 2022. That his intention was when the kids were with me, I will get them a school for my daughter in Lagos, pay the school fees and to relocate down to Lagos, which I did pay the school fee. This decision which she disagreed with me. On the part of my son, she told me that she had already gotten a physiotherapist who was taking care of him while he was with her but not going to school.

That it is equally true that I have no evidence that I have ever paid my daughters school fees ever since our marriage in January up till date. That he is a principal manager with central Bank of Nigeria (CBN) and in two years' time my next promotion will be to an Assistant Director.

That his basic salary as a principal manager is not up to N500,000.00 that he is under oath not to disclose the details of his salary in the court.

And that in the course of my job, I embark on periodic trips some times for weeks.

That his son is nine years old, and that because of his health challenges he is highly inactive and periodically aggressive as such needs a little bit of patience to tolerate him.

That he has two accounts on salary account with GTB and savings account with Zenith Bank and two accounts which are redemptive in fidelity and Stanbic.

That the children of the marriage are children under marriage Act, but according to Igbo culture, it did not allow the son to stay outside the house and that under the prevailing circumstance, my children can stay outside the house.

That it is not correct that custody is the same as responsibility.

That from January 2021 till date he has never given his wife any money or gift and that it is not in the interest of the children of the marriage to see that the

children are brought up separately and such he is aware where there asked for the custody of the children

That she is not aware that his wife Ebere is currently leaving with her parents. But when sent his driver to pick the children and drop them it was Ebere's parent's house/residence. That after he took his case to have Access with the son. That it took the intervention of my lawyer, her counsel to allow his son to spend the coming holiday with her while the girl spends the rest of the holiday with me.

That it is correct that he did not send her money to take the services of a domestic staff.

That he had a plan to marry again and raise children but the said marriage would not be at the expense, interest and the welfare of the children under this marriage.

No-re-examination.

The petitioner then closed its case and the matter adjourned for defence.

This court in summarising the respondent defence thus DW1 and DW2. Thus:

DW1;

Doctor EbereAnyina resident at No: 65, Gaborone Street, Wuse Zone 11 Abuja. A medical Doctor by profession.

In her evidence told the court that she met his husband in the year 2011 which coincided with her final year in the university and later got married in Lagos in February, 2012.

That in Abuja, they had a marriage at AMAC in the year 2011 and in the year 2012 they had Church wedding in FESTAC Lagos.

That in the course of the marriage she was being meted with a lot of problems from the husband.

That one of such is consisting and body sharing meaning disapproving on how she noticed which was always a sought of comparison with other women which the court begs to answer when did she get married to him.

Secondly, was his consistent infidelity which lead him to have contracted a virus disease called Herpes which is highly contagious that this confession was

from him because it has stated manifesting symptoms at a time which coincided the time she was delivering of her first child in the U. S. A. that USA is being mentioned, because before given birth, one has to go through series of test or screening for which Herpes is one of them and was found negative.

That in her profession as a Doctor she knows the implication of having such disease, that rather than feeling remorseful about his action, he will rather use it as a subject of discussion during guard. That she was not happy with the 'Herpe's she contracted and that she might as well carry her bag and leave rather than being remorseful.

Thirdly, still on infidelity which boils down to. Physical abuse, that on two occasions she has been physically abused by the husband twice for which one of the occasions one Mrs UcheOyene had to intervene.

Fourthly, disrespect, that every discussion made within the house (home) has to be taken outside i.e. to his friends or family friend before the outsider will maker decision rather than his wife and himself.

That one of the instance was the delivery of theirchildren which he made sound like he was doing her a favour and which was his own idea because he wanted the children to be citizens. But she as a doctor, would have had the babycomfortably here in Nigeria.

That the discussion about things concerning the family inrespect of finances and raising of the children has to be run by his mother and siblings before an agreement is reached.

That in the year 2019, when they had a conversation about going to US for her Master, and prior of the agreement he had consulted his friends who are based in UK and they had advised him that it will be better that she go alone to the UK, get a Job while schooling and they that will be a cheaper option that go along with the children. That the exams for which she was to write in order to enable her gain a permanent stay in the UK would be easier, if she gets there alone. That will be because she will be able to focus not only on the master's programme but also on medical examination.

But he insisted that she goes with the children and he will bear the cost. That she advises that going with the children, will be financially over bearing as she will seek for the services of a Nanny which they both knew that it will be very expensive, but still insisted that he will bear the cost and that the sole purpose was not for her masters but for the well-being of their son.

That in 2020 being the year of Covid which was the year that follows the year she arrived of at UK on the 31-8-2019 why businesses lost their jobs and businesses.

That they had two children, one of which has special needs, and needed full attention. That the husband knowing all these insisted that she finds all means possible to remain back at U.K

They she applied for several jobs, but couldn't be done with the professional examination. In order to seek for the Job as a doctor in U.K.

That in his desperation he contacted some immigration lawyer who reached out to both of them by mail explaining that it will be better for his wife to return back to Nigeria, apply for the exams, and once successful she can return legally, they also stated that as a health care worker, after five years, she will have indefinitely to remain which was better than 10 years rout for known health for known health care immigration service. That his husband did not buy the advice given by the immigration lawyers, but rather insisted that she find a way to remain back in UK with the children and has one time told her to seek for asylum she insisted that with the two kids, there was no way she will remain illegally in the UK and that she was going to return back to Nigeria and wrote the appropriate examination to enable her get a job and legally stay in the U. K.

That as the month went by, as at the expiration of her visa, draw close she applied for an extension to enable her write the first part of the medical examination which she wrote on the 18-20-2021.

That however, the visa only granted them two months' extension for which she was to leave the US by a before the 31-03-2021. That the letter from the U.K home office was forwarded to her husband who was fully aware and knew exactly when she was to return back to Nigeria that the husband told her that he will not be able to stay back with (the children if she has not). For gotten a job or permits her to stay legally and also if she did not have the means to stay, that the husband told her specifically that,

**“if you think you are coming to this lugbe in Nigeria you must be Joking.**

That because of several communications from him and his instance on she not returning back with the children, she decided to come back to Nigeria on the 31-3-2011.

And when she came back she went straight to husband parent with the children.

That the last fund she ever recovered from him was in January 2021. That through the help of her family and some of their friend or colleague, over there, they were able to pay for the expenses for February to March and the return ticket back to Nigeria. That there was a chef showing that she was no more given any finance and he stepped all communication with them, on the same month January 2021.

