

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 23RD OF APRIL, 2024
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: PET/281/2023

BETWEEN:

DR. JOSEPH OKOKO ----- PETITIONER

AND

MRS. BLESSING OKOKO ----- RESPONDENT

JUDGMENT

The Petitioner Dr. Joseph Okoko filed this Petition on the 13/3/2023 against the Respondent Mrs. Blessing Okoko for an order of dissolution of marriage celebrated on the 13/5/2017 on the ground that the marriage has broken down irretrievably. The Petitioner has also prayed for sole custody of the child of the marriage with access to the Respondent during holidays as she desires.

The fact relied upon by the Petitioner is living apart for 2 years immediately preceding the presentation of the Petition with no objection from the Respondent to a decree being granted. This is pursuant to Section 15(2)(e) of the Matrimonial Causes Act.

The Petitioner testified for himself as PW1 on the 18/10/2023. He adopted his witness statement on oath and tendered the following documents:

- Marriage certificate dated 13/5/2017 marked as Exhibit A.
- Pictures and Whatsapp messages along with certificate of compliance marked as Exhibit A1.
- CTC of Ruling dated 9/12/2022 marked as Exhibit A2
- Court processes marked as Exhibit A3 rejected.

The Petitioner was cross examined.

The Respondent on her part filed an Answer and Cross Petition on the 14/6/2023. The Respondent prayed the Court for the following reliefs:

- “1. A decree of dissolution of marriage (relying on Section 15(2)(c) of the Matrimonial Causes Act.*
- 2. An order of the Court granting custody of the only child of the marriage (Jason Oche Okoko) to the Cross Petitioner with reasonable access to the child by the Petitioner.*
- 3. An order of the Court directing the Petitioner to pay the following:*

i) N500,000.00 annually for the child's school fees and other miscellaneous school expenses.

ii) N2 Million annually for the feeding accommodation, clothing and medical expenses of the only child of the marriage."

The Respondent also testified for herself and tendered the following documents:

- Marriage certificate dated 13/4/2017 marked as Exhibit D.
- Photographs and certificate of compliance marked as Exhibit D1.
- Bank Statements and certificate of compliance marked as Exhibit D2.
- Letter dated 16/2/2023 marked as Exhibit D3.
- Police investigation report marked as Exhibit D4 rejected.

The Respondent was also cross examined. At the close of evidence, parties were directed to file written addresses.

I.E. Uzuegbu Esq filed the Respondent's final written address dated 2/11/2023 wherein he presented two issues for determination. The issues are:

- “1. Whether there is a valid originating process (Notice of Petition) before this Court to enable the Court assume jurisdiction to hear the Petitioners Notice of Petition.*
- 2. Whether the Respondent/Cross Petitioner has led credible evidence to be entitled to all her prayers in her notice of Cross Petition.”*

On his part, Joseph Adejoh Esq filed the Petitioner’s written address dated 6/11/2023. Three issues were presented for determination. They are:

- “1. Whether from the facts and circumstance of this case, the marriage between the Petitioner and the Respondent has not broken down irretrievably.*
- 2. Whether in view of the facts and circumstances of this case as well as the peaceful growth of the child of the marriage the Petitioner is not entitled to the reliefs sought.*
- 3. Whether in view of the absence and failure of the Respondent to adduce credible evidence, the Cross Petition of the Petitioner is not bound to fail.”*

The Respondent filed a Reply on points of law on the 7/12/2023.

For a start this Court will consider the Respondent's first issue for determination which border on the jurisdiction of the Court. Learned counsel submitted that the Notice of Petition was not issued for service outside jurisdiction, i.e. the United Kingdom where the Respondent resides, and no leave of Court was sought pursuant to Section 97 of the Sheriffs and Civil Process Act. That this failure robs the Court of jurisdiction to entertain the Petition since the originating process (Notice of Petition) is fundamentally defective. He added that it goes to show that the notice of petition was not served on the Respondent who was not in Nigeria when the Petition was filed.

On his part, learned counsel for the Petitioner submitted that the originating processes were served on the Respondent at No. 9, Atakpame Strt. off Ademola Adetokunbo Crescent Wuse II, Abuja being the address provided by the Respondent and her counsel. He urged the Court to discountenance the submission of the Respondent's counsel.

Perusing the Notice of Petition, the address for service on the Respondent was clearly captured as:

“To:

Mrs. Blessing Okoko,

*House adjacent Plot 121 Emmanuel Ozigi Street Apo NEPA
FCT, Abuja.”*

It is correct as rightly noted by learned counsel to the Respondent that on the face of the Petition, the opening paragraphs clearly stated that the Respondent resides at 80 Barbel Drive WV10 OTQ United Kingdom. It was also captured that she also resides at House adjacent Plot 121 Emmanuel Ozigi Street Apo NEPA FCT, Abuja being the address of her elder sister in Nigeria.

