

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : SUIT NO: PET/414/2021
DATE: : THURSDAY 25TH APRIL, 2024

BETWEEN:

DR. LILIAN OZUGBO PETITIONER

AND

MR. KINGSLEY CHUKWUEMEKA OZUGBO... RESPONDENT

JUDGMENT

By a Notice of Petition for the Dissolution of Statutory Marriage dated 13th October, 2021, and filed same day Petitioner approached this Honourable Court for the following:-

1. An Order of dissolution of the marriage between the Petitioner and the Respondent on the ground 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 therefore the marriage has broken down irretrievably.
2. An Order of this Honourable Court directing the Respondent to take up the responsibility to pay the tuition fee and other ancillary fees, as well as purchase of textbooks, note/exercise books, school uniform and other items/materials necessary for the proper education of the four children of the marriage for each academic term or session from their current level of education till they graduate from University.
3. An Order directing the Respondent to always pay the money covering the items mentioned in prayer (b) above into the

Court's custody at the commencement of every academic term/session to enable the Petitioner access the said money for the education of the four children of the marriage.

4. An Order of this Honourable Court granting custody of the four children of the marriage to the Petitioner till the children become adults and can make their own decision to be with the Respondent.
5. And for such other reliefs as the Honourable Court may think just and necessary to make in the circumstance of this case.

The grounds upon which the petition is brought are as follows:-

- a. That the Respondent has consistently behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent in marriage since after the Respondent began to insist that the Petitioner's mother, who has lived with the parties since 2011 with the consent of the Respondent (for the purpose of taking care of the children of the marriage as parties had decided against getting nannies and house help) should be thrown out of the house simply because the Petitioner refused to give the Respondent access to the Petitioner's personal bank account and the

bank account of Azriel Premier Hospital Limited, a hospital that is being run and managed by the Petitioner.

Upon service of the said petition on the Respondent, the Respondent neither filed an answer nor cross petition. The Respondent did not file any process.

The petition was set down for hearing on 31st January, 2023.

The Petitioner adopted her verifying affidavit and tendered the following in evidence and was admitted;

1. Marriage Certificate
2. School Fees Receipt
3. Copy of Quit Notice
4. FCMB and Union Bank Account statements with Certificate of Compliance.

All marked Exhibits "A", "B", "C" and "D" respectively.

Petitioner was examined and subsequently discharged.

Learned counsel for the Petitioner filed final written address wherein three (3) issues were formulated for determination to-wit;

- 1. Whether from the evidence adduced by the Petitioner, the marriage has broken down irretrievably.**
- 2. Whether the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.**
- 3. Whether the Petitioner has met the required standard of proof and is entitled to the Orders sought.**

On issue one, learned counsel submits, that the Petitioner has placed before this Court substantial evidence supporting her case that the marriage between the Petitioner and Respondent has broken down irretrievably as the sole ground for dissolution of marriages as provided for in Section 15(1) of the Matrimonial Causes Act. The instant case has proven this ground for dissolution of marriage. The above is supported by the locus classicus case of ***HYDE VS. HYDE***.

Learned counsel submits, that in arriving at the decision on whether or not a marriage has truly broken down irretrievably, the Court is guided by the provision of Section 15(2) of the Matrimonial Causes Act. In the instant case, the Petitioner has by

credible evidence, as can be seen in paragraph 10 of her witness statement on oath, the above piece of evidence strengthened the case that she cannot be reasonably be expected to live with the Respondent, the Petitioner heavily relies on all depositions in the Petitioner's witness statement on oath especially at Paragraph 11 (d) of the said Oath. Counsel cited the case of ***EKEREBE VS. EKEBE (1993) 3 NWLR (Pt. 596) 514 CA.***

On issue two, Learned counsel submits, that the Petitioner' evidenced facts to elucidate its claim that the Petitioner cannot be reasonably expected to live with the Respondent.

1. The Respondent failure to live up to his responsibilities to cater for the needs of the family, general upkeep, House Rent, Shop Rent, School fees of their children inclusive.
2. The Respondent dishonestly refused to remit the sum paid into his account by the Petitioner for onward remittance to the landlord.
3. The Respondent has severally been aggressive to the Petitioner as the Petitioner is in constant fear for her life and wellbeing as a result of the actions of the Respondent.

