IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GARKI

CLERK: CHARITY ONUZULIKE
COURT NO. 10

SUIT NO: FCT/HC/PET/109/2022
DATE: 25/9/2024

BETWEEN:

COVENANT CHUKWUNONSO NDUBUISI..... PETITIONER

AND

NGOZI IFEYINWA NDUBUISI……..RESPONDENT

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Petitioner filed this petition on 28th February 2022, wherein he sought a single relief from this Honourable Court to wit:

> ***A DECREE OF DISSOLUTION OF THE MARRIAGE celebrated between the Petitioner and Respondent celebrated on the 20th April 2023 as the marriage has broken down irretrievably on the ground that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to live with her.***

The Petitioner also filed alongside the Petition, a Verifying Affidavit, and a Witness Statement on Oath.

The Respondent in opposition to the Petition filed her Answer and a Cross Petition on 21st November 2022.

The Petitioner opened his case on 20th November 2023 and testified. He adopted his Witness Statement on Oath, tendered

documents in Court and was cross-examined by the Respondents Counsel.

The Respondent filed an Answer to the Petition on 21st November 2022 and a Cross-Petition, while the Petitioner filed no Reply to Answer and the Cross Petition. The Respondent was however cross-examined on 12th March 2024.

EVIDENCE

Petitioner Case –
The Petitioner in proof of his case adopted his witness statement on oath deposed to on 20th November 2023 and tendered in evidence one document namely,

a. Marriage Certificate – **Exhibit "A"**

Under cross-examination, the Petitioner was manifestly unshaken as to his ground of the Petition, which bothered on intolerable behaviour of the Respondent. None of the facts and evidence of intolerable behaviour was remotely watered down under cross-examination. It was firmly established that he was a Pastor, that the issues leading to this instant Petition could not be resolved by family or Church members, that there was no purported affair with one Ifeoma Owo nor proof of marriage to the said person. Most importantly, that he DID NOT seek for a dissolution of the marriage because there was no child of the marriage.

Respondent's Case –
Under cross-examination, this witness confirmed that she wanted a dissolution of the marriage with the Petitioner, that the Petitioner was a full time Pastor and was not a salary earner, the Respondent also confirmed after having read paragraph 5 of her Witness Statement on Oath that there was no pleaded fact respect to same. The Respondent contradicted herself under-cross examination when she confirmed that she had a job at Dalchi-Fit

Suites and was earning salary of N50,000 (Fifty Thousand Naira) contrary to paragraph 2 (c) of her Cross-Petition were it was stated ***"the respondent has not (sic) means of living presently"***.

She confirmed under cross-examination ***"I have no medical report to support paragraph 6",*** which paragraph, also as contained in the Respondents Witness Statement stated ***"that it was the Petitioner who has been biting the respondent and even gave he respondent the mark which made the respondent to result to the use of eye glass perpetually."***

The Respondent confirmed that she did not sue Ifeoma Owo who she purportedly claimed the Petitioner committed adultery with, contrary to the provisions of the Section 32(1) of the Matrimonial Causes Act.

The Respondent also under the heat of cross-examination could not substantiate paragraph 9 of her Witness Statement same not having been pleaded but was merely an afterthought.

This Honourable Court thereafter adjourned the matter to 30th May 2024 for adoption of Final Written Address and upon the election of the Respondent's not to file an address, it became imperative for the Petitioner to file same.

ISSUE FOR DETERMINATION

The sole issue arising for determination of this Honourable Court to wit:

> ***"Whether the Petitioner is entitled to the relief sought in the Petition."***

ARGUMENTS

The learned Counsel to the Petitioner submitted that a Petition brought under the Matrimonial Causes Act, 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. See Section 15 (1) Matrimonial Causes Act, CAP M7 Laws of the Federation of Nigeria 2007.

By section 15(2) of the Matrimonial causes Act, a Court hearing a Petition for a decree of dissolution of a marriage shall hold that a marriage has broken down irretrievably if the petitioner satisfied the Court of one or more of the following:

(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.