The importance of service of Court process, especially originating process, to the jurisdiction of the Court to adjudicate on a matter, cannot be over emphasized. Jurisdiction is the life wire of adjudication, whose fire can only be ignited by service of originating process on the opposing party. See **Zenith bank Plc vs. Real Integrated Hospitality Ltd & anor (2022) LPELR – 58948 (CA)**.

Service of originating process no doubt activates the competence of the Court to adjudicate over a matter properly placed

before it. Thus, where there is no proper service of originating process, the Court will not have the requisite competence and jurisdiction to entertain the matter. To ascertain whether a process is served or not, recourse is often made to an affidavit of service in order to convince the Court that the person(s) on whom the process is to be served have been duly served. However, where there is no affidavit of service and the person served with an originating process of Court appear in Court, there is no further need to insist on a proof of service as there cannot be better proof than the appearance in Court of the person on whom the process was served. See **Okesuji vs. Lawal (1991) 1 NWLR (part 170) 661.**

It is trite that the essence of service of a Court process is to bring it to the attention of the party served, and thus it should really make no difference whether the process was served by substituted means or personally, unless the party served suffered a detriment by reason of the mode of service. See **Kangnaan vs. Kangnaan (2019) LPELR – 46502 (CA).** A party that takes steps after an alleged service of the originating process must be taken to have submitted himself to the jurisdiction of the Court and cannot now complain of non service or lack of proper service. I so hold.

In this instance, the aim of service has been achieved. The Respondent had appeared before the Court, participated in the proceeding and ably defended herself and presented her case before the Court. The submission of learned counsel to the Respondent that failure to serve the Respondent at her address in the UK is belated and of no moment. The said submission is hereby discountenanced and I hold that the Court has jurisdiction to entertain the petition.

The Matrimonial Causes Act has clearly set out circumstances when to hold that a marriage has broken down irretrievably, the Petitioner, who desires a dissolution of that marriage, must discharge the standard of proof stipulated by the Act and establish in evidence, one of the facts set out under Section 15 and 16 of the Act. He must be able to bring himself within one or more of the facts enumerated in Section 15(2)(a)–(h) of the Matrimonial Causes Act before he can succeed in the petition. See **Georgewill vs. Georgewill (2022) LPELR–56914 (CA)**, **Ekrebe v. Ekrebe (1999) 3 NWLR (Pt. 596) 514** and **Akinbuwa v. Akinbuwa (1998) 7 NWLR (Pt. 559) 661**.

The power of Court to dissolve marriages is one which should be cautiously applied, because such jurisdiction involve status of the parties, the children and indeed families. It is a sacred institution that must be sanctified. Accordingly, public interest and the law demands that marriage bond must not be set aside unless absolutely necessary and unavoidable. There must therefore be "strict proof of the grounds and after a painstaking judicial enquiry". See **Oguntoyinbo vs. Oguntoyinbo (2017) LPELR - 42174** and **Adeparusi vs. Adeparusi (2014) LPELR - 4111**.

By virtue of Section 15 (2) of the Matrimonial Causes Act, a Court hearing a petition to dissolve a marriage shall hold the marriage to have broken down irretrievably only if the petitioner satisfies the Court on one or more of the following facts:-

“(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 did not object to a decree being granted;”

There are two limbs to the provision of Section 15(2)(e) of the Matrimonial Causes Act. First is that parties have lived apart for a continuous period of 2 years immediately preceding the

presentation of this petition. The second is the absence of contest from the Respondent.

The evidence of the Petitioner is that after the marriage, parties cohabited together until 2020 when the Respondent abandoned the marriage and relocated to the United Kingdom. The Petition was filed on the 13/3/2023 which is a period of more than 2 years. The Respondent has not denied the fact that parties have lived apart since 2020. She admitted that she travelled to the UK for professional studies. This evidence satisfy the first leg of Section 15(2)(e) of the Act which is that parties have lived apart for more than 2 years immediately preceding the presentation of this petition.

The next ground is the absence of objection. What better way can the existence of the absence of objection be identified than by either a letter of no contest or where the Respondent also seeks dissolution of the marriage. In this instance, the Respondent has filed a Cross Petition also seeking for dissolution of marriage.