That in April, 2021 she was reached out to by Mr. UcheOyene who is the senior Colleague at his work and also a friend to her mother. He went further to state that he was informed of their return and did not make any effort to contact herself or to know the where about of the wellbeing of the children. It took him 9 months that is December, 2021 to give her a call stated that he would like the children to come and spend the holidays or Christmas and new year with him.

That prior to that he was informed of the need to pay school fees for his children's therapy which went on deaf ear. That his husband also communicated with his cousin by name Ogochi where she sent her the Bank Details and the snapshot of the school fees and the account details of the school which he was already enrolled with, was sent through Ogochi, who told him to make a direct payment into the school, if he is not happy to send it to him and the picture of the school, the amount and the Bank of the School. He went further to state that he followed up the Conversation with her where she assured him that he was getting the message. That because of her silence, he also personally made payment for their Daughter school fees and also their son therapy fees.

That in December, despite all this, he allowed him to see their children to spend the Christmas and new year of December, 2021 and January, 2022 with him and for holiday of over two weeks.

In January of 2022, she asked that she will need them back so that she will prepare for School which was to be in January, of 2022 she asked that she will prepare for school which was to be in January, 2022 but then the story changed.

She told him that she had already made payment for their Daughter to go to School in Lagos State, under the custody of his aged mother without her consent as well, she refused and insisted that she can go to Lagos as he is the mother and still alive. He also threatened that because she refused this she will continued to be responsible for their Daughter.

That since they arrive in March, 2021 till date, he has never made any financial commitment to their Daughter.

That by the time of their arrival in Nigeria their daughter was in third term and currently is in the first term in primary 3 (three) and no kobo from her husband.

That the husband insisted that that the son stay with him since he was able to make financial commitments for a special need school and that because of proximity being the school from where he stays i.e. citec EstateJabi Abuja, is will be better for their son to stay in his custody.

That out of desperation on his part, seeing that she wasn't going to make any financial commitment close to where she lives with their son, she then agreed. That as at the time she was singlehandedly taking care of their daughter she did not have enough money for both their school fees.

That they also agreed that whenever he is not around, as he travelled very frequently he will bring their son their place in her residence in Wuse Zone 2 Abuja. That it took the intervention of his lawyer to see their son someone whom she willingly allowed him to be in his custody despite not providing for him for 9 months after their return. That the son is autistic which is a condition that affect the child mental behaviour, emotional wellbeing, that he often get physical aggressive because he cannot speak and as such throws tantrums” when he is trying to make a request this has prompted patience on their part, herself and every other person that knows him very well in his upbringing. And that for those who didn't know his condition, they could be quick to inflict injury or punishment on him because of this tantrum.

That when he was brought to her after instruction from both lawyers, in August, 2022, she noticed visible marks. He can speak and would not be able to tell her who inflicted such injury on him in the custody of his father.

That her husband travelled very frequently and as such will obviously leave the child their son in the custody of a stranger who might not be equipped with managing him.

That by virtue of the fact that she is his mother and above all and also a medical doctor by profession, with lots of years in researching his conditions definitely will take better care of him.

That the only reasons why she conceded in him having custody for the period that was not specified is because she doesn't want to be selfish holding on to him even when he wouldn't pay the school even though he made therapy fee payment.

That she told the court that she was getting messages, that means that his potential wife to be will get his own children, especially for one who will never be able to take better care of their son than she would.

That since the year 31-January, 2021 she has been responsible for their daughter's school fees.

That it took the intervention of the lawyer to take the child to him and when he brought him there was a mark on his body and they took photograph.

In the course of the evidence the following document were identified by the witness and tendered in evidence as an exhibit.

- 1. Certificate of marriage as DD1**
- 2. Message to Ogochi as exhibit DD2**
- 3. Text message of compass immigration exhibit DD3**
- 4. 4. Extension letter from the Home office as exhibit DD4**
- 5. Cash receipt of payment of school fees from Tophill, school as exhibit E, E1, E2, E3 and E4.**
- 6. The picture of the son and the certificate of complain as exhibit FF, FF1, FF2, FF3 and FF4.**

Finally, she appeals to the court to grant her custody of their children as she will be in a better position to take care of them and also that he takes full responsibility of their wellbeing, finally and also concedes to divorce because of the infidelity.

Under cross-examination that she is a qualified medical doctor that before she went for her master she was working with Zenith and Medical centre earning the sum of N250,000.00. that currently having a master's degree from UK university and now stiles at to the said Zenith medical centre and that her salary is N400,000.00. that her husband undertook to sponsor her education in the UK with loan facility because of their son medical condition. That she is 30 years of age. That she is not aware that a regular civil servants retire at the age of 60 years. That the retirement age for a medical doctor is 75 years, meaning she can practice medical till age 75 years with sound judgement.

That before she returned to Nigeria, her husband sent to her £4007.74. that she suggested at that time that her mother in law should take care of their daughter, as at that time she was giving her problem with social service in UK.

That when she came back to Nigeria, she enrolled their daughter to a special needs school, and did not enrol my son.

That as a medical doctor she engages in shift and still can be paid another money as she is in permanent shift and not subject to call. That as a medical doctor she is okay where she is.

That reference to exhibit FF1, she did not get letter of invitation that it was her narration to the lawyer's futile answer to the petition that in paragraph 33 she made reference to her parents. That she denied the letter of invitation. Because the letter shown to her was not received by them i.e. exhibit FF1.

That on the said letter exhibit FF1 her family did not react to it.

That when he returned to Nigeria she did not tell him when she was leaving and when she will return to Nigeria but sent a third party to tell him because he blocked her lines.

That the moment this court pronounced the marriage null and void they will no longer be husband and wife and by that time both of them will be free.

That it is true that her husband singlehandedly finances their children at different times in the UK (United Kingdom) and that was his decisions.

Under re-examination by the respondent cross/petitioner. That she was not financially sound when she enrolled their Daughter and did not enrol their son at the special needs school, secondly she was then about to start work and the fees was much and could not pay six times therapy of their son.

DW2, one Ifeoma Julient Omumaegbu a staff of CBN central Bank of Nigeria with human resources department as a senior manager and works in the reward manager Division.

That she was served with subpoena duces tecum and testificandum dated the 21-11-2022.

That she knows Mr Obinna Anyina who is a staff of the CBN.

