

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 6TH DAY OF OCTOBER, 2021
BEFORE: HON. JUSTICE M.A. NASIR
COURT NO: 11
SUIT NO: PET/273/2017

BETWEEN:

OLUFUNKE ALETAN --- PETITIONER

AND

OLUWASHINA AYOMI ADEYEMI --- RESPONDENT

JUDGMENT

The Petitioner instituted this action on the 16/6/2017, the Petitioner seeks for a dissolution of marriage against the Respondent on the ground that the marriage has broken down irretrievably in that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent any longer. The Petitioner also sought for custody of the only child of the marriage Isreal Obalulowa Adeyemi. Hearing commenced and was concluded. Judgment was delivered on the 27/11/2018. However, on the 13/9/2019

the Respondent filed a motion seeking to set aside the judgment of this Court. The application was taken and in a considered ruling delivered on the 26/11/2020 this Court set aside the judgment and the petition was then heard de novo.

The Respondent upon receipt of the Notice of Petition filed an Answer and Cross Petition on the 19/2/2021. However, before the date slated for hearing parties filed terms of settlement in respect of all ancillary reliefs relating to the child of the marriage. And on the 13/7/2021 the Petitioner testified for herself as PW1.

The fact of this Petition as per the evidence of the Petitioner is that as a spinster she got married to the Respondent on the 10/7/2014 at the Federal Marriage Registry AMAC, Abuja. After the marriage she discovered that the Respondent lied about his family, his place of birth and did not have a job. Testifying further, she stated that during the pregnancy and delivery of the child, the

Respondent was nonchalant in paying the bills. She gave birth to the only child of the marriage on the 9/12/2014. The Petitioner said that with little financial and emotional support coming from the Respondent prior to, during pregnancy and after the baby's delivery, she became very broke and emotionally unstable which resulted in the Petitioner becoming overwhelmed with the problems. She tried severally to talk to the Respondent to take up some of his parental responsibilities towards his child but to no avail. Despite the Petitioner's parent's intervention in talking to the Respondent, he did not see the need to change, he was rude, uncooperative and nonchalant.

The Petitioner said she made up her mind to quit the marriage and go back to Lagos where the Respondent was resident to gather some of her belongings. Two exhibits were tendered in evidence.

- Certificate of marriage Exhibit A
- Birth Certificate Exhibit A1.

From the records, learned counsel for the Respondent Emeka Ibeneme Esq said he was not cross examining the Petitioner and that the Respondent was not leading any evidence in defence of the petition. Learned counsel adopted the terms of settlement agreed upon by the parties. Madeh Yakubu Esq who appeared for the Petitioner also adopted the terms of settlement and both counsel waived their right to address the Court.

The Petitioner has relied on unreasonable behaviour pursuant to Section 15(2)(c) of the Matrimonial Causes Act, in bringing this petition. Section 15(2)(c) of the Act states:

“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:

(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.”

By the wordings of this section, it is clear that the Petitioner who relies on this ground must establish by cogent evidence that it would be unreasonable to require her to live with the Respondent. In that wise, the test of whether those behaviours are intolerable to expect the Petitioner to continue to live with the Respondent is objective and not subjective. Therefore, there is every possibility that what the Petitioner terms ‘intolerable’ may not pass this objective test. See Emmanuel vs. Funke (2017) LPELR – 43251 (CA). The Court must be satisfied that the Petitioner cannot reasonably be expected to live with the Respondent before a decree sought is granted. See Oguntoyibo vs. Oguntoyibo (2017) LPELR – 42174 (CA).

The provisions of Section 16(1)(a)–(g) exhaustively listed the various behaviours that qualifies as intolerable behaviour that will be unreasonable to require the Petitioner to continue to cohabit with the Respondent under Section 15(2)(c) Matrimonial Causes Act. Indeed, the operative word in Section 16(1) of the Act is "shall" and “shall” implies compulsion and divestment of discretion on the part of the Court.

A Petitioner can allege any of the grounds listed under Section 15(2) of the Matrimonial Causes Act, but when Section 15(2)(c) is the arrow head ground of the petition, then, it must be grounded on any of the behaviours listed in Section 16(1) of the Matrimonial Causes Act. See Wokomo vs. Wokomo (2020) LPELR - 49882 (CA) per Nimpur, JCA.

In other words unless and until any of the conditions listed in Section 16 (1) (a)–(g) exist with credible evidence;

the Court shall refuse to make an order of dissolution of marriage. See Emmanuel vs. Funke (supra).

The conduct of the Respondent which the Petitioner adjudged intolerable is that of lack of care and concern for her and the only child of the marriage. She stated that during the pregnancy and delivery of the child, the Respondent was nonchalant in paying the bills. She said that with little financial and emotional support coming from the Respondent as her husband prior to, during pregnancy and after the baby's delivery, she became very broke and emotionally unstable which resulted in the Petitioner becoming overwhelmed with the problems. He refused to provide any means of support for the Petitioner and the child. The Respondent did not controvert the above evidence. It is deemed as admitted and therefore taken as proved.

Section 16(1)(c)(ii) of the Matrimonial Causes Act has made provision for this kind of behaviour and made it one

of the behaviours that are termed unreasonable worthy of a dissolution of marriage. It provides:

"16(1) Without prejudice to the generality of Section 15(2)(c) of this Act, the Court hearing a petition for a decree 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 satisfies the Court that:- (c)(ii) the Respondent habitually left the petitioner without reasonable means of support;"

It is quite unfortunate that this kind of behaviour of leaving a spouse/wife and children without means of support is becoming an ugly trend, unbecoming and persistent in our society today and it should be condemned. I am satisfied that the Petitioner has established the ground of dissolution under Section 15(2)(c) of the Matrimonial Causes Act. In the circumstance, I hold that this petition

succeeds and a *Decree Nisi* is granted dissolving the marriage between the Petitioner and the Respondent.

On the issue of custody sought by the Petitioner, parties agreed and filed terms of settlement on the 29th of June, 2021 duly signed by the parties. Both Counsel adopted the said terms and urged the Court to enter same as part of the judgment of the Court. By their terms parties agreed save for clause 1 as follows:

“RESOLUTION/AGREEMENT

1.

2. The parties hereby agree to a joint custody of Israel Obaloluwa Adeyemi who is the only child of the marriage.

3. The Respondent shall be primarily responsible for the cost of education of Israel Obaloluwa Adeyemi, and in particular, the costs of his school fees up to at least, the first Degree level in a higher institution of his

choice, in such amount to be determined by the school or institution he wishes to attend.

4. The Respondent shall be responsible for buying of gifts at Christmas, Easter and all major national Christian Celebration.

5. The Petitioner shall be responsible for the domestic upkeep, including but not limited to the hiring and firing of nanny, feeding, homework, body care and other domestic bills.

6. The parties hereby agree that Israel Obaloluwa Adeyemi shall be registered with a suitable Medical Insurance Scheme and the Insurance costs shall be borne by the Petitioner and the Respondent equally.

7. The Petitioner shall have custody of Israel Obaloluwa Adeyemi during the period that his school is on session and the Respondent shall have custody during his holiday period.

The above terms which have been willfully and mutually agreed upon, are adopted and made to form part of the judgment of this Court. The decree nisi shall become absolute upon the expiration of 3 months from today.

Signed

Honourable Judge

Appearances:

Petitioner in Court

Madeh Yakubu Esq – for the Petitioner

Emeka Ibeneme Esq – for the Respondent