

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU
PETITION NO: PET/2152023

BETWEEN:

DR. PAUL O. ACHUGBU.....PETITIONER

AND

MRS. CHIMAOGE C. ACHUGBU.....RESPONDENT

JUDGMENT

The Petitioner whose address is at No 1 Samuel Idoko Close, FCDA, Kubwa, Abuja petitions the Court for a decree of dissolution of Marriage against the Respondent whose marriage was contracted on the 9th of November, 2010 at Umahia North Local Government, Registry Abia State on the ground that the Marriage between the Petitioner and the Respondent has broken down irretrievably and facts relied on are that the Petitioner cannot reasonably be expected to live with the Respondent.

The Petitioner sought the following reliefs:

- a. A Decree of Dissolution of Marriage between the petitioner and the Respondent held on the 9th of November, 2010 at Umahia North Local Government, Registry Abia State.*
- b. A Decree of Dissolution of Marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably.*
- c. An Order granting full custody of all the Children in the marriage of the marriage Chibudom Paul Achugbu, Chibuikem Paul Achugbu, Okey (jnr) Paul Achugbu and Nneoma Glory Achugbu to the petitioner.*
- d. An Order allowing the Respondent to visit the Children of the marriage in reasonable place and time.*

e. Omnibus prayer.

Upon service, the Respondent filed an Answer and cross petition against the Petitioner. At is the close of pleadings by the parties, the petition was set down for hearing.

The Petitioner on the 6/05/2024 adopted his witness statement On Oath. The facts of the Petitioner's case is that the parties got married on the 9th of November, 2010 at Umahia North, Local Government Registry, Abia State and the marriage is blessed with 4 kids 3 boys one girl namely:

1. **Chibudom Paul Achugbu born on the 7th of March, 2011.**
2. **Chibuikem Paul Achugbu born on the 28th of January, 2013.**
3. **Okey (jnr.) Paul Achugbu born on the 19th of February, 2015.**
4. **Nneoma Glory Achugbu born on the 19th of November, 2018.**

That Since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her.

Her behavior has been life threatening to him and it is neither safe nor healthy for parties to live together in the same environment.

That she failed, refused and neglected to show concern and love to the him and always looks for a reason to rain verbal abuse and blackmail on the him.

The she has indulged in despicable act of infidelity with her co-worker one Dr. Evaristus Chijioke Aniakwu, which completely violates the ethics and tradition of the institution of marriage. A copy of the whatsapp conversations between the her and said co-worker was pleaded That she has shown acts of violence to the Petitioner and to the people around them. As she constantly maltreats and manhandles the house maid to the extent that she has maimed one (broken ear drum) and she has also broken her head to which the Petitioner took the maid to the hospital to suture the scalp. It was the position he took against the maltreatment of maids that caused the blackmail of beating by the Respondent.

The Respondent has subjected him to psychological trauma, undue anxiety and emotional abuse in an environment of fear.

That the Respondent detests his presence and this gives him a serious concern.

That she keeps fighting and verbal abusing him at any slightest opportunity, particularly on the 24th day of June 2021 she attacked him violently and physically abused him and even went ahead and broke his phone in his attempt to call officials of Human Right Commission to intervene in the matter at that moment. A picture of the physical abuse was pleaded.

That he presently lives in constant fear for his life and depression.

That she is very stubborn, temperamental, disobedient and none submissive.

And even makes unauthorized movement without disclosing her way about and comes back in ungodly hours.

That she delegates her duty as a mother to their Children to their maids which leaves their Children at the mercy of the house maids.

The Petitioner tendered the following documents in evidence:

1. *The photographs showing violence to the Petitioner*
2. *The School fees receipt of the Children of the marriage*
3. *Result of school*
4. *Evidence of payment of rent and sending fees*
5. *Apartment letter of Respondent and pay slip.*
6. *WhatsApp conversation between Respondent and a 3rd party.*

The Respondent did not object to the admissibility of Exhibit P1 – P4. However, objected the admissibility of P4 and P5 on the ground that it is a public document and that it does not comply with Section 84 of the Evidence Act respectively.

The Petitioner sought the leave of Court to subpoena a witness who is SW1 namely Okwguigwe Geoffrey an investigator of NAPTIP he averred that there was a report at their office on September 2022. The report of forceful eviction and battery. The case was assigned for investigation that he invited the Petitioner after which both parties wrote them statements, he went through it and realized there was witness, so he met the witness and interview the witness after which he reconciled their statement, prepared his report and submitted same to his superior for further directives.

The report of the investigating officer was tendered in evidence.