He cited the case of **BIBILARI VS. BIBILARI (2011) 13 NWLR, (PT. 1264) 207.**

He further submitted that the Petitioner has rightly sought solace under the ground contained in 15(2) (c) of the Matrimonial Causes Act and the case of **OLABIWONNU V. OLABIWONNU (2014) LPELR – 24065 (CA)** where the Court of Appeal held thus:

> ***"A decree for the dissolution of marriage would therefore only be granted if the petitioner has proved that the marriage had broken down irretrievably and that the petitioner finds it intolerable to live with the respondent. See Section 15 of the Matrimonial Act and Damulak v. Damulak (2004) 8 NWLR (Pt. 874) 651.***

And the case of **PIUS V. OLORUNFEMI (2020) LPELR – 49579 (CA)** where the Court of Appeal held thus:

> ***"In HARRISON V. HARRISON (1989) 5 NWLR (prt 119) 6, it was held that the provisions of Section 15 (2) (a) – (h) of the Act do not constitute separate grounds or separate cause of action on the basis of which a dissolution of marriage can be granted. Thus they are various species of the breakdown. Consequently, a petitioner who satisfies the Court on any one of those facts would be entitled to a finding that the marriage has irretrievably broken down and a decree dissolving it.....Learned Counsel on both sides have submitted rightly in my view that a party seeking for divorce on the ground that the marriage has broken-down irretrievably has the liberty to prove the occurrence of one or more of the scenarios set out in Section 15(2)(a)-(h) of the Act. And once such is done, the Court has no choice but to grant a decree dissolving the marriage. See EZIAKU V. EZIAKU (2018) LPELR – 46373."***

Learned Counsel finally submitted that the Petitioner has by his evidence successfully proved the circumstances leading to why the marriage has broken down irretrievably especially as the Respondent has behaved in such a way that he finds it intolerable to continue to live with her or continuously be in the marriage. We refer my Lord to paragraph 9(e) to (i) of Petition and paragraphs 5 to 16 of the Petitioners Witness Statement on Oath.

I have considered the factual circumstances of this case and the relevant laws applicable.

As a matter of fact, the Respondent knowingly admitted to paragraph 9 (j) of the Petition in paragraph 12 of the Answer when it was stated

> ***"The Respondent admits the paragraph 9 (i) (sic) of the Petition to the extent that when the frustration of the petitioner's behaviour went uncontrollable the***

respondent has no option other than to make such difficult but necessary statement".

The statement in paragraph 9 (j) my Lord is ***"Nonso what you are doing is to me is why other women are poisoning their husbands"***

Despite the admittance to the Petitioners case, the Respondent by her statement knowingly inferred a disposition to poison the Petitioner merely because he purchased property without informing the Respondent. This constitutes and amounts to an intolerable behaviour supporting the ground of the Petition.

I can see that the evidence as proffered by the Respondent through her Witness Statement on Oath also never controverted paragraphs 6 to 12 of the Petitioners evidence but in reality gives credence to the manifest insecurities of the Respondent towards the Petitioner and his church congregants and her behaviour which more often than not frustrated the Petitioner into sleeping in the church and not in his home. The Respondent failed to prove by evidence her baseless and vexatious allegations of the Petitioner without proof merely to convince this Honourable Court into granting maintenance in her favour, which is the major goal of the Respondent, as divorce is clearly undisputed.

One of these baseless allegations allegations and contradictions of the Respondent is contained in paragraph 6 of her Answer to the Petition and paragraph 6 of her Witness Statement on Oath claiming the Petitioner bites her and made her use glasses, but failed to bring a Medical Report before this Honourable Court that might substantiate this false claim and that is why under cross-examination she admitted that ***"I have no medical report to support my paragraph 6".***

The Respondent by paragraph 2 (c) of her cross-petition sought to present a false notion to this Honourable Court in a bid to attain maintenance when she stated ***"...the Petitioner (sic) does not***

oppose the marriage being dissolved but demand for orders with respect to the maintenance of the respondent (sic) as the respondent has not (sic) means of living presently". This statement is clearly false and contradictory as the Respondent admitted under cross examination ***"I have a job now", "I work at Dalchi-Fit Suites", "my Salary is N50,000 a month".***