In **Omotunde vs. Omotunde 1 SMC page 255 at 289** the Court of Appeal made the point that under Section 15(2)(e) and (f) of the Act, as far as living apart is concerned, the law is not interested in

who caused the living apart. It is not interested in the right or wrong or guilt or innocence of the parties. Once there is evidence that the parties have lived apart for two or three years immediately preceding the petition, the Court has no discretion in the matter. It must hold that the marriage has broken down irretrievably. See **Uzochukwu vs. Uzochukwu (2014) LPELR – 24139 (CA), Agunwa vs. Agunwa (1972) 2 E.C.L.R. 20 at 22**

In the circumstance, this Court has no discretion in this suit as it relates to this petition and the fact of living apart, but to come to the obvious conclusion that the marriage between the Petitioner and the Respondent has broken down irretrievably. The position of the law is to give a marriage which is already dead, a decent burial. See **Santos vs. Santos (1972) 2 WLR page 289, Fuller vs. Fuller (1973) 1 WLR page 730**

In **Harrison vs. Harrison (1989)5 NWLR (part 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 break down. 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. See **Eziaku vs. Eziaku (2018) LPELR – 46373**.

This Court is also satisfied that the Petition succeeds on the ground of living apart.

It is noted that both parties have prayed for custody of the only child of the marriage. I will however consider the Cross Petition before delving into the delicate issue of custody.

Cross Petition

It is trite to state that a Cross Petition is different from the petition itself. They are independent and separate claims to be determined by the Court. The failure of one does not automatically translate into the success of the other because each would be decided on the basis of the evidence adduced in support thereof by the party who bears the legal burden of proof. See **Eluwa vs. Eluwa (2013) LPELR – 22120 (CA)**.

In **Otti vs. Otti (1992) 7 NWLR (part 252) 187 at 212** the Court held:

“It is elementary that a Cross Petition is itself a petition for it is in the same category as a counter claim. The Cross

Petitioner must therefore prove every averment in the Cross Petition.”

The Respondent/Cross Petitioner has prayed for dissolution of the marriage on the ground that the marriage has broken down irretrievably. The fact relied upon is unreasonable behaviour pursuant to Section 15(2)(c) of the Matrimonial Causes Act.

The Petitioner who alleged that the marriage has broken down irretrievably because of intolerable behaviour has a duty to prove two sets of facts to wit;

- i. The sickening and detestable behaviour of the Respondent and,
- ii. That the Petitioner finds it intolerable to live with the Respondent.

See **Damulak vs. Damulak (2004) 8 NWLR (part 874) 151; Bibilari vs. Bibilari (2011) LPELR 4443 (CA) and Bakau vs. Bakau (2013) LPELR – 22687 (CA).**

In respect of the provisions of Section 15 (2) (c) of the Matrimonial Causes Act as stated above, it is pertinent to ask; what sort of behaviour of the Cross Respondent should the Cross

Petitioner not reasonably be expected to put up with. In **Katz vs. Katz (1972) 3 ALL ER 219**, the Court stated thus:

"Behaviour is something more than a mere state of affairs or a state of mind... Behaviour in this context is action or conduct by the one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct and in my view it must have some reference to the marriage".

In other words, the conduct of a Respondent that a Petitioner will not be reasonably expected to put up with must be grave and weighty in nature as to make further cohabitation virtually impossible. However, before the Court will come to that conclusion, the entire history of the marriage has to be considered. In other words, the Court must consider the totality of the matrimonial history of the parties to the petition. See **Ibeawuchi vs. Ibeawuchi unreported, Suit No. FAC/E/5/82 delivered on 22nd September, 1982 per Oputa, J.** (as he then was).

It is thus the law that the burden on the parties as Petitioner and Cross Petitioner is to prove by credible evidence the conduct of the other which makes cohabitation impossible. The Cross Petitioner

testified that the marriage has been characterized with series of incompatible difference, with the Petitioner/Cross Respondent verbally and emotionally abusing the Cross Petitioner. The Petitioner/Cross Respondent abandoned his responsibility of caring for the family. The Petitioner also denied the Cross Petitioner access to the matrimonial home. Issues arose between the parties when the Cross Petitioner travelled abroad. She narrated how the Petitioner wrote a petition against her and her parents accusing them of kidnapping and abducting the only child of the marriage which led to the arrest of her parents. She accused the Petitioner of being adulterous, alcoholic, violent and highhanded. She also accused the Petitioner of having mental breakdown. His anger was triggered when he failed to pass his professional exams having attempted twice, while she passed once in flying colours which enabled her to study and practice in the UK.

The Petitioner/Cross Respondent filed a Reply to the Answer and Cross Petition wherein all these allegations were denied. He denied being an alcoholic, adulterous, and violent. He also denied abandoning his responsibility of taking care of the home. He said he

has been responsible for payment of rent, feeding and upkeep of his home.