On her part the Respondent denied all the allegations and cross petition. In her cross petition, she alleged the Cross-Respondent has committed adultery and has also dealt very cruelly with the

cross petitioner and the cross petitioner finds it intolerable to now continue to live with the cross-respondent.

The Cross-petitioner seeks for the following reliefs.

- a. A Decree of dissolution of the marriage between her and the Cross-Respondent on the ground that the marriage has broken down irretrievably in that since the commencement of the marriage the Cross-Respondent has demonstrated physical and emotional cruelty towards me and I find it intolerable to continue to live with him.
- b. Full physical custody of all the children of the marriage and shared legal custody; with supervised access granted to the Cross-Respondent on two Saturdays in every month (9 am in the morning till 4pm in the evening) in public locations and outside the my house.
- c. Monthly upkeep of N300, 000. 00 (Three Hundred Thousand Naira only) for the children of the marriage.
- d. The sum of N1, 000, 000. 00 (One million Naira only) per annum as rent to enable me secure a comfortable two-bedroom apartment for me and the children.
- e. Payment of full tuition fees for all the children which is N80, 000. 00 (Eighty Thousand Naira only) per term per child respectively for the 1st and 2nd child; and the sum of N97, 000. 00 (Ninety Seven Thousand Naira only) and N67, 000. 00 (Sixty Seven Thousand Naira only) respectively per term for the 3rd and 4th child and any increment that that may accrue as their education progresses up until graduation from the university.
- f. The sum of N100, 000. 00 (One Hundred Thousand Naira only) as monthly maintenance allowance for the Cross-Petitioner.
- g. Omnibus prayer.

Parties close their respective cases to pave way for filing and adoptions of Final Written Address.

The Respondent formulated the following issues for determination to Wit:

1. Whether Exhibit SW is admissible.

2. Whether or not the marriage has broken down irretrievably?
3. Whether the Petitioner is entitled to custody of the children of the marriage (names of ages children listed).

Counsel argued the above issues succinctly in urging the Court to dismiss the petition and grant the Cross Petitioner.

On the part of the Petitioner through his Counsel formulated 2 issues for determination to Wit:

1. Whether the marriage between the Petitioner and the Respondent has broken down irretrievably?
2. Whether custody of the children should be granted to the Petitioner.

Learned Counsel argued above issues citing relevant authorities in urging the Court **to grant the Petitioner's petition and dismiss the Cross-Petition from the evidence** before the Court, I find the following facts undisputed between the parties.

1. That the Petitioner and the Respondent are both no longer interested in being married to each other.
2. That the marriage has broken down irretrievably.
3. *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.*
4. That the children of the marriage are minors.

I have identified the area of dispute that stand distinct between the parties to include, the custody of the children of the marriage, the post maintenance of the Respondent and children after dissolution of the marriage.

In the opinion of this Court, the issue, whether the marriage is to be dissolved on the ground that the Petitioner finds it intolerable to live with and cannot reasonably be expected to live with the Respondent or on the ground that the marriage has broken down irretrievably call for determination.

I shall beam my searchlight on the evidence led by both the Petitioner and Respondent and their submissions before the court in proof of their cases regarding the dissolutions of their marriage. Matrimonial causes matters are in a world of their own, that is why they are called *sue generis*. The procedure for the dissolution of marriage under the Act, is as provided under the Matrimonial Causes Act. No marriage will be dissolved merely because the parties have agreed that it be dissolved. It will not be dissolved merely because it is a contract between two persons who choose to terminate same.

Marriage is the foundation of a stable society. It is the nucleus of society, in that; it is the families that make the society. Marriage that are entered into and ran out of by mere agreement of parties will not augur well for the society.

A decree for the dissolution of marriage would therefore only be granted if the Petitioner has proved that the marriage has broken down irretrievably as provided under Section 15(2) (a-h) of the Act. And the court hearing a petition for a decree of dissolution of marriage shall hold that the marriage has broken down irretrievably if, but only if, the Petitioner satisfied the court that one or more of the situations set out in Section 15 (2) (a) (h) of the Act occurred. See ***PIUS VS. OLORUNFEMI (2020) LPELR 49529 (CA)***.

