IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO.12 JABI ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
THIS 31st DAY OF OCTOBER, 2024

SUIT NO: FCT/HC/PET/180/2023

BETWEEN:

MR. OLANREWAJU ABEEB PEREIRA ---------------- PETITIONER
AND

YETUNDE SUZANNE OBEBE PEREIRA ------- DEFENDANT

JUDGMENT

The Petitioner filed a Notice of Petition on the 30th day of January, 2023 seeking for the dissolution of the marriage between him and the Respondent. It stated in his evidence in chief that they got married on the 29th day of December, 2007 at the Federal Marriage Registry in Ikoyi, Lagos. He tendered the Exhibit A1 the marriage certificate.

The grounds for the dissolution of the marriage are:

(1) Willful act of the Respondent denying the Petitioner his conjugal duties, breakdown in communication between the Petitioner and the Respondent and that the marriage as broken down irretrievably.
(2) Living apart for a continuous period of ten years immediately preceeding the presentation of this Petition.

It is on record that only the Petitioner testified while the Respondent despite the service of the petition on her reject to file an answer challenging the claiming the Petitioner. The unchallenged evidence of the Petitioner was that he performed his responsibilities as a loving

and caring husband to the Respondent and also showed great care and love to the only child of the marriage. He claimed that there was no domestic violence on his part, however despite this he did not have a blissful union with the Respondent throughout the period they stayed under the same room. He further informed the Court that about 10 years ago, he got a new job with a construction Company in Abuja and relocated, but he still traveled on a routine visit to Lagos to visit the Respondent and the baby child of the marriage Kamal Mofopefoluwa Pereira. That the attitude of the Respondent when he visited was repugnant as she was always moody and kept mute whenever he is in Lagos. His efforts to enquire about the sudden change in the behavior by the Respondent proved abortive. That when the situation become unbearable for him, family members equally inquired about the change in the Respondent's behavior, but she was evasive and did not state any reason for the change in her behavior. That the Respondent had behaved in a manner that he could not perform his conjugal duties with her, and if he did not initiate sexual intercourse with the Respondent, she is indifferent with same, an attitude he found quite discouraging and traumatic. And that due to the attitude of the Respondent, he had to stay back in Abuja to enable him overcome the shock and trauma of an unfriendly wife. That there is no reasonable probability of any form of reconciliation between the Petitioner and the Respondent as he cannot reasonably be expected to live with the Respondent under the circumstances. That he has been giving the Respondent the sum of **₦50,000 (Fifty Thousand Naira)** for the monthly upkeep of their only child and paying his School fees, i.e the sum of **₦625,000 (Six Hundred and Twenty Five Thousand Naira)** that total amount per session is **₦1,875,000 (One Million, Eight Hundred and Seventy Five Thousand naira)**

Upon the conclusion of the testimony of the Petitioner, the matter was adjourned to the 7th day of June, 2023 for Cross Examination by the Respondent. The Respondent failed to appear despite service of Hearing Notice on her. On the 24th day of February, 2024 the Counsel to the Petitioner Kehinde Soremekun Esq. applied that the Respondent be foreclosed from cross examining the Petitioner and from testifying due to the fact that the time within which the Respondent can enter appearance has elapsed. The Petitioner who appeared virtually on the 24/1/2024 was discharged by the Court. The parties were ordered to file and exchange their final written address in according with the rules governing the Matrimonial Cause. The Petitioner Counsel in his address dated 30/01/2024 but adopted by the Petitioner's Counsel on the 9/10/2024 formulated a sole issue for determination by the Court to wit:

> *Whether the Petitioner has proved his case to be entitled to the reliefs sought.*

He submitted that by the provision of Section 15 of the Matrimonial Cause Act, the only condition for the dissolution of marriage under the Act is that the marriage has broken down irretrievably and one of the potent grounds relied upon by the Court hold that a marriage has broken irretrievably is cruelty. That the ground upon which the instant petition is brought is change in attitude of the Respondent which the Petitioner find intolerable to put up with. He relied on the case of **ANIOKE V ANIOKE (2011) LPELR – 3774 (CA) Per ADEJU, JCA, OMOGIATE V. OMOGIATE (2021) LPELR – 56018 (CA) Per OBASEKI – ADEJUMO, JCA,** were the Court held that facts alleging cruelty and humiliation can sustain a ground that a marriage has broken down irretrievably, **WILLIAMS V. WILLIAMS (1966) LPELR – 25334 (SC) Per IDIGBE JSC.** Where the Court held in what consistent cruelty: cruelty is in its nature a cumulative charge, and so an accumulation of

minor acts of ill treatment causing or likely to cause the suffering spouse to break down under strain constitutes the offence, thus, cruelty may consist in the aggregate of the acts alleged in a petition and each paragraph need not allege an independent act of cruelty sufficient in itself to warrant the relief sought."