4. The Respondent has exhibited fetish practices which is contrary to the Christian faith and belief of the Petitioner.
5. The Respondent has caused enormous mental, emotional and psychological trauma, affliction, economic suffering, pains and embarrassment to the Petitioner as well as constituting imminent danger and threat both physically and spiritually to the lives of the Petitioner, her mother and the children of the marriage.

The Petitioner has established that the Respondent has behaved in numerous ways and on the basis of those facts proven and stated by the Petitioner under oath during examination in-chief has proven that the Petitioner cannot be reasonably expected to live with the Respondent. Counsel commend the case of ***NANNA VS. NANNA 2006 3 NWLR (Pt. 966)1 at 30; DAMULAK VS. DAMULAK 2004 8 NWLR (Pt. 874) 151.***

On issue three, learned counsel submits, that the Petitioner has met the required standard of proof and is entitled to the Orders sought. The Petitioner in line with the provision of Sections 131, 133 and 134 Evidence Act, 2011 has discharged the burden of proof which lies on the Petitioner, the standard of proof shall be discharged on balance of probabilities which is in favour of the

Petitioner as the Respondent has failed to challenge or contradict the evidence before this Honourable Court.

By the provision of Section 15(2)(d) of the Matrimonial Causes Act, where the Respondent has deserted the Petitioner for continuous period of at least one year immediately preceding the presentation of the petition, the Court will hold that the marriage has broken down irretrievable, this instant case is a replica of this section of the Matrimonial Causes Act. It has fulfilled the conditions for desertion by the Respondent. The de facto separation of the parties i.e A case of desertion when one spouse physically departs from the Matrimonial Home. Counsel commend the case of ***OGHENEVBEDE VS. OGHENEVBEDE (1973)3 U.I.L.R 104***

Learned counsel further submits, that in this present suit the Respondent did not call evidence at the trial, in fact, he was foreclosed from defence for lack of diligent prosecution with evidence showing the Respondent was always served hearing notice. Counsel humbly submits that in such circumstances the onus of proof on the Petitioner will be discharged on a minimal proof. This was the decision in ***AJIDAHUN VA AJIDAHUN***

(2002) 4 NWLR (Pt. 654) at 607 Paragraph 5; AINA VS. UBA PLC. (1997) 4 NWLR (Pt. 498) Page 181 at 189.

It is trite and well settled law that both parents of a child have equal rights to the custody of a child however, in considering the custody of a child the Court is enjoined to consider what will be in the best interest of the child. Counsel refer to the cases of ***NWOSU VS. NWOSU (2011) LPELR – 4654(CA); WILLIAMS VS. WILLIAMS (1987) LPELR – 8050.***

Learned counsel submits, that notwithstanding the facts that both the Petitioner and Respondent have equal legal right to the custody of their children, this Honourable Court has the power to exercise its discretionary power in favour of the Petitioner by granting the custody of the four children who are minors to the Petitioner most especially considering their age and the gender of the first child who is female. More so when the Courts have long recognized that it is in the best interest for children of tender age to remain in the care and custody of their loving mother.

Learned counsel contended, that the four children of the marriage were resident at the matrimonial home with both parties herein till the time of filling this petition; the Petitioner thus proposes that four children of the marriage being minors with oldest being

thirteen (13) years, while the rest are Ten (10) years, Six (6) years and Ten (10) months respectively, should be in the custody of the Petitioner subject to the children exercising their right to stay with the Respondent in the future, when they become adults. Especially, the first and second children of the marriage who are females, they would need the Petitioner to bring them up and guide them in relation to their unique biological and physiological makeup as a female. The last child of the marriage is just Ten (10) months old and is still being breast fed by the Petitioner, he needs to be in the custody of the Petitioner. The third child who is just Six (6) years old would need the company of his siblings, else he could develop some psychological problems and become withdrawn due to loneliness; thus, he needs to be in the custody of the Petitioner.

The Petitioner requests specifically that the Respondent be allowed access to the four children of the marriage forth nightly (every other weekend, specifically Saturdays) between 2:00pm to 6:00pm, until the four children of the marriage become adults.

Learned counsel further contended, that the Respondent has left his responsibilities of taking care of his children to the Petitioner. Section 71(1) of the Matrimonial Causes Act, 1970. Conferred the

right to consider the interest of the children as paramount, thereby ordering the Respondent to do the needful as to the proper maintenance of the children as the Court deems fit.