The admitted facts need no further proof. See **NIGERIAN BOTTLING COMPANY PLC VS. STEPHEN OBOH (2000) 9 WRN 114; HAUWA UBUDU VS. BULAMA ABDULRAZAK (2001) 7 NWLR (PT. 713) 669;** again, it is settled law that evidence elicited from a party or his witness(es) under cross examination, which goes to support the case of the party cross-examining, constitute evidence in support of the case or defence of that party. See the case of **MTN V. CORPORATE COMMUNICATIONS INVESTMENT LIMITED (2019) LPELR – 47042 (SC).**

It is my humble view that the case presented by Respondent ought not to be believed in light of her copious contradictory statements on oath.

In the case of **DAUDA & ORS. VS. MASUMI (2021) LPELR – 55075 (CA)** the Court of Appeal held:

> ***"For a statement to be contradictory, it should be a direct opposite of what was earlier pleaded stated, or spoken. The Court is always slow to act on the evidence of a witnesses that is contradictory such statement should be regard as unreliable and unsafe for the purpose of determining the material issue before the Court."***

The Respondent's case which is fraught with contradictions cannot and did not countermand and germane testimonies of the Petitioner who laid down facts as to why he finds it intolerable to live with the Respondent which facts too, the Respondent has

either not denied or responded to by any facts to the contrary. I so hold.

On evidence not supported by pleadings

I at this juncture refer to paragraph 4, 5 and 9 of the Respondents Witness Statement on Oath not having arisen from the Respondents pleadings or Answer to the Petition but simply emanated for the very first time in the Witness Statement. It is therefore discountenanced with.

The content of a witness statement on oath constitutes the evidence of that witness and like any other evidence, it must be related to facts as averred to in a party's pleading. It cannot stand alone on its own, because evidence, which is not founded on pleaded facts goes to no issue because it lacks any base or foundation to rest upon. See **OLANIYI VS. ELERO (2008) AII FWLR (PT. 411) 975, IWUOHA & ANOR. VS. NIPOST LTD & amp; ANOR. (2003) 8 NWLR (PT. 822) 308.**

In **OKHUAROBO & ORS. VS. AIGBE (2002) 9 NWLR (PT. 771) 29,** the Supreme Court held:

> ***"A Court cannot found its judgment on the evidence of material facts not pleaded as such evidence in law, goes to no issue".***

See also **SHELL BP LTD VS. ABEDI (1974) 1 All NLR (PT. 1) page 1; NIPC LTD VS. THOMPSON ORGANISATIONS LTD & ORS. (1969) 1 All NLR 134.**

I hold that the Petitioner has by his Petition and evidence adduced, successfully proved the intolerable behaviour of the Respondent to entitle him a grant of a dissolution of the marriage.

On demand for payment of maintenance

It is pertinent as a starting point to replicate the provisions of Section 70(1) of the Matrimonial Causes Act, which provides thus:

> ***"Subject to this section, the Court may, in the proceedings with respect to maintenance of a party to a marriage, or children of the marriage, other than proceedings for an order for maintenance pending the disposal of the proceedings, make such order as it thinks proper, having regard to the MEANS, EARNING CAPACITY AND CONDUCT OF THE PARTIES to the marriage and all other relevant circumstances."***

Having regard to the above provision, the means, earning capacity and conduct of parties are the important factors in the grant of maintenance to any party in a divorce proceedings. In this case, the Respondent has requested that the Petitioner pays her the sum of N50,000 (Fifty Thousand Naira) for 10 years, but have failed woefully in the justification of this demand to warrant your Lordships discretion.

It is in evidence before this Honourable Court that the Petitioner is a Pastor of a budding Church, but more importantly, it was elicited under cross-examination and even the Respondent herself confirmed the fact that the Petitioner was a Pastor when she admitted under cross-examination ***"He is a full time Pastor", "He is not a salary earner".***

I hold that this pieces of evidence elicited from the Respondent destroyed in totality any demand by the Respondent for maintenance, as it has been established from her own admission and in line with the provisions of Section 70(1) of the MCA, as regards means and earning capacity, that the Petitioner does not have means of making money neither has any earning capacity been established.