On the unchallenged evidence before the Court, the Counsel relied on the case of **PLANTAIN SELLERS MULTIPURPOSE CO-OPERATIVE SOCIETY LIMITED & ANOR V. YA'U & ORS (2022) LPELR – 58302 (CA) PER WAMBAI JCA.** The Counsel reinstated the trite principle of law that the unchallenged evidence must be accepted or believed and acted upon by the Court. He cited the case of **OFORLETE V. STATE (2000) 12 NWLR (Pt. 681) 415, BALOGUN V. UBA LIMITED (1992) 6 NWLR (Pt. 247) 354, ADA V. STATE (008) 13 NWLR (Pt. 1103) 149.** He further argued that there is a qualification to the acceptance of an unchallenged evidence by the Court, that such evidence must be evaluated by the Court and found to be cogent and credible before it is accepted to sustain a claim. He relied on the case of **GONZEE (NIG) LIMITED V. NEROC (2005) ALL FWLR (Pt. 274) 235.** He submitted that from the above provision of law, the Petitioner is entitled to the relief sought, that apart from cruelty, there is evidence of separation, that both the Petitioner and the Respondent have been living apart for the past ten years preceeding the filing of the petition which in law is a potent ground to hold that the marriage has broken down irretrievably.

Custody of the children: The Learned Counsel relied on the provision of Section 71 (1) of the Matrimonial Cause Act, 1970. On the guiding principle of custody of children after the dissolution of a marriage. That properly it is the interest of the child that is paramount on the mind of the Court taking into consideration, the welfare of the child/ children of the marriage. He relied on the case of **ADESEKE V. ADESEKE (2020) LPELR 51160 CA Per ELECHI, JCA, DAVIDSON V.**

DAVIDSON & ANOR (2021) LPELR 56109 CA Per HASSAN JCA. He further submitted that what constitute the interest of the child is not spelt out in the Matrimonial Cause Act but the Court must look at the circumstances of each case in distilling that issue. Cases cited in support of his contentions are **WILLIAMS V. WILLIAMS (1987) 2 NWLR (Pt. 54) 66, PER KABIRI – WHYTE JSC, ACME BUILDERS LIMITED V. K.S.W.B (1999) 2 NWLR (PT. 590) 288, SARAKI V. N.A.B KOTOYE (1990) 6 SCNJ 31 @ 51,**

Furthermore Counsel cited the case of **SOLANKE V. AJIBOLA (1968) 1 ALL NLR 46 @ 59** that held: unless it is abundantly clear or established that the mother suffers from moral conduct, infectious diseases, insanity or lack of reasonable or is cruel to the children etc, the custody of the children ought to be given to the mother. That it is a known fact that children of tender age, male or female are ordinarily better off in terms of welfare and upbringing with their mother. That there is always that rebuttable presumption in favour of the mother of the children of dissolved or broken down marriage. He further relied on the case of **ODOGWU V. ODOGWU (1992) NWLR (PT. 215), 1992 LPELR 2229 SC.**

He drew the attention of the Court to the fact that the Petitioner only seek the order of Court granting release of the only child of the marriage during holidays, and access to visit the child whether in school or the residence of the Respondent or any place that may be determined by the Court. The Court was urged to grant the petition.

I here gone through the petition and the grounds upon which the petition is anchored. The learned Counsel stated that the marriage had broken down irretrievably on ground cruelty: cruelty is not a ground for divorce as stated under the provision of Section 15/ (2) of the Matrimonial Cause Act, however as decided in the case of **OMOGIATE V. OMOGIATE** supra relied on by the Petitioner's Counsel.

The facts can be used to show the conduct of the Respondent in such a way that the Petitioner cannot be reasonably be expected to live with the Respondent. The conduct of the Respondent which the Petitioner stated that constitute the cruelty is in the denial of conjugal duties by the Respondent and the breakdown of communication between him and the Respondent. Cruelty in my understanding consist of physical harm or intention of injury on a party. It could be harm to any part of the body. It could also be in form of mental torture that put the other in a state of perpetual tear, unhappiness and sorrow. The Court of Appeal in the case of **IKPEA V. IKPEA 2022 LPELR 5874 CA PER ASADUA JCA** of blessed memory defined cruelty thus: cruelty is therefore said to be regarded as a conduct which is grave and weighty as to render the continuance of Matrimonial Cohabitation virtually impossible coupled with injury or reasonable apprehension of injury (physical or mental) to heath See **DAMULALE V DAMULALE (SUPRA)**

The Petitioner in his evidence in chief stated that there was no issue of domestic violence on his post in the marriage, and he never mentioned that there was any on the part of the Respondent as well. Issue of physical and domestic violence on the part of the Respondent is therefore ruled out.