That the petitioner has worked with the CBN for almost 17 years. that the petitioner is currently a principal Manager of the CBN (Central Bank of Nigeria) and not aware of his next promotion but his next promotion will be to (Assistant Director) and have no idea when. That presently works in corporate Commission and have no idea or detail of his duties.

That as staff of human resources with reward management and a senior manager, her duties are administrative, i.e. reward and benefit for the staff of the bank. That corporative department id the representative of Bank, when it comes to communication of the Bank i.e. the manager of the Bank. That his line of duties may require him travel outside Abuja and outside country. The employers of the Bank are paid to the employed for the services rendered.

That she has the scale of payment for the petitioner grade, and the document she brought is his gross annual emolument as the principal manager on level 14

step 2. That the said document she brought is not computer generated but sample extract and in his position and certified i.e. CTC.

The document i.e. the gross annual entitlement of principal manager step 2 by the CBN and the CTC of pay slip of the petitioner was admitted as exhibit H-H13.

She went further to state that the employer CBN has other benefits like health where the family of the staff are entitled to health care, and that she is under oath not to disclose anything before the court.

Under cross-examination by the respondent petitioner cross-petition.

That reference to exhibit G.

Gross means without deduction meaning that is what he earns without deduction. That as a human resources the statutory deductions include things like tax, pension contribution NHF, while other statutory deduction are like loans.

That the aggregate of the petitioner salaries is about N620,000.000, after the statutory deduction from the net known by the Bank, that it is correct that the net known by the Bank is not loan from other commercial Bank, and commercial Bank are not reflected on the pay slips.

The retirement age of the CBN (Central Bank) staff is 60 years.

That as a staff of the CBN one has to take oath of secrecy. she still maintained that the age of retirement of staff of CBN is 60 years.

Under re-examination, he stated that the next aggregate is for the months or durations is from January to November.

The counsel then closed his case and matter adjourned for adoption of final written address to the 21 February, 2023.

On the 21-February, 2023 parties were absent in court, Kelechi Uzoamwa appeared for the respondent/cross petitioner where she stated that her attention has been drawn to the letter of adjournment by counsel to the petitioner on this she stated that in as much they would not oppose to the said application it is for them to step backward. The case was again adjourned to the 6-3-2023 for adoption of final written address.

On the 6<sup>th</sup> March 2023 both counsels were in court. The petitioner applicant who filed his written address out of time sought the leave of this court to regularize the process, this was done and the court granted the order for

regularisation and the motion moved with motion No: M/5092/2023 was granted.

The respondent cross-petitioner's written address dated the 15 December, 2022 and filed on the 16/12/2022 was adopted and urged the court to grant the reliefs sought by the respondent/cross petitioner.

In adumbration, he submitted that they have before the court the main relief which is similar for both parties before the court. That as the courts finds that the reliefs has been established and grant same, it is their prayers before the court that there are two their issues that are ancillary reliefs to the main reliefs and those issue are begging for the court's wisdom in that petition.

1 custody of the union of the marriage, that the issue may be ancillary but very crucial, which involve children who may not be parties to the suit, but whose interest are tied to the suit. Further that the children in question are not adults but are minor within the definition of the law, aged between 7-11 years.

Further that joint custody is only when the parties are co-operating.

On the maintenance, education and welfare of the children, submits that they have made a proposal before the court and have also established the need of both parties and have also stated before the court, the position of Education welfare and maintenance before the court, before the rises of the parties and thereby pray the court that the children should not be a victim before the parties, that the father has always been responsible for the Education, welfare and maintenance of the children. Pleaded that the wisdom of the court prevail in their ancillary reliefs so that the children will not be affected by the problem of the parents.

On the other hand, the petitioner's counsel while adopting its written address dated the 14-2-2023 submitted that, they have distilled three issues and for the dissolution there is no contentions between the parties and urge the court to allow the party to so separate.

Submit that, they are two children to this marriage, a boy and a girl, that the boy has special needs and he is 10 years.

That the parties are Igbo and that the Igbo value the male child and the culture for the main time the child should be with father and he cited book Psalm 123:2. That there are three instances of the women.

That the father is 48 years as at today and has 12 year left in the service and that as of today they have no house of their own. Therefore, urged the court to consider the indebtedness of the petitioner and the aged mother. That the

respondent has a well-placed job and takes good care of the children and urged the court to grant their reliefs, apart from reliefs one and other reliefs by the respondent/petitioner reliefs A-H.

To the written address of parties. The issues distilled for determination are as follows.

The Respondent/cross petitioner has established a ground for the dissolution of her marriage to the petitioner/respondent?

- 1. Whether the respondent/ cross-petitioner has established a ground for the dissolution of her marriage to the petitioner/respondent?**
- 2. Whether the respondent/cross-petitioner has established before this Honourable court that it is in the best interest of the two (2) children of the marriage who are minors especially the child with a special need to be in the care and custody of the Respondent cross-petitioner (their mother).**
- 3. Whether this honourable court has the power to order the petitioner in the circumstance of this case to be responsible for the Education maintenance and welfare of the children of the marriage?**

On the other side the petitioner/cross Respondent in its final written address also formulated the following issues for determination to wit:

- 1. Whether the marriage between the petitioner and the respondent has broken down irretrievably as to warrant an order of this court for dissolution of same.**
- 2. Whether of justice to grant the petitioner the sole custody of the male child of the marriage and joint custody of the female child of the marriage in view of the special need of the, male child.**
- 3. Whether the grant of prayers A-H of the respondent/cross petitioner would not work untold hardship on the petitioner in view of his financial situation, situation and nature of employment?**

A close perusal of issues (1) of the respondent/cross petitioner and that of issue (1) of the petitioner/cross respondent seems to be the same as the two issues centre on the dissolution of marriage. Hence the two issues will be merged as one. As I stated the issues (1) of the respondent and issue (1) of the Petitioner can be subsumed as one issue and it is my firm view that those issues can be determined in one sweep, as it appears, issues two of the respondent is

also dependent on issue (2) of the petitioner which deals with the issue of custody of children hence will be dissolved as issues two in both.

Lastly issue three (3) of the Respondent/cross petitioner and that of issue (3) three of the petitioner/cross petitioner deals with the maintenance and welfare of the children in the marriage, in view of the forgoing I shall adopt the issues so formulated as mine and based on the issues what this court will base his findings to see where the pendulum tilts.