Further to the above, I hold that Churches, which are registered under part C of the Companies and Allied Matters Act, are not money making organisations like Limited Liability Companies. We submit that by the Respondents own testimony, the claim for maintenance fails.

In the case of **IGWEMOH V. IGWEMOH (2014) LPELR – 46807 (CA)** the Court of Appeal ***Per Ejembi Eko JCA*** *(As he then was)* held as follows:

> ***"Dr. Amuda Kannike of Counsel to the respondent, in justifying the award of N5,000,000.00 (Five Million Naira) the Petitioner was ordered to pay to the respondent as maintenance, submits that the amount awarded is neither punitive, nor unjust and improper in the circumstance of the case. Counsel to respective parties agreed that order for maintenance should not be made arbitrarily by the trial Court. I agree. Order for maintenance, like all judicial orders, must not be arbitrary. Rather, it should be made judicially and judiciously. It must be based on empirical evidence and established rules or principles of law. From cases decided on Section 70(1) of the Matrimonial Causes Act (MCA), there are clear templates for the exercise of a Court's discretion in assessment and award of maintenance. By these templates, the Court must always have regards to the means, earning capacity of the parties in marriage and their conduct. See Olu Ibukun v. Olu Ibukun (1974) NSCC 91; Nanna v. Nanna (2006) 3 NWLR (Pt. 966) 1; Akinboni v. Akinboni (2002) FWLR (Pt. 126) 926, (2002) 5 NWLR (Pt. 761) 564 at 582. Section 70(1) of the Matrimonial Causes Act provides: 70(1) subject to this section, the Court may, in proceedings with respect to the maintenance of a party to a marriage, or children of the marriage, other than proceedings for an order for***

maintenance pending the disposal of proceedings, make such order it thinks proper, having regards to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances. The portion of the judgment germane to this issue of the N5,000,000.00 (Five Million Naira) maintenance order made at page 171 of the record is as follows: It is not in dispute that Section 70 of the Matrimonial Causes Act made provisions for "maintenance and not alimony". See also the case of Olu Ibukun v. Olu Ibukun (1974) (cited by petitioner's counsel). This case provides that Section 70 of the Matrimonial Causes Act has done away with the term "alimony" by using the word "maintenance". I do not see any fault in the claim of the respondent. The fact that respondent called it alimony, instead of maintenance, does not deprive her of the claim. Where a party is entitled to a particular relief, it is irrelevant if it is called a wrong name or brought under a wrong law. In the instant case, since the parties have married for 13 years, the respondent gave birth to the five children of the marriage; she cannot get married any more to another man. She is not to be let go without maintenance. Moreso, she keeps looking after the children of the marriage until appropriate age(s). The petitioner is to pay maintenance sum of N5,000,000.00 (Five Million Naira) to the respondent. The portion of the judgment that I have underlined above does not suggest that the learned trial judge was properly guided by Section 70 (1) of the Matrimonial Causes Act as to what the Court should always have regards to in the assessment and award of maintenance. In the first place, it is no business of the Court to speculate, as this trial Court did in his holding that the respondent, after 13 years of marriage to the petitioner and bearing 5 children of the marriage "can not get married to another (man)". See A. C. B. Plc v. Emostrade Ltd (2002) FWLR