The Petitioner further stated that the conduct of the Respondent is not what he can reasonably be expected to live under the circumstance. That there was change of attitude by the Respondent shortly after their marriage for leading to a breakdown of communication. In an action of this nature, the standard of proof required of the Petitioner is to adduce cogent and compelling evidence to the satisfaction of the Court in proof his claim against the Respondent. By virtue of Section 15 (2) of the Matrimonial Act, the Petitioner is to adduce evidence establishing any of the facts enumerate under Section 15 (2) of the Act. The Court in case of

NWAKWO V. NWAKWO (2014) LPELR 24396 CA held that in Matrimonial Cause, the standard of proof is settled by Section 82 (1) of the Act which stipulate that Section 82 (1) for the purposes of this Act, a matter of fact should be taken to be proved if it is established to the reasonable satisfaction of the Court. (2) where a provision f 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 as other matter" In Matrimonial Cause therefore, the standard of proof to be attend by a Petitioner is that to the reasonable satisfaction of the Court. The question of reasonable satisfaction" is therefore of the discretion of the Court upon a proper. Appraisal of the fact adduced by the Petitioner. See **GEOGEWELL V GIOGEWELL 2022 LPELR 56014 CA.**

The Petitioner in the instant case have not satisfactorily brought his complaint against the Respondent within any of the condition stated in Section 15 (2) of the Matrimonial Causes Act. There is no sufficient particular or proof of the attitude of the Respondent which the Petitioner found detestable and cannot put up with or tolerate. In Section 15 (2) (c) one of the ground upon which a Court may find that a marriage has broken down irretrievably is that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

Section 16 (1) (a) – (g) further state what constitute intolerable behaviors, that the Petitioner must proof to the satisfaction of the Court. The Petitioner has not pigeonholed the attitude of the Respondent into any of the circumstances mentioned in Section 16 (1) (a)-g of the Act. The Intolerable behavior must therefore be grave and weighty **BIBILARI V BIBILARI 2011 LPELR 4443 CA.** Further

ground upon which the Petitioner placed the petition is that they have lived apart for ten (10) years I do not believe this and cannot from the evidence see my way through that they have lived apart for ten years. In paragraph 7, of the Witness Statement on Oath of the Petitioner, the stated that about ten years ago, he relocated to Abuja, i.e. within the jurisdiction of the Honourable Court, this is due to the new construction job I got in Abuja… the Respondent was still residing in our Matrimonial house in Lagos".

The Petitioner have not claimed that he relocated to Abuja because of the conduct or attitude of the Respondent or that the Respondent deserted the Matrimonial home. He claimed that he still visits the Respondent and does his duties as a husband. There was no abandonment of each other by the parties. There is no proof that the Petitioner deserted the Respondent. It is therefore safe to conclude that dispute the relocation of the Petitioner to Abuja, they still live together as husband and wife, regardless of the alleged denial of conjugal rights by the Respondent. The is no evidence as to how long the Petitioner has stayed in Abuja without going to his wife in Lagos, there is also no evidence or proof of the several attempts at reconciliation by either the family of the Petitioner or that of the Respondent. Let me state that because of the sanctity of the marriage institution, the Court are very reluctant in granting a dissolution of marriage, in the interest of the parties which include the child or children of the marriage and the society at large. The smallest unit of any society is the family which consist of husband, wife and the children. Granting the dissolution of a marriage therefore is tantamount to uprooting the very fabric or foundation of a society. I am therefore not satisfied that the marriage between the Petitioner and the Respondent have broken down irretrievably. The Petitioner have not adduced sufficient evidence to that effect. Consequently, I hereby order a further reconciliation by the parties.

They said reconciliation is to be anchored by the head of the religious organization where the Petitioner on the Respondent worships, and there must be proof of the reconciliation filed by Counsel for the Petitioner. Meanwhile this Petition is hereby struck out and may be relisted by the Petitioner subject to the outcome of the reconciliation.

Signed

Hon. Judge.

31/10/24