On the issue as captured above in this judgement and the reliefs as of sought by the petitioner are the same which I will reproduce here under.

**1. A decree of dissolution of marriage between the petitioner and the respondent contracted at the marriage registry of the Abuja municipal Area Council (AMAC) on the 15<sup>th</sup> October, 2011 on the grounds that the marriage has broken down irretrievably and that the respondent has behaved in such a way that the petitioner could not reasonably be expected to live with her?**

On this I wish to state that in divorce proceedings, the petitioner must prove one of the facts contained in section 15 (a) (E)-H of the matrimonial causes Act before he can succeed and when the petitioner fails to prove the, the petition for the dissolution of the marriage will be dismissed notwithstanding the fact that the divorce is desired by both parties. See *Akinbuwa V Akinbuwa* (1998) 7 NWLR (pt. 559) 661.

In the instant case therefore, the burden of proof is on the petitioner who is alleging that the respondent has behaved in such a way that he cannot reasonably be expected to live with the respondent.

Unless the petitioner satisfies the court on both of the matters the court will refuse to hold that the marriage has broken down irretrievably. Two sets of facts call for proof under section 15 (2) (c) of the Act, they are (1) the detestable behaviour of the respondent. And (2) that the petitioner finds it intolerable to live with the respondent. These two facts which are deduced from section 15(2) (c) of the Act are severable and independent. The petitioner must prove the detestable Act or such condemnable conduct that the petitioner finds intolerable to live with the respondent. See *Dermulak V Dermulak* (2004) 8 NWLR (pt. 874) 151. Per Abba Aji JCA (pp. 32-33) paragraph F-E.

It is trite law that the test whether the petitioner can or cannot be expected to live with the respondent is objective. it is not therefore sufficient that the petitioner alleges that he cannot live with the respondent because of her

behaviour, the behaviour must be such that a reasonable man cannot endure what would amount to behaviour which the petitioner cannot reasonably be expected to put up with, has been provided in section 16(1) of the Act. The section provides thus:

**“without prejudice to the generality of section 15(2) (c) of this Act, the court hearing a petition for a divorce of dissolution of marriage shall hold that the petitioner has satisfied the court of the fact mentioned in the said section 15 (2) (c) of this Act if the petitioner satisfied the court that:**

- a. Since the marriage, the respondent has committed rape, sodomy or bestiality or**
- b. Since the marriage the respondent has, for a period of not less than two years.**
  - i. Been a habitual drunkard or**
  - ii. Habitually been intoxicated by reason of taking or using of excess any sedative, narcotic or stimulating drug or preparation or has for a part or parts of such a period been a habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated.**
- c. Since the marriage, the respondent has within a period not exceeding five years.**

**I suffered frequents conviction for crime in respect of which the respondent has been sentenced in the aggregate to imprisonment for not less than five years, and**

**Or habitually left the petitioner without reasonable means of support or**

- d. And during the marriage, the respondent has been in prison for a period of not less than three years after conviction for an offence punishable with death or imprisonment for life or for a period of five years or mere, and still in prison at the date of the petition or**
- e. Since the marriage and within a period of one year immediately preceding the date of the petition, the respondent was being convicted of:**
  - i. Having attempted to murder or unlawfully to kill the petitioner or**

- ii. **Having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the petitioner.**
- f. **The respondent has habitually and wilfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the petitioner:**
  - i. **Ordered to be an order registered in a court in the federation; or**
  - ii. **Agreed to be paid under an agreement between the parties to the marriage providing for their separation or**
- g. **The respondent:**
  - i. **Is at the date of the petition of unsound mind and unlikely to recover, and**
  - ii. **Since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of or for a period aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law or in more than one such institution.**

In the instant case at hand it is the submission of the respondent in its written address where the respondent prayed for the dissolution of his marriage or the facts that the respondent refused to perform her conjugal obligation since January 2019, the respondent insisted on coming back to her husband (the petitioner) in Nigeria upon the expiration of her study visa in the UK despite his refusal for her and the kids to come back and finally that the respondent is vindictive and quarrelsome.

He also prayed the court that, on the issue of cruelty and desertion for over a period of one **(1) year before the filing of the cross-petition and that the petitioner constantly body shamed her twice, the petitioner has physically abused her, is always involved with women of easy virtue to the point of contracting a sexual transmitted disease STD (Herpes) which he infected the respondent/cross petitioner with.**

- 2. **That the petitioner's insistence on the respondent remaining in the UK with the two children of the marriage even when he knew her study visa was expiring and she would not be**

**there with the children illegally but was adamant and insisted the respondent/cross petitioner remained in the U.K illegally.**

- 3. That the petitioner/respondent was informed that the respondent/cross petitioner was back in Nigeria with the kids, he deserted them and never cared about them.**
- 4. The petitioner/ respondent however in disguise took custody of the son of the marriage who is a minor and a child with special needs and would not allow the respondent/cross petitioner access to the child.**

Thus the cross petitioner finds all of these acts of the petitioner as cruel.

Having deserted her for over a period of one (1) year., it is cross-respondent expected that the cross-petitioner would live with the petitioner/respondent hence the marriage has broken down irretrievably.

In response the petitioner/cross respondent denied all the allegation and grounds upon which the petitioner founded his petition and also cross petitioned for the dissolution of the manage between her and the petitioner on the ground that the marriage has actually broken down irretrievable on the grounds of cruelty, irresponsible behaviour and general intolerability and ironically for desertion. This he referred this court to section 15(1) of MCA. And the case of B. Buhari Vs Bililari (2011) 13 NWLR (pt. 1264) 207 CA. also referred to section 15 (2) of MCA, and submit that, for a marriage to be said to have broken down irretrievably as to warrant dissolution of the marriage on inference must be drawn from the provision of sub-paragraph which would be conceived as the ground upon which a marriage can be seen to have broken down irretrievably. He then stated that, the petitioner's petition for dissolution of the marriage between her and the respondent is that it has broken down irretrievably by reason of the fact that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent and that the petitioner finds it intolerable to live with her.

That in the evidence presented by the petitioner he said is that cohabitation between him and the respondent ceased sometimes in January, 2021 when the respondent came back from the United Kingdom and decided not to go to her matrimonial home and chose some place unknown to the petitioner. She decided to return back to Nigeria without informing the petitioner nor sought his consent returning that the petitioner also went to the course by failing to return to her matrimonial home, she did not inform the petitioner that she had returned to

Nigeria until a third party told the petitioner after three months that the respondent has returned to the country.

