

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

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

**DATED THIS FRIDAY 27<sup>TH</sup> OCTOBER, 2023**

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

**SUIT NO: FCT/HC/PET/252/2023**

**BETWEEN:**

**OMOREGIE MAIMUNA MAMMAN..... PETITIONER/APPLICANT**

**AND**

**OMOREGIE JUDE OSAIBOVO..... RESPONDENT**

**JUDGMENT**

This judgment is on notice of petition with suit No; PET/252/2023 dated the 15<sup>th</sup> day of February, 2023 filed on the 17<sup>th</sup> day of February, 2023.

The petitioner seeks the following orders:

- 1. A Decree of Dissolution of the marriage celebrated on the 19<sup>th</sup> day of December, 2012 between the petitioner and the respondent herein on the ground that the marriage has broken down irretrievably as since the marriage the respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with the Respondent.**
- 2. An order granting the petitioner sole physical custody of Omoregie Enehizenaan and Omoregie Ehizogie Kenric. The children of the marriage.**

- 3. An order directing the respondent to pay the petitioner the sum of #1,000,000.00 (One Million Naira) quarterly (Every four months) for school fees, medical expenses and maintenance of the children of the marriage.**

These are the claims of the petitioner against the Respondent. Attached to the notice of petition is a verifying affidavit deposed to by Omoregie Maimuna Mamman of no 2 B Close 2<sup>nd</sup> Avenue Efab Estate Life Camp-Abuja, FCT. Certificate relating to reconciliation dated the 15<sup>th</sup> February, 2023, witness statement of Omoregie Maimuna Mamman of 22 paragraphs and the following attached documents:

- 1. Certificate of marriage between Jude Esaigbovo Omoregie and Maimuna Mamman dated the 19<sup>th</sup> day of December, 2012.**
- 2. Certificate of birth with No: A13. 1339842 of Omoregie Lan Enehizena dated the 17-04-2014 issued by the National Population commission.**
- 3. Certificate of birth No A08-9101592 of Omoregie Ehizogie Kendric dated 07-04-2021 issued by the National Population Commission.**
- 4. Official receipt of Oasis International School Abuja of Ehizogie Kendric Omoregie.**
- 5. Official receipt of Oasis International School Abuja of Omoregie Lan Enehizena.**
- 6. Service invoice frompatsilver Educational support and therapy center of Ehizogie Omoregie II Number**

On the 17-2-2023 the petitioner filed a motion expert for an order of substituted service of the originating process by pasting at the entrance door of the usual address of the Respondent House No.14 Fafu Reliable homes Jabi Bakibi Abuja, FCT. The motion was moved dated 27-03-2023 and the order sought therein was granted and enrolment order was signed and served as directed by substituted means on the respondent. The matter was then adjourned to 6-04-2023 for hearing for report of service.

On the 6-04-2023, the petitioner counsel informed the court that service has been effected on then respondent, and applied for a date for hearing and the matter adjourned on 08-05-2023 for hearing with an order of the court to serve the respondent with hearing notice.

On the 08-05-2023 the petitioner counsel who was present in court apply to the court to proceed with the hearing of this suit in the absence of the respondent. By order 32(3) of the High Court of the FCT Abuja Civil procedure Rules 2018, the order provides thus;

“When a cause is called for hearing if the claimant appears and the defendant does not appear, the claimant may prove his claim, so far as the burden of proof is upon him.”

In view of the order 32(4), the court ordered the petitioner to proceed with the hearing of this case.

The petitioner then opened his case as PW1, in its testimony he stated that she is a business development officer with the Leventies Foundation Nigeria and that the Respondent is her husband.

On the 20-2-2023 she made a statement on oath, the said statement which she identified through her signature and her picture, and urge this court to adopt the witness statement on oath as her oral testimony before the court.

The petitioner who identified the marriage certificate and the two birth certificate, also the pleaded receipt of the school fees. She stated that she has been the one paying the school fees of the two children. The marriage certificate and the two birth certificate of the children were admitted in evidence and marked as Exhibit A, B, and B1 respectively while the receipt from Patsilver Educational support and therapy center 12 Number were admitted as Exhibit C and CII respectively. She then pray the court to grant all her reliefs. This matter was then adjourned to 12-05-2023 for cross examination of PW1 by the respondent.