Learned counsel submits, that the Respondent has no legal or factual basis that should attract any judicial consideration. It is not a case that should be thought twice before judgment is delivered in favour of the Petitioner.

Counsel finally urge the Court to grant the prayers of the Petitioner as stated in the notice of petition.

COURT:-

I have considered the case of the Petitioner vis – a vis the entire evidence adduced and tendered by the Petitioner in prove of its case.

I have equally read through Petitioner’s final written address which encompasses the legal argument in support of the reliefs sought as contained in the Petition. The issue 1 formulated for determination by the Petitioner’s counsel seems most apt in the resolution of this Petition.

It is for above reason that same is hereby adopted as court’s issue for determination. The issue is; ***whether from the***

evidence adduced by the Petitioner, the marriage has broken down irretrievably.

Relief 1 as endorsed on the body of this Petition seeks an Order of dissolution of the marriage between the Petitioner and the Respondent on the ground 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 therefore the marriage has broken down irretrievably.

It is worthy of note, that Respondent who was served the said petition and indeed hearing notices failed and or ignored to respond to the said petition.

I have taken note of the fact that the grounds for dissolution of marriage are clearly spelt out under Section 15(1) and (2) of the Matrimonial Causes Act.

The standard of proof in Matrimonial Causes Matters such as the present one, is embodied in Section 82(1) of the Act. See ***OMOTUNDE VS. OMOTUNDE (2001) 9 NWLR (Pt. 718) page 252 at page 274 – 245 paragraphs G-A.***

I shall dwell on the requisites for the dissolution of marriage but not after I would have considered the effect of Respondent in this

case, resting in case on that of the Petitioner, and the attendant implications in law.

Dissolution of marriage contracted pursuant to our marriage law is guided by Matrimonial Causes Act, Cap 220 LFN, 1990.

Under the said Act, specifically Section 15(1), a Petition by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage that the said marriage has broken down irretrievably.

Under Section 15(2) of the Act, the court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have 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 intolerable 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. That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the determination 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 the decree being granted.
- f. That the parties to the marriage have lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the petition.
- g. That the other party to the marriage has, for a period of not less than one year failed to comply with a decree or registration of conjugal rights made under this Act.
- h. That the other party to the marriage has been absent from the petition for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

For emphasis, one or more of the conditions enumerated under Section 15(2) Matrimonial Causes Act (MCA) suffice to hold the marriage has broken down irretrievably.

In ***HARRIMAN VS HARRIMAN (1989) 5 NWLR (Pt. 119) 6 UCHE OMO***, JCA (as he then was) held that under the Matrimonial Causes Act, 1970, there is only one ground for the dissolution of marriages, and that is that the marriage has broken down irretrievably, which is provided for under Section 15(1) of the Act.

In prove of its petition, petitioner gave evidence to the effect that the marriage between her and the Respondent has broken down irretrievably in view of the following:-

That the Respondent has consistently behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent in marriage since after the Respondent began to insist that the Petitioner's mother, who has lived with the parties since 2011 with the consent of the Respondent (for the purpose of taking care of the children of the marriage as parties had decided against getting nannies and house help) should be thrown out of the house simply because the Petitioner refused to give the Respondent access to the Petitioner's personal bank account and the bank account of Azriel Premier Hospital Limited, a hospital that is being run and managed by the Petitioner.

The philosophy of Christian marriage is vividly captured in the first chapter of the book of Genesis when man first saw a woman created from his rib by Yaweh and he concluded; this at last is bone from my bone and flesh from my flesh.

She is to be called woman because she was rather from man, that is why the man leaves his father and mother and joins himself to his wife and then become one body. See Genesis 2; 18-24.

As stated earlier in the preceding part of this judgment, any one condition for dissolution under Matrimonial Causes Act (MCA) established, can sustain dissolution of marriage.

Petitioner has clearly been able to show by evidence, since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, and therefore the marriage has broken down irretrievably.

The couple are adults and cannot be forced into any marriage.

They loved themselves and have now found reason (good or bad), to go their separate ways.

The court cannot force the couple to stay in the marriage.

Consequently, it is hereby ordered that the marriage contracted on 30th Oct

October, 2011 at AMAC Marriage Registry, Abuja, FCT between Petitioner and Respondent shall be and is hereby dissolved on the ground that the marriage has broken down irretrievably by reason of the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him and clearly supported the dissolution of the marriage.