All entreaties by the petitioner and his family to make the respondent return to the matrimonial home proved abortive indicating that the respondent is done with her marriage to the petitioner.

He Finally submits that is not necessary for them to go into the full details of the parties since both parties are in ad-idem that the marriage be dissolved and therefore urged The court to so hold based on the petitioner s petition for the dissolution of the marriage between him and the respondent , that the marriage between the petitioner and the respondent has broken down irretrievably as the act and conduct of the respondent as proven above by the petitioner in his testimony is a negative act and such is a proof that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with her and the petitioner finds it intolerable to live with the respondent.

On the issue of abandoning the respondent, where in her testimony she stated that she came back from the United Kingdom and refused to return to her matrimonial home. That the piece of evidence of the petitioner is uncontroverted, that the respondent only offers a very ramshackle defence to her action in this regard.

On this he referred the court to the case of *Nnana V Nnana* (2006) 3 NWLR. 1 CA. Where the court held thus.

**“the test as to whether a petitioner for the dissolution of a marriage can or cannot be expected to live with the respondent is objective.**

Consequently, it is not sufficient for a petitioner to merely alleged that he or she cannot live with the respondent because of the respondent behaviour. The behaviour alleged must be such that a reasonable man cannot endure”

He submits further on the issue of cruelty and defines it to mean, such conduct of the respondent that causes danger to life, or health, body or mental state of the petitioner or a reasonable apprehension of such Danger. This he referred the court to the case of *Adaramaga vs Adaramaja* (1962) ALL NLR 247, *Williams V Williams* (1966) 1 ALL NLR. 36 and *Abayemi V Obayemi* (1962) LMLR 212. And the English case of *Collins V Collins* (1963) 2 ALL ER 966 and 992 where the court held.

**“when reprehensive conduct or departure from the normal standards of conjugal landmass causes injury or an**

**apprehensiveness of it, it is I think cruelty of a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that his spouse could not be called on to endure I.e.”**

Submit that, where the behaviour of the respondent causes injury to the petitioner, or a reasonable apprehension therefore, he may be reasonably expected to live with the respondent.

He therefore, urged the court to hold that the behaviour of the respondent is such that the petitioner cannot be reasonably expected to live with her, hence urged the court to grant a decree of dissolution of the marriage as the marriage between the petitioner and the respondent has broken down irretrievably and submits that the petitioner has successfully proved the petition and urged the court to uphold same.

Finally submit that both the petitioner and the respondent are desirous of the court granting a decree of dissolution of their marriage. It is the petitioner's testimony under cross-examination that he made efforts to talk to the respondent family but all they did was to ignore the letter written by his family.

That the respondent also affirmed under cross examination that she is not contesting the dissolution of the marriage, and affirmed that she has a cross-petition for the dissolution of same.

Now that it is evident that both parties have asked the court for a decree of dissolution of the marriage contracted between them, thus referred the court to the case of **Kalawole V Kolawole suit No: HDY/8/168 Per Odulami J** it was held that the respondent's cross-petition for divorce was an unjudicial evidence of his desire to bring the marriage to an end. Also in *Oyenuga V Oyenuga* (1977) 3 CCHCJ. page 395, it was also held that mere letter written by the respondent informing the petitioner that the marriage between them had broken down and that he would file a petition for divorce is evidence that the respondent does not object to a divorce being granted and urged the court to grant the dissolution of this marriage between the parties.

Now the question is have these facts been established by both parties and if they are so established are they sufficient facts to grant a dissolution of marriage under any of the sub-paragraph of section 15(2) of the Act? There was evidence before the court N doubt from both parties urging the court for the dissolution of the marriage. It is also a fact that the respondent has no objection to a decree being granted.

Now if all the evidence as adduced by the respondent is put on the imaginary scale, would the evidence adduced by the petitioner outweigh that adduced by the respondent under Nigeria law he who asserts in the affirmative and would fail if no evidence is called has the burden under section 136 of the Evidence Act to prove the assertion. In the instant case, the burden of proving whether the marriage has broken down irretrievably lies on the petitioner. Therefore, I hold that since the parties have all agreed and consented to the dissolution of their marriage I hereby resolve the issue one in favour of the both parties. So I hold.

Now to issue two. The issue boils down on who shall have the custody of the two children. The respondent/cross petitioner prayed the court to grant the custody of the male child with a special need to be in the care and custody of the respondent/cross-respondent to pray the court to grant the petitioner the sole custody of the male child of the marriage and joint custody of the female child of the marriage in view of the special needs of the male child.

On this I wish to refer to section 71(1) of the Matrimonial Causes Act, 1970, where the court regards the interest of the children as the paramount consideration. In the award of custody of children to a party. Section 71(1) of the Act which relates to custody provides

**“in proceedings with respect to the custody, guardianship, welfare, advancement or education of the children of the court shall regard the interest of those children as the paramount consideration subject thereto, the court may make such order in respect of those matters as it thinks proper”**

The importance of custody of the children of marriage in a matrimonial proceeding need not be over emphasised, in **Hayes V Hayes (2000) 3 NWLR (pt. 648) 278**, this court per Aderami JCA, SAID AT 290 THUS:

“throughout the gamut of matrimonial proceedings, the interests of the child of the marriage, as to custody and welfare is held paramount.

See (1) **Anyaso V Anyaso (1998) 9 NWLR PT. (504)150**, (2) **Oyelowo V Oyelowo (1987) of NWLRR (pt. 56) 239, SC 32**. Such is paramount that it has been held that a decree shall not be made absolute until the court is satisfied as to upbringing of the child of the marriage, and a decree absolute made on an inadvertent, noncompliance with the custody and maintenance of the child shall be declared void” what is paramount in all matters relating to custody and welfare of the child of marriage and dominant issue that calls for careful examination and consideration is what is in the absolute interest of that child or those children (per **Abba Aji JCA (PAGE. 41-42) paragraph B-C**).

Although there is no settled rule that a child of tender age should remain in the custody of the mother, but I take the view that custody of a child of the marriage came along with it, the all-important implications of the preservation and care of the child's person, morally.

Having said so, I will now go to the evidence of both the petitioner and the respondent the written address to assert who will be the best person for the court to grant custody of the children of the marriage to.