On the 12-05-2023, the learned petitioners counsel informed the court that the witness sought to be cross examined was present in court that in the absence of any written communication or explanation while the respondent was absent in court or represented by counsel applied that the respondent be foreclosed for cross examining the petitioner and the petitioner be discharged.

Upon the oral application made by the petitioner counsel for the foreclose of the right of the respondent from cross examining PW1 and the reasons adduced this court was convinced with the reasons adduced by the petitioner counsel and accordingly granted the prayers for the foreclose of the right of the respondent

from cross examining PW1. The matter was adjourned for continuation of hearing to 22-05-2023.

On the 22-05-2023, as usual the petitioner counsel was in court while neither the respondent nor the counsel were in court. The petitioners counsel who informed the court that the respondent was duly served against today's date and craved the indulgence of the court to proceed with his case as his witness was in court. The court granted the prayer sought.

PW2, one Thomas Wanger Adigi lived behind Aso Estate Airport Road, that before now he was living at Fafu Homes behind King's Court Mbororo, knows the petitioner in this case.

In his testimony before the court, he stated that the parties in this suit were his neighbors and the respondent was his friend. He stated that, one evening he was in his house when he heard crying from the house, and when he came out to check he met the houseboy running to his house that he should come quickly that his friend was beating his wife. On getting to the house, he met his friend at the dining section while the wife was on the floor. The husband was sitting on a side stool that he went in and held the husband and tried to separate them i.e. to mediate. That it was one of the times he came into an incident like that, that there are times he was asked to come, when he was assaulting her physically sometimes at odd hours of the night.

That as his friend, he had tried to have counseling with him as regard the constant abuse in the house but nothing changed and had to involve a clique of his friend to also talk to him. That at sometimes he didn't like the involvement of the clique of friends and insisted he should stay away from his family as it was a domestic issue. The matter was adjourned to 5-06-2023 from cross examination of PW2 by the Respondent.

On the 5-06-2023 as usual the petitioner counsel and the petitioner were in court while neither the respondent nor his counsel were in court. The petitioners counsel then applied that the respondent counsel be foreclosed from cross examining PW2. The oral application made was granted and the respondent foreclosed from cross examining PW2.

The petitioner then informed the court to close its case and applied orally for the court to also foreclose the right of the respondent from defending this suit and the

matter adjourned to enable the petitioner file and adopt her final written address to 3<sup>rd</sup> July, 2023.

The petitioner final written address dated the 22-06-2023 filed on the 23-06-2023 and adopted on the 3-07-2023 whereby, he urged the court to grant all the reliefs of the petitioner.

In the final written address, the petitioner raised a sole issue for consideration and determination in the matter to wit:

“Whether the petitioner has been able to prove that her marriage to the respondent has broken down irretrievably as to entitled to a Decree of Dissolution of the marriage and order Ancillary reliefs sought”

On this it is the submission of the learned counsel of the petitioner, that the petitioner has led evidence as to how the respondent has been beating and assaulting her even to the extent of strangling her to death if not for the help of neighbors and security men for no just cause. Referred to section 15(1)(2) of the MCA, that the evidence of the petitioner as to how she has been maltreated, battered and beaten frequently by the respondent has remained unchallenged and uncontroverted by the respondent who though served with the process in this suit failed and/or refuses to respond to it.

Referred to the case of IJEBU ODE LG V ADEDEJI (1991) LPELR-SC 22/1989 at 39 paragraph A-D where my lord Karibi Whyte JSC stated:

**“Where there is evidence to support a claim, as here which remains unchallenged, or uncontroverted by the other party, the court is bound to accept the evidence in support of the claim.”**

On this submitted that the court is bound to accept the petitioners evidence as to the behavior of the respondent since the marriage and how she have solely been taking care of the two children of the marriage.

Furthermore, that this court discharged its duty of creating the atmosphere or environment for the respondent to be heard, however it was not for the court to ensure that the respondent utilize the atmosphere or environment, on this referred the court to the case of NewsWatch Communication V Attah (2006) 12 NWLR (PT. 993) 144 at 171c, 175-13D and 181 a-182E. And that in the instant case the respondent was served with the process of the court by substituted means by

pastings at the entrance door of his usual residence, the court granted several adjournments, hearing notices were served on him but he exercised his constitutional right and stayed away from the court.