Decree Nisi will issue forthwith and shall be made absolute after three months from the date hereof if there is no cause to the contrary.

With the dissolution of the marriage, I will now gravitate towards the issue of custody of the four children.

In Matrimonial Causes, great importance is placed on the care, welfare and maintenance of the children of the marriage. See Section 70(1) of the Matrimonial Causes Act.

In other words, this responsibility includes his/her needs in terms of food, shelter, clothing and the life.

***ALABI VS. ALABI (2008) ALL FWLR (Pt. 418) 254 at 257
Page 296 Paragraph C (CA).***

It is instructive to note that it is not the law that a party who succeeds in the proceedings shall always be awarded the custody of the children of the marriage.

It is the evidence of the Petitioner that the four children of the marriage; Onyinyechi Ozugbo (F) born on 28th day of August, 2008, Chidiamara Ozugbo (F) born on 27th April, 2011, Chukwuebuka Ozugbo (M) born on 5th April, 2015 and Kenechukwu Ozugbo (M) born on 19th September, 2020 have been resident at the matrimonial home of both parties herein till the time of filing this Petition. The Petitioner has been largely responsible for the maintenance, education and moral upbringing of the four children of the marriage.

Petitioner prayed the court for An Order of this Honourable Court directing the Respondent take up the responsibility to pay the tuition fee and other ancillary fees, as well as purchase of textbooks, note/exercise books, school uniform and other items/materials necessary for the proper education of the four children of the marriage for each academic term or session from their current level of education till they graduate from University.

An Order directing the Respondent to always pay the money covering the items mentioned in prayer above into the court's

custody at the commencement of every academic term/session to enable the Petitioner access the said money for the education of the four children of the marriage.

An Order of this Honourable Court granting custody of the four Children of the marriage to the Petitioner till the children become adults and can make their own decision to be with the Respondent.

The judicial discretion of a Judge is what is often called into play when the issue of custody of children is dragged by parties i.e mother and father or other stake holders.

If two adults refuse to perform whatever compromises necessary to continue to cohabit and co-parent, then they are required to live in a barbell shaped situation. An efficient situation for each parent on the ends of the space for the children. The children are not shuttled back and forth for the convenience of the adults. They stay in their safe space and both parents remain on their toes day and night to be able to meet the needs of the children.

The age of the children, education, welfare, general upbringing and the arrangement for their accommodation, the conduct of the parties to the marriage are the factors always borne in mind by the Judge in his determining who to have custody.

ODUCHE VS. ODUICHE (2005) LPELR 5076 (CA).

I have perused and assimilated the documentary and oral evidence adduced by Petitioner in support of her petition.

No evidence has been led to show that the Respondent is capable of catering for the four children of the marriage financially, emotionally and psychologically. Moreover, the Respondent is not opposed to any living arrangement for the children suggested by the Petitioner.

My take-off point and answer simpliciter, therefore is that the Petitioner who is the mother of the four children is most suited to take care of her children.

Guided by wisdom and reason, and considering the fact that the children are minors; it is my Judgment that the mother, at this point in time shall keep them in her custody.

On the whole, Petitioner's petition succeeds...

Thus;

An Order of this Honourable Court directing the Respondent take up the responsibility to pay the tuition fee and other ancillary fees, as well as purchase of textbooks, note/exercise books,

school uniform and other items/materials necessary for the proper education of the four children of the marriage for each academic term or session from their current level of education till they graduate from University **is hereby granted.**

An Order directing the Respondent to always pay the money covering the items mentioned in prayer (b) above into the Court's custody at the commencement of every academic term/session to enable the Petitioner access the said money for the education of the four children of the marriage **is hereby granted.**

An Order of this Honourable Court granting custody of the four children of the marriage to the Petitioner till the children become adults and can make their own decision to be with the Respondent is **hereby granted.**

The father shall always provide food, clothing, school fees and all children needs for the four children, and shall have access to his children forth-nightly (every other weekend, specifically Saturdays) between 2:00pm to 6:00pm, until the four children of the marriage become adults.

This is the judgment of this court.

***Justice Y. Halilu
Hon. Judge
25th April, 2024***

APPEARANCES

R.O. Adakole, Esq. with E.K. Dairo, Esq. – for the Petitioner.