Here in this case it is in the testimony of both parties that got married at the Abuja municipal Area council on the 15<sup>th</sup> October, 2011 and had two children named as follow:

- 1. Chiagoziem Xavier NwabuezeAnyina born on the 13-May, 2013**
- 2. Nneka Zoe AdannaAnyina born on the 17 January, 2015.**

It is the evidence of the petitioner PW1 where he stated that, they have two children of the marriage, in the course of the union, the first child is a special child. That in the 2022 when he realised that he had suffered a huge set back he discussed with the mother of the children and his option is to have her and the two children relocated to United Kingdom for three purpose.

- 1. Family to get special care for their son through NHS in the U.S.A.**
- 2. For her empowerment as the mother of the children.**
- 3. Improve the future of the children.**

The petitioner who stated in his evidence that, he had a conversation with the respondent to establish the situation and welfare of their children and told him that his daughter had already been enrolled in the school and the son has been in home school i.e. took engagement of a therapy to take care of the child.

That in November, 2021 he asked to see the children and to know their well-being he was absolute bothered of the state of the welfare of his children, he saw that the child was unkempt and malnourished.

That in December, 2021 he made inquiries towards enrolling them at Royal Foundation. Academy Gwarimpa, after he had undergone appropriate valuation, by speech, occupational and behaviour therapy and ascertain his state of wellbeing rather than having him stay at home, he then enrolled him at the educational institute in January, 2022 where he had been for three terms. That he had been taken responsibility for paying his school fees for the turn of N400,000.00 per term and also the serviced of his speech therapy in the same school by name Ikechukwu who comes to the house every three times a week and for every circle he engages 12 times, who presented evidence of payment

and that for the support of the son he has he has a widow Nanny as well as Aunty his late father's half-sister, his cousin female who grows up with him.

That by virtue of his culture, as an Igbo man it is customarily appropriate that his first son and who bear his father's name is to be under his watch and periodically visit their mother from time to time so that they jointly participate for the wellbeing and upbringing of the children. That the mother of the children was because of out of his goodwill and kind intention for the family and for her, she is a medical doctor and that was why the daughter is in her care.

Further, that for the most part of the last two years, and because of the loans he collected from GTB, his salary account has been in debit because his salary is little above N500,000.00 which is little above N500,00.00 which is not enough for his up keep and that of the children and for the purpose made the facilities and was because he had to seek credit facility for her upkeep and for the sake of children that it will take him 10-15 years to service the debt because interest kept on accruing on it if he does not service. He went further to state that the respondent/cross petitioner's request for up keeping to the turn of N15,000.00 for child and N2.5 million as rent is totally unacceptable and wasn't done in good faith.

Under cross-examination he stated that his marriage with Ebere was consummated and reasons they have two children from the marriage and the children are minors. He went further to state that at about 2021, he was residing at Citec estate Jabi Airport Road Abuja and that she agreed that his children be with him for Christmas and was to bring them back on resumption of school in January, 2022. That his intention was that, when the children were with him he will get them a school for his daughter in Lagos, pay the school fees and to relocate down to Lagos which he did pay the school fee. And that on part of the son told her that he had already gotten a physiotherapist who was taking care of him while he was with her but not going to school.

In confirmation of payment the school fees of the children he answered under cross-examination that he had no evidence of the payment of the children school fees since marriage in January up till date. That his son is Nine years old and because of his health challenges he is highly inactive and periodically aggressive and such needs a little bit of patience to tolerate him, and that the children of the marriage are children under the marriage Act, but according to Igbo culture, they do not allow the son to stay outside the house. from January 2021 to date, He has never given his wife any money or gift and that is not in the best interest of the children of the marriage to see that the children are

brought up separately as such he is aware why then asking for the custody of the children.

That the wife Ebere after taking his son has never allowed him have access to him not until his lawyer intervene to allowed his son spend the holiday with him while the girl spend the rest of holiday with him.

That it is equally correct that he did not send her money to take care of the domestic staffs and had a plan to marry again and raise children but the said marriage would not be at the expenses, interest and the welfare of the children under this marriage.

The respondent DW1 on her side stated that the discussion about things concerning the family in respect of finances and raising of the children has to be run by his mother and siblings before an agreement is reached. That in the course of the marriage had two kids one of which has special needs, needed full attentions.

That when she returned to Nigeria, he was informed of their return and did not make any effort to contact herself or to know the whereabouts of the well-being of the children and that took him 9 months, that is December, 2021 to give her a call and he stating that he would like the children to come and spend the holiday of Christmas and new year with him. That prior to that he was informed of the need to pay school fee of his children therapy fee which went on deaf ear that he also communicated with his cousin by name Ogochi where he sent her the Bank account details and the school fees of their daughter and the snapshot of the school fees and the account details of the school which she was already enrolled with, was sent through Ogochi that she also told the husband to make direct payment into the school, he is not happy to send it to her, and though was the reason he sent the picture of the school fee, the amount and the Bank account of the school.

That because of the silence of the petitioner she personally made payment for their daughter school fees, lesson fee and the sons therapy. That despite all these in December she allowed him to see the children to spend the Christmas and new year of December, 2021 and January, 2-22 and for holiday of over two weeks. That the story changed when she told him that he needed them back to prepare for their school which was to be in January 2022 that is when he told her that he has already made payment for their daughter to go to school in Lagos under the custody of his aged mother without her consent she then refused and told him that she can't go to Lagos as she is the mother and still alive. This he threatened her because of her refusal, she will continue to be

responsible for their daughter. That since they arrived in March, 2021 till date he has not made any commitment to their daughter.

That by the time they arrived Nigeria the daughter was in third term but no kobo from the husband. That the husband insisted that the son stays with him since he was able to make the financial commitment for a special needs the school from where he stays i.e. Citec Estate Jabi Abuja it will be better for their son to stay in his custody, and this she agreed out of desperation seeing that she wasn't going to make any financial commitment. That at that time she was singlehandedly taken care of their daughter and did not have enough to take care of the means of both of their school.

That they also, agreed that since he travels frequently he should bring their son to her place in her residence in Wuse Zone 2, Abuja. This took the instruction of both lawyers for her custody despite not providing for her 9 months after their return.

Under cross-examination she stated that she is appealing to the court to grant her custody of their children as she is in a better position to take care of them, and that the petitioner takes responsibility of their wellbeing financially.

Q ask whether her salary was a little over N400,000.00

A my salary is N400,000.00

Q that before she came to Nigeria her husband sent £4007. She answered yes.