(Pt. 104) 540, (2002) 8 NWLR (Pt. 770) 501. Speculation is not only an unfortunate frolic; it also leads the Court to acting or deciding in an arbitrary manner. The principle that a Court of law should not decide a case on mere conjecture or speculation is well settled. As Adekeye JSC puts it in Agip (Nig.) Ltd v. Agip Petroleum International (2010) All FWLR (Pt. 520) 1198, (2010) 5 NWLR (Pt. 1187) 348, (2010) LPELR 250, Courts of law are Courts of law and facts; they decide issues on established facts and law; and must avoid speculation. See also Adefulu v. Okulaja (1996) 12 SCNJ 136, (1996) 9 NWLR (Pt. 475) 668; Orhue v. N.E.P.A. (1998) 7 NWLR (Pt. 557) 187; Agbi v. Ogbeh (2006) All FWLR (Pt. 329) 941, (2006) 11 NWLR (Pt. 990) 65. An award of maintenance purportedly made under Section 70(1) of the Matrimonial Causes Act that is arbitrary, capricious and speculative is liable to be set aside. See Akinboni v. Akinbobni at 581. In ordering the petitioner to pay N5,000,000.00 (Five Million Naira) as maintenance to the respondent, the trial Court did not take into consideration the statutory factors as the means or earning capacity or income or assets of the parties herein. None of the factors stipulated in Section 70(1) of the Matrimonial Causes Act that the Court is enjoined to have regards to before making maintenance order was considered. For instance, the petitioner testified unchallenged and uncontradicted, that for one year, before and at the time he testified, he had been unemployed and "completely out of job". As against this evidence, the respondent's evidence, at page 137 of the record shows that she has the means and was profitably engaged in her events management business. Her evidence admits of the fact that the petitioner had previously contributed to that business. These facts notwithstanding, the learned trial judge chose to resort to extraneous matters and speculation to enable him award the outrageous sum of N5,000,000.00 (Five

Million Naira) for maintenance. A decision is perverse, and liable to be set aside, where the judge took into account matters which he ought not to have taken into account, or where the judge shuts his eyes to the obvious. See Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360. The judge in this case acted purely on extraneous matters and mere conjectures. In Etim Effiong Nakanda v. Alice Uzoamaka Nakanda (CA/C/99/81 of 17 June 1988 unreported), where it was only the earning capacity of the husband that the trial Court considered to make its maintenance order in favour of the wife, this Court, per Ademola JCA, held that the trial judge had adopted an entirely wrong approach to the issue of maintenance before him. Neither the length of time the marriage lasted nor the ability of the wife to remarry after divorce are relevant facts the divorce Court, under Section 70(1) of the Matrimonial Causes Act, shall have regard to before making a maintenance order. The order directing the petitioner in this case to pay N5,000,000.00 (Five Million Naira) as maintenance, predicated on a wrong approach and completely perverse, speculative and arbitrary, is hereby set aside. The duty of the Court not to speculate, but only to decide on facts before it, is also acknowledged by the respondent where she relies on Adelenwa v. The State (1972) 10 SC 13; Okolo v. The State (1964) 1 All NLR 423; Okorogba v. The State (1992) 2 NWLR (Pt. 222) 244, to so submit. The discretion vested in divorce Court to make maintenance order under Section 70(1) of the Matrimonial Causes Act is not a discretion empowering the divorce Court to award compensation or damages upon dissolution of marriage nor is it as a mark of disapproval of the conduct of one of the parties to the marriage. Quite unlike in tort, in divorce proceedings the Court does not award damages. In awarding N5,000,000.00 (Five Million Naira) as maintenance the trial Court, from page 171 of the record

(earlier reproduced), perceived erroneously that he had been called upon to award compensation or damages to the respondent, or against the petitioner, for his audacity for asking for dissolution of their marriage. Afterall, marriage and divorce are both sides of one coin the right of two adults to associate or disassociate guaranteed by the Constitution. Maintenance order is neither a reward for a party's good conduct, nor is it awarded as a punishment for improper conduct of a party in marriage or for the audacity of a party to sue for divorce...

Contrary to the tenets of the above cited judicial decision, the Respondent have simply demanded for maintenance to be paid to her by the Petitioner for 10 YEARS as compensation for acts which she purports the Petitioner committed against her in the cause of the marriage. In realty however going by the evidence before this Honourable Court, the Respondent has by her own showing determined the issue of means and earning capacity of the Petitioner. It is on record before this Honourable Court that the Respondent as opposed to the Petitioner is gainfully employed. She stated under cross-examination ***"I have a job now", "I work at Dalchi-Fit Suites", "my salary is N50,000 a month".***

I reiterate in line with the authority of Igwemoh V. Igwemoh that it is only the statutory factors envisaged by the Matrimonial Causes Act that are considered in the grant of maintenance by a Court and nothing more. Despite this, the Respondent has simply relied sentiment to ground her claim for maintenance, which sentimental claim we urge your Lordship to refuse as being unsubstantiated.