I will for the purpose of clarity and avoidance of doubt reproduce the provisions of Section 15(a) – (h) of the Act, to wit:-

- (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 presentation 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 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 Petitioner for such time and in such circumstances as to provide reasonable grounds for assuming that he or she is dead.*

For emphasis, one or more of the conditions enumerated under Section 15(2) above suffice to hold that, the Marriage has broken down irretrievably. ***HARRIMAN VS. HARRIMAN (1989) 5 NWLR (PT 119) 6.***

The Petitioner has led evidence and tendered the marriage certificate, photograph showing violence on the petitioner, copy of WhatsApp conversation between the Respondent and 3rd parties, school fees receipts of children and school results, Similarly Sw1 testified for the petitioner who is an investigating officer of NAPTIP to the effect that he was assigned to investigate the report of forceful eviction and battery, where he tendered the report of his investigation

However, going by the testimony of both the Petitioner and the Respondent before now, parties have lived apart for more than three years as clearly stated in evidence of the Respondent and petitioner that since 2022 cohabitation between the parties ceased.

That the Respondent left their matrimonial home in 2022. I find it pertinent to note here that it has become obvious that there is desertion in the marriage.

In this instance, circumstances as is clearly present between the parties was frowned at by Supreme Court in line with their definition of what amounts to a desertion in a marriage in the case of ***ANIOKE VS. ANIOKE (2015) ALL FWLR PT (666) 521*** where the court held thus:

“..Desertion of spouse is defined as the withdrawal of support and cessation from cohabitation without the consent of the other spouse and with intention of abandoning allegiance, fidelity or responsibility and remaining separated in perpetuity”.

Similarly, the Respondent/cross Petitioner have led evidence to show that the Petitioner/cross Respondent was the one who was abusive and committed adultery as against the allegation of the

Petitioner/Cross Respondent, thus the petitioner tendered marriage certificate, set of pictures and letter of complaint to social welfare office.

The Respondent stated that she was ejected from her matrimonial home by the petitioner on the 6th of September, 2022 by changing the locks of their home. That upon the intervention of her Bishop both petition and complaint at NAPTIP were withdrawn. Subsequently the petitioner informed her that the petition was still subsisting in court, following a threat of divorce. The children have since then been in custody of the petitioner. That she had suffered physical and psychological abuses in the marriage.

I therefore, find the case of intolerable behavior proved as alleged by both Petitioner and the Respondent and I am of the opinion that the marriage should be dissolved on that ground. Accordingly, it is my considered view that this petition has satisfied the requirement of Section 15(1) and (2) (b) (c) and (e) of the Matrimonial Causes Act, 2004 which states that;

(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.

(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.

Accordingly I hold, on these grounds, that the marriage between the Petitioner and the Respondent has broken down irretrievably.

In the light of my findings, and in respect of which, I will and do hereby record a *Decree Nisi* for the dissolution of the marriage contracted on 9th day of November, 2010 between the Petitioner and the Respondent. The *Decree Nisi* shall become *absolute* by operation of law upon the expiration of three months from today.

I shall now, consider the issue of custody of children of the marriage having dissolved the marriage between the parties. Custody of a child in matrimonial causes connotes not only the control of the child but carries with it the concomitant implication of the preservation and adequate care of the child's personality and physical, mental and moral wellbeing. ***ALABI VS. ALABI (2008) ALL FWLR (PT 418) 248 AT 257 PAGE 296 PARA C.***

Often, it is the welfare of the children that is of paramount importance and parameter to be used in the determination of the issue of custody.

It is the contention of the Petitioner that the four children of the marriage **Chibudom Paul Achugbu, Chibuikem Paul Achugbu, Okey(jnr.) Paul Achugbu and Nneoma Glory Paul Achugbu** should be granted custody to him. An Application/relief the Respondent vehemently objected to and sought for the custody of the children with the Petitioner been responsible for their upkeep and school fees.

Indeed, judicial discretion of a Judge is what is often called upon when the issue of custody of children is before the court.

The age of the children, general welfare, upbringing, their accommodation, the conduct of the parties to the marriage are some of the factors always borne in mind by the court in determining who should have custody. *ODUCHE VS. ODUCE (2005) LPELR 8976 (CA)*.

Guided by wisdom and reason, however, considering the fact that the children are minors, the ---
----- shall have the custody of the children.

The petitioner shall pay in full the school fees of the children as assessed by the academy institution of his choice-----.

The ----- shall have unfettered access to the children any time provided and gives the --- prior notice. The ----- shall have custody of the children for not more than two weeks, every year, during the long vacation, during which he may travel with the children.

The petitioner shall bear the cost of the medical care of the children.

On the relief of maintenance for the Respondent and other compensatory reliefs sought by the Respondent, I am of the view that same are not grantable in the circumstance of this Petition; accordingly, same are hereby refused and dismissed.

In the event of the breach of the terms of custody, the --- shall have custody.