Q that year daughter at a time, she suggested that her mother in law should take custody of her and she answered yes I did.

Q that when she returned to Nigeria she enrolled their Daughter in School, she answered yes, but did not enrol their son and she answered yes didn't.

DW2 one Ijeoma Juliet Onumaegbu, a staff of CBN knows the petitioner.

That currently the petitioner is a principal manager of the C.B.N and his next promotion will be to an assistant Director. That the document of a principal manager 14 step 2 and under cross-examination the stated that what the petitioner earns is without the deduction and that the statutory deduction includes things like tax, pension contribution.

NHF, and other none statutory deduction like loans. That the average of the petitioner's salary from January to December, is about N620,000.00 after the statutory deductions.

The above which was one of the issues raised in all both the petitioner respondent and that of the respondent/cross petitioner in its written address stated that, the cross petitioner as the mother of the children of the marriage who are minors has abundantly shown to this Honourable court that it is totally in the best interest of the children to be under her care and custody. This the petitioner/respondent clergy in one breath at 12:1 of the petition under custody and maintenance of the children of the marriage that

**“the respondent has the custody of the children of the marriage and the petitioner would not contest custody with her, but would need access to the children subject to agreement between the parties.**

This position which the respondent/ cross petitioner agrees with and has clearly stated in the reliefs sought is the arrangement of the petitioner’s access to the children including holidays, but still the petitioner was asking under the arrangement for the custody of the son of the marriage who is a minor with special needs and joint custody of the daughter of the marriage who is also a minor.

Now to the testimony of the petitioner he stated that the nature of his job takes him out of home but he has made arrangements to get a nanny, his aunty and aged mother to care for the son of the marriage and he further stated that, the Igbo custom does not allow a son stay outside the father’s home. It is also in evidence of DW1 where he stated that the children of the marriage prior to this divorce proceeding lived with the respondent/cross petitioner, and also with her after their return to Nigeria. the above statement which was not counted by the petitioner respondent.

The above reason can it be fair for this court to give custody of the two children to the petitioner/respondent or the respondent/cross petitioner?

From the evidence available to this court, if all the evidence adduced by the petitioner/respondent is put on the imaginary scale, would the evidence adduced by the respondent/cross petitioner outweigh that adduced by the petitioner/respondent? Under the Nigeria law, he who assert on the affirmative and would fail if no evidence is called has the burden under section 136 of the evidence Act to prove that he desires to be given the custody of the children.

In granting custody of the children what comes into the mind of this court, are terms of Educational endowment policy of the children bringing them up in accordance with strict societal norms and values and then according to the religion they may choose to belong other arrangement to be made are for them

to be taken care and a standard medical attention to be provided for them. To my mind and looking at the evidence adduced by the petitioner/respondent, especially wherein the evidence, it is clear that, the petitioner/respondent intends to get married to another wife after the separation, and it that is the case this will be one of the reason why it will be better for the mother, the respondent/cross petitioner to be given the custody of the two children as care of is better with the mother of the two kids than an outsider. Even though it is the arrangement of the petitioner/respondent to bring in a Nanny that still will not be in the good interest of the children whom I consider they are total strangers who are not used to the children.

Let me re-cap this that, from the reliefs claimed, the onus was on the petitioner/respondent to not only plead facts on the basis of which it can be held that custody of the two children should be given to him.

Allied with the facts being pleaded is that the evidence must be adduced to prove the pleaded facts. It is rudimentary law that pleadings are the skeleton framework while the evidence is the flesh and together they make up the body and flesh of the case of a party. Put different, pleadings are the body and soul of any case. In a skeleton form.

They are built up and solidified by the evidence in support thereof. The pleadings are not evidence, and if evidence is not adduced to support the pleadings then the pleaded facts are of no consequences. Conversely, where evidence adduced in respect of facts not covered by pleadings the said evidence goes to no issue and will be discontended by the court. Since there would be no base some skeleton on which to engraft the flash of the evidence. See *Emegokwe V OKadigbo* (1973) NMLR. 192. And *Okoko Vs Dakolo* (2006) CPELR (2461) 1 at 42-43.

In the instant case the basis upon which the petitioner/respondent based his argument to be given custody of the children cannot hold, for the following reasons: -

- 1. The children of the marriage are still minors, with special needs, it is better for them to be in the custody of the mother.**
- 2. The nature of the petitioner/respondent job taken him out of town (home) at intervals.**

3. **That the children of the marriage prior to this divorce proceeding lived with the respondent/cross petitioner, in fact with her in the United Kingdom for two (2) years and with her even after they returned to Nigeria.**
4. **The respondent/cross petitioner being a medical doctor by training, the mother of the children is one of her reasons allowed the two children to be in the custody of the mother, needs consistent parental monitoring and the petitioner would apparently not be there for her.**
5. **It is in evidence that the Job of the petitioner/respondent entails him travelling outside while that of the mother does not entail her travelling long distances if she is not on calls and has abundant time to care for the son of the marriage who needs her in another and her expertise as well for his altogether wellness and general development.**

On this it is the submission of the respondent/cross petitioner, that the arrangements of the petitioner/respondent is a mere cosmetic arrangement, as same is not in the best interest of the son of the marriage, who is a special needs child. On this he referred the court to the case of *Nnana v. Nnana* (2006) 3 NWLR (pt. 966)1 where the court of Appeal held Per Abba AJi JCA thus;

**“I have stated above the evidential account of the arrangement of the appellant but together for the well-being of the children, if same is considerate against the background” drop of the evidence adduced by the respondent can that be said to be sufficient as to warrant the grant of the custody of the children to the appellant? I think not.**

**There is nothing therein to persuade the court to grant custody of the marriage to the appellant. I agree with the respondent counsel, that such arrangements are merely cosmetic---**

**What the children need is not a mere endowments policy and a 5-bedroom apartment. The appellant’s court cannot take the place of their mother. The antecedent of the appellant reveals it all. It will amount to a negation of the well settled principles that the welfare and interest of the child or children of the marriage must be accorded paramountcy where an order of custody of the children of the marriage be made in favour of the appellant based on the said cosmetic arrangement”**

Also in the case of *Odogwu V Odogwu* (1992) 2 NWLR (pt. 225) 539 at 560 the supreme court enunciated that if the parents are separated and the child of the union, is of a tender age, it is presumed that the child will be happier with the mother and no-order will be made against this presumption unless it is abundantly clear that the contrary is the situation for example immorality of the mother's infectious diseases on the mother, insanity and cruelty to the child.