Finally submitted that, the law is trite that the unchallenged and uncontroverted evidence of the petitioner ought to be accepted by the court as establishing the facts therein contained. On this placed reliance on the case of *Ogunyade V Oshonkeye* (2007)2 MJSC 157(a) 160. Further that the petitioner has led unchallenged evidence to the effect that the respondent has shown cruelty, by maltreating and beating her since the marriage before proceeding with this petition for dissolution of marriage which is a specie of the conduct grounding the dissolution of the marriage under section 15 (a) (c) of the MCA, the court should dissolve the marriage as the petitioner has satisfied all necessary requirements for the order to be made, and grant sole custody of the two children of the marriage Omoregie Enehizena Lan and Omoregie Ehizogie Kendric until they attain 18 years of age to the petitioner, as well as cost of maintenance, her evidence in respect of same having remained unchallenged.

I have carefully considered the evidence adduced by the petitioner as well as all the documents admitted by the court. The petitioner's evidence was uncontroverted while the documents tendered fully support the case of the petitioner.

As I said in the early part of this Judgment, the respondent though properly served with the notice of the petition by substituted means, chose to do nothing. The staying away from the defense of this suit, did not enter appearance nor file any statement of defense.

The law is settled that where the defendant (herein the respondent) fails to enter appearance and did not file any statement of Defense, every allegation of fact contained in the statement of claim must be taken as established even without further proof. See *Arimi V Bashorun* (1979) 1 FNR. 226. Also in *Okeobor V Police Council* (2003)12 NWLR (PT 834) 444 at 472-473, the supreme court Per Tobi JSC said:

**“Where the defendant fails to file a defense, he will be deemed to have admitted the claim or reliefs in the statement of claim”**

In this case, the claim is one seeking for a Decree of dissolution of Marriage, an order granting the petitioner sole physical custody of the two children of the

marriage and an order directing the respondent to pay to the petitioner, the sum of #1,000,000.00 (One million naira) Quarterly (Every four month) for school fees, medical expenses and maintenance of the children of the marriage.

The petitioner is therefore required to lead evidence in proof of its claim. In fulfillment of this requirement, the petitioner led evidence in support of this petition which has not been contested, challenged, or controverted. The law is trite that where evidence is unchallenged, or uncontroverted and manifestly credible and reasonable, court or tribunal is at liberty to accept it and indeed act on it.

See *Ikwuka V Anachuna* (1996)1 NWLR (pt.424) 355 at 366.

Now on the first claim being the dissolution of marriage, the petitioner in her witness statement on oath paragraph 3, 4, 5, 6, 7, 8, 9 & 10, which is reproduced below;

**Paragraph 3:**

**That the respondent and I became legally married on the 19<sup>th</sup>, December, 2012 at the Federal Marriage Registry Lagos state.**

**Paragraph 4:**

**In the course of my marriage to the respondent, I conceived and gave birth to two male children, Omoregie Enehizena Lan born on 20<sup>th</sup> day of July, 2013 and Omoregie Ehizogie Kendric born on the 17<sup>th</sup> day of November, 2014.**

**Paragraph 5:**

**Since the marriage between us, the respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with him as he has physically abused me and harassed me as well as my family.**

**Paragraph 6:**

**Since the marriage between the respondent and I, the respondent has abused me both physically and emotionally to this end, I state that the respondent has on numerous occasions brutally and violently attacked, assaulted and battered my person (sometimes in the presence of our children) causing me to seek medical assistance.**

**Paragraph 7:**

**Upon the intervention of family and close friends, we were still unable to reconcile our differences, I further states that, I attempted to leave the house the respondent forcefully detained me in the matrimonial home causing a struggle to ensure between both of us. The entirety of this incident took place in the presence of our infant children.**

**Paragraph 8:**

**I further state that the respondent could not share the same room with me anymore as I now irritate him.**

**Paragraph 9:**

**That on the 12<sup>th</sup> day of May, 2022, the respondent beat me thoroughly and attempted to strangle me to death when the security men in the compound rushed to rescue me and subsequently moved out of the house on the next day being 13<sup>th</sup> may, 2022 and never returned up till date.**

**Paragraph 10:**

**That on that faithful day all the neighbors gathered and I felt thoroughly humiliated.**

**From the paragraph so stated it is clear that the marriage has broken down irretrievably. In Akimbuwa V Akimbuwa reported at page 1 particularly at page 3 RTLR of the selected matrimonial causes by Fumilayo Quadir (revised Edition) Sections 15(10) of the MCA 2004 provides thus:**