The burden of proof in this instance rest squarely on the Cross Petitioner. The standard of proof in matrimonial proceedings is provided in Section 82 (1) and (2) of the Matrimonial Causes Act which reads thus:

"82 (1) For the purpose of this Act, as a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient, if the Court is reasonably satisfied of the existence of that ground or fact or as to that other matter."

The conduct that would amount to intolerable behaviour is not at large. It is governed by the provisions of Section 16(1)(a) – (g) of the Matrimonial Causes Act which provide as follows:

"16.(1) Without prejudice to the generality of Section 15(2) 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:

(a) Since the marriage the Respondent has committed rape, sodomy or bestidity; or

(b) Since the marriage, the Respondent has, for a period of not less than two years

(i) Been a habitual drunkard; or

(ii) Habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating during or preparation, or has for a part or parts of such a period, been a habitual drunkard and has for the other part or parts of the period habitually been so intoxicated; or

(c) Since the marriage, the Respondent has within a period not exceeding five years –

(i) Suffered frequent convictions for crime in respect of which the Respondent has been sentenced in

the aggregate to imprisonment for not less than three years; and

(ii) Habitually left the Petitioner without reasonable means of support; or

(d) Since the marriage, the Respondent has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more and is still in prison at the date of the Petition; or

(e) Since the marriage and within a period of one year immediately preceding the date of the Petition, the Respondent has been convicted of –

(i) Having attempted to murder or unlawfully to kill the Petitioner; or

(ii) Having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the Petitioner or the intent to inflict

grievous harm or grievous hurt on the Petitioner;

or

(f) The Respondent has habitually and willfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the Petitioner.

(i) Ordered to be paid under an order of, or an order registered in, a Court in the Federation; or

(ii) Agreed to be paid under an agreement between the parties to the marriage providing for their separation or

(g) The Respondent:

(i) Is at the date of the petition, of unsound mind and unlikely to recover;

(ii) since the marriage and within the period of six years immediately preceding, the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of

mind in accordance with law, or in more than, one such institution."

It follows therefore, that for a Court to hold the Respondent/Cross-Respondent has conducted himself/herself in such a way that the other person cannot be reasonably expected to live with him/her the Petitioner/Cross Petitioner must establish a conduct or act within the provisions of Section 16(1)(a) to (g) of the Matrimonial Causes Act. This would involve not only a consideration of the behaviour of the Respondent but also the character, personality and disposition of the Petitioner. See **Ogunjobi vs. Ogunjobi (2021) LPELR-52894(CA)**. Perusing the evidence the before the Court, one would have expected some form of corroborative evidence. The law is that corroboration of the evidence of the parties by an independent witness in matrimonial cases is highly desirable unless there is an acceptable explanation for the absence of corroborative evidence. See **Uzochukwu vs. Uzochukwu (supra), Ibrahim vs. Ibrahim (2007) 1 NWLR (part 1015) page 383**.

The Cross Petitioner did not call any of her parents, who were arrested by the Petitioner to corroborate her evidence. She has alleged violence, but nothing was presented to substantiate that

piece of evidence. Her piece of evidence that falls under Section 16(1)(c)(ii) of Matrimonial Causes Act is when the Cross Petitioner said the Petitioner did not provide for the family. This was countered by the Petitioner. Nothing was presented by the Cross Petitioner to substantiate this evidence.

What could be clearly gleaned is that Cross Petitioner was more particular about the child and took the issue of proof of dissolution for granted. I have no hesitation in coming to the conclusion that the case presented by the Cross Petitioner does not come under what constitute intolerable behaviour under Section 16(1)(a) – (g) of the Matrimonial Cause Act. It follows therefore that the Cross Petitioner has failed to prove intolerable behavior against the Petitioner/Cross Respondent, and I so hold. The Cross Petition therefore fails on the ground of intolerable behaviour.

Both parties have claimed for custody of the only child of the marriage. I am quick to state that custody is never awarded as a reward for good conduct, nor is it ever denied as a punishment for the guilty party's matrimonial offence. See: **Okafor vs. Okafor (1966) Vol. 5 (Oputa LR) 102, Allen vs. Allen (1948)2 All ER page 413 at 415.**

In deciding to whom to award the custody of a child of a broken marriage the Court shall regard the best interest of the children as paramount, and it is only subject to that any order of custody need to be made by the Court. See **Alabi vs. Alabi (2007) 9 NWLR (part 1039) page 305**, **Odogwu vs. Odogwu (2006) 5 NWLR (part 972)**, **Buwanhot vs. Buwanhot (2009) 16 NWLR (part 1)**, **Williams vs. Williams (1966) 1 All NLR, 36**

In the case of **Otti vs. Otti (1992) 7 NWLR (part 252) 187 at 210**, the Court of Appeal defined custody as essentially concerning the care, control and preservation of a child physically, mentally and morally, it also includes responsibility for a child with regard to his needs like food, clothing, instruction and the like. See also **Alabi vs. Alabi (supra)**.

