

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA – ABUJA

DATED THIS WEDNESDAY THE 16TH FEBRUARY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/PET/095/2022

BETWEEN:

OINE MOELLER.....PETITIONER

AND

HOLGER MOELLER.....RESPONDENT

JUDGEMENT

The petitioner by the notice of petition No: Pet/095/2022 dated the 1st Dec, 2022 filed and dated the same date, seeks the following orders.

- 1. A DECREE of dissolution of the marriage celebrated between the petitioner and the respondent on the 21st day of February, 2004 at the Abuja Municipal Area Council [AMAC] Marriage Registry.**
- 2. AN ORDER of this Honorable court terminating any and all paternal rights whatsoever which the respondent hitherto exercised over the petitioners adopted niece Ms. Ochanya Amali by virtue of the marriage between the respondent and the petitioner.**
- 3. AN ORDER of this honorable court directing the respondent to, not later**

than December 2022, pay the lump sum of £34,352 (Thirty-four thousand, three hundred and fifty-two Euros) out of the £61,896.66 from the fuchspezial mortgage contract number 13716571L01 already paid into the respondents account to the Landheim am Ammersee for their son Leon moeller's school fees and expenses for the period January-August 2023.

4. AN ORDER of this honorable court directing the respondent to pay the petitioner not later than 1st March 2023, the sum of £29,663.28 (Twenty Nine Thousand Six Hundred and Sixty Three Euros, Twenty Eight cents) being the petitioner's equal share of the balance on the 2 (two) cancelled mortgage savings contract: Fuchspezial with number 13716571L01 worth £61,896.66 and Fuchsimmo with number 13716571L02 worth £31,781.89 being a total amount of £93,678.55 less the sum of £34,352 deducted for their sons' school fees and expenses for the period January -August 2023.

5. AN ORDER of this honorable court that the initial caution fee of £10,000 (Ten Thousand Euros) deposited by the respondent with Landheim Am Ammersee upon the admission of their son Leon Moeller into the school shall be transferred by the school upon Leon's graduation in June 2023 to an account in the name of their son Leon Moeller which money is toward his university studies.

6. AN ORDER of this honorable court directing the respondent to not later than December 2022 make a lump sum payment of £8,000 (Eight thousand Euros) into the account of his son Leon Moeller as emergency fund.

7. AN ORDER of this honorable court directing the respondent to continue to maintain his son Leon Moeller's current mobile phone contract until its expiration; and to fund and allow Leon's credit card to continue to run on the respondent's bank account.

8. An order of this honourable directing the respondent to immediately pre-activate and re-include his son Leon Moeller in the AOK family insurance operational in Germany under the cover of the respondent for the duration of his university studies.

9. An order of this honourable court granting the respondent exclusive

ownership and possession of the contents, furniture and electronics of the petitioner and respondent's apartment in Germany except for the petitioner's personal effects and books.

10. An order of this honourable court granting the petitioner exclusive ownership and possession of the contents, furniture and electronics of the petitioner and respondent's matrimonial home in Abuja except for the respondent's personal effect.

This order was accompanied with a verifying affidavit of four paragraph deposed to by Oine Moeller and attached to the affidavits marriage certificate with no 16071/04 issued at the AMAC Registry-Abuja dated the 21-04-04 and a certificate relating to the cancelation pursuant to order 11 of the MCR 1982 dated 29th November, 2022 and the petitioners witness statement on oath of 13 paragraphs.

The notice of petition was assigned to this court dated 02-12-2022 and service effected on the respondent dated 07-02-2022 of about 2.27pm acknowledged same by Holger Moeller of Julius Berger life camp (furnishing supervision) and the matter set for mention on the 16-2-2022.

On the 16-2-2023 the petitioner/counsel informed this court that they have filed in court terms of settlement and same signed by both parties, this which the respondent counsel consented to the terms of settlement so filed, same adopted by both counsel of the petitioner and the respondent dated 14th February,2023. They urged this court to adopt the terms of settlement as the consent judgement of this court.

Based on the above, the court had to accept the terms of settlement so filed as the consent judgment of this court in accordance with order 26 of the High court of FCT court proceedings 2018 which provides thus:

"When a matter comes before the court for the first time the Judge shall in circumstance where it is appropriate, grant to the parties time not more than 30 days within which the parties may explore possibilities for settlement of the disputes."