**“A petition under this act by a party to a marriage for a decree of dissolution of marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably”**

Section 15(2) provides:

“The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have been broken down irretrievably if, but only if the petitioner satisfies the court of one or more of the following facts:

- a. **That the respondent has willfully and persistently refused to consummate the marriage.**
- b. **That since the marriage the respondent has committed adultery and the petitioner finds it unfavorable to live with the respondent.**
- c. **That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.**
- d. **The respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.**
- e. **That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted.**
- f. **That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition**
- g. **That the other party to the marriage has been absent from the petitioner for such time and in such circumstance as to provide reasonable grounds for presuming that he or she is dead.**

By the testimony of the petitioner, it is evidently clear that the petitioner and the respondent have lived apart for more than two year, and the respondent has deserted the petitioner for more than two years preceding the filing of this petition. I therefore hold that, the petitioner has proved her case as provided for in sections (15) (2) c, d, e, f, g, & h of the MCA 2004 and is therefore entitled to be granted relief one.

On the issue of the custody of the two children of the marriage, The petitioner has also given evidence of the maintenance for the upkeep and education of the children of the marriage and that the petitioner gave evidence that the children are with her and she is fully responsible for their education. Further submit that, the children are in her custody and pray the court to have the custody of the two children of the marriage. This evidence of the petitioner is unchallenged and uncontroverted, the trial court ought to accept the testimony as true and act on it. See *Towoeni V Towoeni* (1) SMC page 173 at 178, R8, *Oduni V Bamjbolam* (1995) NWLR (page 374) pg. 641.

To buttress her assertion, she tendered exhibit of payment of the school fees of the two children and service invoice of center based Therapy intervention of Ehizogie Omoregie in Evidence.

It is trite law, that in custody proceedings, unless it is abundantly clear that the mother suffers from moral conduct, infectious disease, insanity, lack of reasonable means or is cruel to the children, ETC children of tender age, male or female are ordinarily better off in terms of welfare and upbringing with the mother. Of course, there may be few exceptions that are far apart where the father maybe better than some mothers in the upbringing of the children. There is always that rebuttable presumption in favour of the mother in the consideration of broken down marriage like in this instant case. See *Odusote V Odusote* (2012)13 NWLR (PT 1288) pg. 478.

By the provision of section 70(1) of the MCA, the court may in proceeding with respect to the maintenance of a party to a marriage or of children of the marriage, other than proceeding for an order for maintenance pending the disposal of proceedings make such order as it think proper having regards to the means, caring capacity and conduct of the parties to the marriage and all other relevant circumstances.

The principles guiding the assessment of maintenance in matrimonial proceedings includes:

- 1. The station in life of the parties and their lifestyle.**
- 2. The respective means**
- 3. The conduct of the parties.**

On this the petitioner proposed arrangement for the welfare and education of the children thus:

Education and Welfare:

- 1. The petitioner prays for this honorable court to order the respondent to support her in the responsibility of the payment of the children school fees and general upkeep.**
- 2. The respondent shall be financially obliged to providing for the school fees, medical bills and maintenance of the children of the marriage (Omorie Enehizena Lan and Omorie Ehizogie Kendric).**

As stated earlier in this Judgment, the failure of the respondent to respond to his petition confirms in all material particulars that the fact that the marriage has broken down irretrievably and that they have lived apart now for more than two years.

In the final analysis and in summation, I accordingly hereby make the following order.

- 1. An order of a decree of Dissolution of marriage celebrated on the 19<sup>th</sup> of December, 2012 between the petitioner and the respondent herein on the ground that the marriage has broken down irretrievably.**
- 2. The petitioner is granted the sole physical custody of Omoregie Enehizena Lan and Omoregie Ehizogie Kendric with an order that the respondent shall be visiting the children of the marriage at weekends and during holidays.**
- 3. The respondent to pay the petitioner the sum of #200,000 (Two Hundred Thousand Quarterly) every four months for school fees, medical expenses and maintenance of the children of the marriage.**

This is the Judgment of the court.

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**Hon. Justice A. Y. Shafa**

**Appearance:**

1. Faith Okpeterhe for the Petitioner
2. Respondent absent.