In this instance, the evidence before the Court is that the child is currently with the Petitioner. The Petitioner testified that the Respondent abandoned the child and the marriage and travelled to the UK and cut off all communication with the Petitioner. When he (Petitioner) travelled to the UK, he found that the Respondent was living an immoral life style posting nude pictures and videos on social media. The Petitioner said he was the one that encouraged

the Respondent to take the exams to enable her travel abroad to work, with a plan of him and his son joining her. He funded the exams and even hired a personal coach to prepare her for the exams. That the Respondent/Cross Petitioner abandoned the family and even when she returned to Nigeria she did not visit the matrimonial home. That his son does not even know the Respondent. As a consultant surgeon the Petitioner said he has the capacity to schedule his work activities, giving him room to take care of his son.

He has a comfortable accommodation and has enrolled the child in one of the best schools in the FCT, Handmaid International School. He proposed that the Respondent shall be free to see the child of the marriage at agreed time and designated place during holidays.

Under cross examination, the Petitioner confirmed that he can exercise his privilege of being a consultant surgeon from anywhere and he communicates with his doctors through phone call and sees his patients when he deems fit. He however said as a senior surgeon his services can be required at anytime.

The Respondent has also prayed for custody of the child with reasonable access to the Petitioner. The Respondent stated that with the consent of the Petitioner she traveled to the UK for studies which is scheduled to terminate by end of 2023. That while she was away, the Petitioner forcefully took the child of the marriage from her parents and has since then denied her access to the child despite several efforts.

Under cross examination, the Respondent confirmed that she is working and schooling in the UK. That she travelled to the UK in January, 2020 and she comes into Nigeria at least 3 times every year.

In matters of custody of children, Section 71(1) of the Matrimonial Causes Act confers on the Court a discretion concerning the proper order to make, bearing in mind the interest of the children as it relates to their physical, mental and moral welfare. Section 1 of the Child's Right Act, 2003 also provides that in every action concerning a child, the best interest of the child shall be the primary consideration.

Where a party seeks custody of a child of the marriage he is required to set out the proposed arrangement for accommodation,

welfare, education, upbringing and other arrangement of the child. The fact that one spouse is in a much better financial position to bring up the child and to provide him with better accommodation may be decisive. But the determining factor ought to be what is best for the children. See **Oduche vs.Oduche (2005) LPELR – 5976 (CA), Alabi vs. Alabi (supra)**.

The pertinent issue is, will it serve the best interest of the child, Jason to remove him from his familiar surrounding having been with his father the Petitioner for 4 years, and hand him over to his mother the Respondent who is not resident in Nigeria? The answer is certainly in the negative. The Respondent under cross examination confirmed that she schools and works in the UK, and only visit Nigeria 3 times in a year. In line with the above, the Court considers that it will not be a proper exercise of discretion which will serve the child's interest if he is removed from custody of his father with whom a bond has already been created.

This Court is not unmindful of the fact that the Petitioner has denied the Respondent access to the child. In the course of the proceedings, the Court ordered the Petitioner to produce the child to spend the weekend with the Respondent. To attain wholesome

and balanced development, children of every marriage need the father and mother figure presence around them. Neither parent can all alone provide that. With this in mind, I will make an order allowing the Respondent/Cross Petitioner access to the child. This is moeso, considering that access of a child to his/her parents is a basic right of the child and not that of the parents.

In conclusion, I hold that the Petition succeeds pursuant to Section 15(2)(e) of the Matrimonial Causes Act. I hold that the marriage celebrated on 13/5/2017 between the Petitioner and Respondent has broken down irretrievably, and I grant a decree nisi in its dissolution. The decree nisi shall become absolute upon the expiration of three months from today.

- Custody of the child Jason Oche Okoko shall remain with the Petitioner with unhindered access to the Respondent during weekends anytime she is in the country.
- The child shall also spend part of his holidays with his mother, the Respondent whenever she returns to the country.

Signed

Honourable Judge

Appearances:

Joseph Adejoh Esq with him H.O. Baba Esq – for the Petitioner/Cross
Respondent

I.E. Uzuegbu Esq with him Bilkisu Inuwa (Miss) – for the Respondent
Cross Petitioner.