<u>On alleged allegation of Adultery</u>

With respect that the Respondent's allegation of adultery by the Petitioner fails in its entirety and I discountenance all the

paragraphs in the Respondents Answer, Cross-Petition and Witness Statement on Oath in this regard.

The provisions of Section 32(1) of the MCA is emphatic on the duty if a party alleging adultery again another. It provides thus

> ***"Where in a Petition for decree of dissolution of marriage or in an answer to such a petition, a party to the marriage alleges to have committed adultery with a specified person, whether or not a decree of dissolution of marriage is sought on the basis of that allegation, the person SHALL, except as provide by the rules of Court, be made a party to the proceedings."***

This provision speaks volumes against the allegation of the Respondent making same rightly incompetent as the Respondent never sought to join the purported "Ifeoma Owo" to the suit as a party. It therefore follows that every allegation on this score fails in its entirety.

<u>On Dissolution of the Marriage</u>

One common denominator, which exists between the Petitioner and the Respondent is the desire to have the marriage dissolved, as established in the reliefs of both the Petitioner and the Respondent. Save for the single ground of this Petition, which we hold steadfastly as having been proved, it is also in evidence from both parties that they have lived apart for long periods compliant with other grounds in Section 15(2) of the MCA.

The provisions of **Section 81 (1) of the Matrimonial Causes Act** states as follows:

> ***"For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court."***

The Petitioner by Exhibit "A", which is his Marriage certificate, has proved that there is a marriage between him and the Respondent, which has now broken down irretrievably and now sought to be dissolved.

Petitioner who is a figurehead to his congregants both male and female has pleaded facts to show that the Respondent could not stand his interactions with his church members. The Respondent on several occasions confronted the Petitioners female church members and to their faces, blatantly accuses them of having affairs with the Petitioner, leaving the Petitioner now having to face such demeaning and embarrassing complaints from the individuals and even their husbands as some of these female members are married. As a result of the Respondents insecure nature the Petitioner was relegated to sleeping in the church building, away from the Respondent as a result of her making the home uncomfortable for the Petitioner. Then the Respondent finally broke the camels back by inferring to poison the Petitioner.

Essentially as the saying goes **"it is only he who is alive that can live to testify".** The Petitioner can only tell his truth because himself and the Respondent have lived apart from each other because the Respondent left the home. However, the reverse might have been the case, which invariably might have been the untimely death or his derail into depression of the Petitioner had he continued to condone the hardship he was facing at the hands of the Respondent but did not complain to anyone in the hopes that she would change, which never happened. By the evidence presented by the Petitioner and even the Respondent, which supports the case of the Petitioner, it was indeed established and proved that the marriage has broken down irretrievably.

A decree for the dissolution of marriage would therefore be granted if the petitioner has proved that the marriage had broken down irretrievably and that the petitioner finds it intolerable to live

with the respondent. See **DAMULAK V. DAMULAK (2004) 8 NWLR (PT. 874) 651.**

This Honourable Court therefore hold that the Petitioner has discharged the onus of proof on him to be entitled to the reliefs sought. In the circumstance, I grant the relief of the Petitioner in line with the provisions of Section 15 (2) (C) of the Matrimonial Causes Act.

Furthermore, I retreated that on the available evidence before this Honourable Court, I grant the relief sought in this Petition and I dismiss in entirety the prayer for maintenance as contained in the cross-petition for the following reasons:

(a) The Marriage conducted between the Petitioner and the Respondent on the 20th April 2013 has broken down irretrievable as the Respondent has behaved in such a way that the Petitioner cannot be reasonable be expected to live with her.

(b) The Petitioner has led credible evidence to be entitled to the relief sought in the Petition.

(c) The Respondent has failed to establish that the Petitioner is a person of means and has earning.

(d) The Respondent is gainfully employed as opposed to the Petitioner.

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S. B. Belgore
(Judge) 25/9/2024