It is trite that a petition seeking the grant of dissolution of marriage must prove that the marriage has broken down irretrievably. This is the ground under the MCA for which a petition for dissolution of marriage can be brought before the court. This

fact is stated in the petition presented in paragraph 10, which I will reproduce below.

a. Over the years, the relationship between the petitioner and the respondent became very frosty and the hitherto passionate love between them has disappeared.

b. In the interest of their respective sanity, the petitioner moved out of the matrimonial home on 1st October 2019 and the parties have now agreed that the marriage be amicably dissolved.

and clause 7 of the petition provides thus

**"Thereby the biological child of the marriage Leon Moeller's now
18 years old."**

A careful perusal of the above shows that the marriage between the petitioner and respondent has broken down irretrievably hence this court will proceed to adopt the forms of settlement as the consent judgement of this court.

It is to be noted that a consent judgment is a final judgement as it determines the final rights of the parties and binds them. It extinguishes the original cause of action and divests the court of jurisdiction to hear the same subject matter 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, see order 26 of the High Court of the FCT civil procedure Rules 2018 (cited)

The terms agreed upon by parties in settlements discussions are usually filed in court and upon the application of the parties, becomes the judgement of the court in that case.

In the case of **Vucan Gas Ltd vs Okunlola (1993) 2 NWLR (PT.274)142** the court held thus:

"A consent judgement presuppose 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 judgment 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 has been brought to the end.

Similarly, in D.T.T. Ent. (Nig.) Co. LTD V Busaris (2011) 8 NWLR (PT 1249) 387 the supreme court held thus:

"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 after trial it is not dependent upon exchange of pleadings or calling of evidence."

A consent judgement is a decision reached by a court upon the agreement of all the parties involved in a suit. In civil suits like this one, the parties can work out an agreement and have it finalized with this judgment to end litigation. the court's decision is final and puts the issue to rest, ensuring that it cannot be contested or re-litigated in the future.

For a judge to issue a consent judgement all parties must indicate that the agreement has been mutually agreed on and that they find it acceptable.

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 and dated the 14th day of February, 2023 as the consent judgement of this court and order as follows as agreed by the parties.

a. A decree of dissolution of the marriage contracted on the 21st day of February 2004 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 years immediately preceding the preparation of the petition. See clause 6 and 10 (b) of the petition for decree of dissolution of marriage.

b. The marriage between the petitioner and the respondent has been terminated and all paternal rights whatsoever which the respondent hitherto exercised over the petitioners adopted niece Ms Ochanya Amalchi by virtue of the marriage between the respondent and the petitioner.

c. It is ordered that the respondent to not later than December 2022, pay the lump sum of (£34,352) Thirty-Four Thousand Three Hundred and Fifty-Two euros out of the £61,896.66 from the fuchspezial mortgage contract number 13716571L01 already paid into the respondents account to the Landheim am Ammersee for their son Leon Moeller's school fees and expenses for the period January-August 2023.

d. It is ordered that the respondent not later than 1st march, 2023, pay £29,663.28 (Twenty Nine Thousand Six Hundred and Sixty Three Euros, Twenty Eight cents) being the petitioner's equal share of the balance on the 2 (two) cancelled mortgage savings contract: Fuchspezial with number 13716571L01 worth £61,896.66 and Fuchsimmo with number 13716571L02 worth £31,781.89 being a total amount of £93,678.55 less the sum of £34,352 deducted for their sons' school fees and expenses for the period January -August 2023.

e. It is ordered that the initial caution fee of £10,000 (Ten thousand Euros) deposited by the respondent with Landheim Am Ammersee upon the admission of their son Leon Moeller into the school shall be transferred by the school upon Leon's graduation in June 2023 to an account in the name of their son Leon Moeller which money is toward his university studies.

f. it is ordered that respondent to not later than December 2022 make a lump sum payment of £8,000 (Eight thousand Euros) into the account of his son Leon Moeller as emergency fund.

g. It is ordered that respondent to immediately re-activate and re-include his son Leon Moeller in the AOK family insurance operational in Germany under the cover of the `respondent for the duration of his university studies

h. It is ordered that the respondent should continue to maintain his son Leon Moeller's current mobile phone contract until its expiration; and to fund and allow Leon's credit card to continue to run on the respondent's bank account.

i. It is hereby ordered that the respondent's exclusive ownership and possession of the contents, furniture and electronics of the petitioner and respondent's apartment in Germany except for the petitioner's personal effects and books.

j. It is hereby ordered that the petitioner's exclusive ownership and possession of the contents, furniture and electronics of the petitioner and respondent's matrimonial home in Abuja except for the respondent's personal effect.

This is the judgement of this court dated the 16-02-2023 Attached to the judgment is the settlement of agreement.

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. Ogechi Abu for the Petitioner.
2. Afurumchi N. Ottah for the Respondent.