The respondent/cross petitioner's counsel then submits that based on the above cases that there is nothing, absolutely no facts against the grant of custody to the mother of the minor children who is the cross petitioner.

The court of appeal in the case of **Tabansi V Tabansi (2009) 12 NWLR (PT. 1155) PER Alagad JCA** held thus:

**“except the conduct of the wife is morally reprehensive it is better in an estranged marriage, for the child of the marriage, more so if the child is a girl of tender age be left in the care and custody of the wife.**

Again one of the reasons I stated in this judgement is the issue of the petitioner/respondent where he stated he would marry after the divorce process. On this it is the submission of the respondent/cross petitioner where she poses this question.

**“will it be in the best interest of the son of the marriage to be left in the hands of a step mum whose predisposition to the child is uncertain and most case cruel?**

In **ALABI v Alabi (2007) 9 NWLR (PT. 1039) 297 AND 347-382** paragraph G-A, sets out the factors to be considered in the grant of custody and the court held that

**----- “where one party live, with a third party as either man or woman, it a factor that should weigh against the grant of custody to that party. the court went further to state that the fact that in children of tender ages custody should normally be awarded to the mother unless other consideration make it undesirable”**

Further that, there is nothing before this court that tilts against the grant of custody to the cross- petitioner who has set out a perfect arrangement for the custody and maintenance of the children of the marriage.

All that the petitioner/respondent stated is that, the first child of the marriage has special needs being a child with autism” and that it is a general belief that

girls should be in the care of their mothers whilst boys their fathers and the first child being a male should be with the father and to also recommend the court to the bible in the Book of Psalm 123:2 and that the first child of the marriage not only being a male child is also 10 years old and no longer an infant will be desirable to live with the mother. On this I will disagree with his submissions that the child under the age of 10 years is still a minor and an infant who desires the mothers care and affection and the mother being a medical doctor by profession it is desirable for this court to give the custody of the two children to the mother. To this end it is my humble view that the evidence before this court sways this court to the award of the custody of the two children of the marriage to the respondent/cross petitioner.

On the issue of maintenance, it is on the grounds of petition where the petitioner stated that the respondent has the custody of the children of the marriage and the petitioner would not contest custody with her, but would need access to the children subject to agreement between the parties based on the above, the proposed arrangement for the child are as set, up below.

- 1. The petitioner has been responsible for the up keep of the children of the marriage since birth.**
- 2. The petitioner is ready to continue with the upkeep of the children.**
- 3. The petitioner has the custody of the 1<sup>st</sup> child of the marriage and the petitioner would not contest the custody with him.**
- 4. The 2<sup>nd</sup> child of the marriage would be with the respondent with undenied access to the petitioner.**

On this it is the Submission of the respondent/cross petitioner that as the mother of the children of the marriage who are minors has abundantly shown to this Honourable court that it totally in the best interest of the children to be under her care and custody. In support of this he equally stated that in the testimony of the petitioner, he admitted that the nature of his job takes him out of the home but he has made arrangement to get a Nanny, his aunty and aged mum to care for the son of the marriage whom he seeks custody of.

Also that the children of the marriage prior to this divorce proceedings lived with the respondent/cross petitioner in the UK (United Kingdom, solely without the petitioner/respondent for almost two (2) years and were with her even after their return to Nigeria against his “ consent” until he requested to have the children for Christmas holiday in December, 2021 but decided to keep the son

of the marriage because of the proximity of where he lived then to the child, school but has since refused the respondent/cross petitioner access to the child, and it took the intervention of his lawyer and that of the cross petitioner for the cross -petitioner to have the son of the marriage for the August, 2022 holiday. Therefore, submit that the proposed arrangement of the petitioner/Respondent is not in the best interest of the children especially the son of the marriage who would be craving for his mother in maternal love and care.

It is also in the evidence of the petitioner that the mother of the children is a medical Doctor by training, the mother of the children without any disability not to care for her children and that she has been there for the children all their years in consequences attached emotional to the children as a doctor she in the United Kingdom (UK ) and that she went through some studies and research on how to further manage the son of the marriage who has autism and needs special care, attention and Patience .

I have painstakingly considered the argument for and against the custody and maintenance of the children or the marriage and the reasons adduced before me, the evidence sway to the respondent/cross petitioner to have the custody of the two children instead of to allow a Nanny who will be a stranger to the children of the Marriage. This I have stated in this judgment and with cases to buttress this finding I.e. Odogwu V Odogwu (supra) and Tabansi V Tabansi (supra) and the case if Alabi V Aliba (supra)

In view of the forgoing facts as stated in this judgment it is my judgement that the custody of the children be with the mother of the two (2) children is better be with the mother of the marriage (respondent/Cross petitioner than the petitioner/respondent and the petitioner/respondent to take care of the maintenance of the children.

In summation, issue one (1) is hereby resolved in favour of both the petitioner/cross petitioner while issue two(2) and three (3) is resolve infavour if the respondent and the respondent/cross petitioner who is in a better position to take care of the children of the marriage than giving the custody to a Nanny or the aged mum.

Based on the forgoing I hereby make the following order:

- 1. A decree of dissolution of the marriage contracted between the petitioner and the respondent at the marriage registry of Abuja Municipal Area Council (AMAC) on the 15<sup>th</sup> October,2011 on the grounds that the marriage has broken down irretrievably and that**

**the respondent had behaved in such a way that the petitioner could not reasonably be expected to live with her.**

- 2. An order granting the respondent/cross petitioner the custody of the children to the marriage.
  - a. Chiagoziem Xavier NwabuezeAnyina**
  - b. Nneka Zoe AdannaAnyina.****
  
- 3. An order directing the petitioner to set up an account accessible to Chiagoziem Xavier Nwabueze Angina where the petitioner can deposit the sum of #100,000.00 (One Hundred Thousand) only monthly for the child therapy and for two of the children the sum to agree by both the petitioner/ respondent and the respondent/cross petitioner for the Education and maintenance.**

This is my judgment.

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**HON. JUSTICE A. Y. SHAFIA**

**APPEARANCE:**

- 1. B. S. Akinwunmi for the Petitioner**
- 2. Kelechi Uzoanya for the Respondent/Cross Petitioner**

