

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP THE HON. JUSTICE G. O. IMADEGBELO-JUDGE
ON THURSDAY THE 23RD DAY OF JANUARY, 2014

BETWEEN:

SUIT NO: HAB/61D/2011

MR. DAVID UWAIFO PETITIONER
AND
MRS. MAGDALENE UWAIFO RESPONDENT

J U D G M E N T

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This is a petition for dissolution of marriage filed on behalf of the Petitioner Mr. David Uwaifo by his Counsel V. N. Eluma Esq. against his wife the Respondent Mrs. Magdalene Uwaifo and in which he seeks the following orders.

A decree of dissolution of the marriage between the Petitioner and the Respondent on the grounds that the marriage has broken down irretrievably

And such order or other orders as the court may deem fit to make in the circumstances.

The facts relied upon by the Petitioner as constituting the grounds for a decree of dissolution are as follows:

- (a) That the Petitioner and the Respondent were lawfully married at Oredo Local Government Marriage Registry, Benin City on the 29th day of September 1984 but the marriage had since broken down irretrievably.
- (b) That since the marriage and during cohabitation the respondent had persistently behaved in such a way that the Petitioner cannot be reasonably expected to continue to live with her being that the

Respondent never showed love or respect to the Petitioner and always quarrelsome.

- (c) That since the marriage, the Respondent had continually deserted the Petitioner for no just cause until she finally deserted the Petitioner in 2009 hence the Petitioner finds it intolerable to live with her.
- (d) That the Respondent before her last desertion in 2009 deserted the matrimonial home in 2007 to rent an apartment for herself and when the Petitioner called her on phone she said she was comfortable where she was until Petitioner's Christian brothers insisted that the respondent be brought home but upon arrival at the matrimonial home poisoned pawpaw which the Petitioner ate and almost died and was grasping for breath Respondent ridiculed him saying she taught he knew how to be careful and when the Petitioner confronted the Respondent if she was really she would never love him again and she immediately packed away from the matrimonial home.
- (e) That before the poison incident the Petitioner would rather not eat anything at home even though the Respondent occasionally cook at home and would rather prefer to sleep with hunger or sneak out of the matrimonial home to eat if the hunger became unbearable.
- (f) The Respondent lacks respect for the Petitioner, and has always been unpredictable, on a certain day before the poison incident while the Petitioner was preparing to attend a religious meeting the Respondent forcefully and suddenly assaulted him and tighten his tie around his neck in order to suffocate him to death, the Petitioner miraculously escaped.
- (g) The respondent upon desertion of the matrimonial home monitored the movement of the other two children living with the Petitioner on phone and the Respondent secretly came to the matrimonial home to pack some moveable properties and left with the children and the Petitioner ceased having sexually intercourse with the Respondent since 2009.
- (h) In December 2009 after the last two children had left with the Respondent the last son of the Petitioner Peter Osagona visited the matrimonial home in order to attend a religious convention but the Respondent instigated

him against the Petitioner and he said he wanted to go back to school and needed some money else he would set the house on fire and he started destroying all the louver blades in the house and the protector and threatened to deal with the Petitioner because he is a member of secret cult.

- (i) The Respondent has insisted that the said Peter Osagona should not attend any tertiary institution because of the mysterious way his elder brother died but the Petitioner insisted that he must attend a tertiary institution and he eventually got admission into Delta State Polytechnic Otefe, Oghara Delta State.
- (j) The Respondent threatened that since the Petitioner allowed their son Peter Osagona to attend tertiary institution, he is not going to achieve anything from the said institution and Peter eventually dropped out of the institution.
- (k) That the Petitioner is afraid of the threat by his son under the instigation of the Respondent who has also promised to take life out of him, he decided to flee his home to a rented apartment in compliance with the candid advice of friends, relations and Christian brothers.

The Respondent filed an answer and Cross Petition. The Petitioner filed a reply to the Cross Petition.

The Petitioner testified, he knows the Respondent, she is his wife. They got married on the 29/9/1984 at the Oredo Local Government Registry, Benin City.

He identified the marriage certificate. Marriage Certificate NO.393/84/85 dated the 29/9/1984 was admitted in evidence as Exhibit 'A'. They cohabited at No. 10 Agboma Street, Uzebu Quarters later they moved to No. 2 Esigie Street and later Osa Street then to No.10 Agho Street, finally to No. 92 Igbinedion Street, Evbotutu. Their first son now deceased was born in 1985. There are four children of the marriage. Master Esosa Uwaifo born 1985, Master

Osagona Peter Uwaifo 1989, Miss Orobosa Uwaifo born 1995, Miss Ewaen Uwaifo born 1998. In the year 2007 co-habitation between them ceased when the Respondent absconded. The Respondent rented apartment thrice before she finally absconded. When she rents a house the Church will intervene, she will come back until she finally left. The Respondent was having an affair with the landlord who promised her money to set up a supermarket. The matter was taken to the Church she denied it. He did not connive nor collude to bring this petition. He wants the court to dissolve the marriage. He is aware the Respondent filed an answer to the Petition. The Respondent broke his head and ran to her father's house. He set up a store with a tanker for the Respondent. He did not threaten to kill the Respondent. He has a double barrel gun he uses for hunting. He has been paying the school fees. He is unable to pay the sum of N30,000.00 monthly for maintenance of the children as he no longer goes to farm and he sent the Respondent to school and she is employed as a civil servant at Psychiatric hospital. He is also unable to pay the Respondent N20,000.00 monthly maintenance. He did not borrow the sum of N25,000.00 from the Respondent. He did not know about the tying of her womb, she only told him after the last baby, he was annoyed. She said the doctor said it was reversible, he told her to go and reverse it.

Under cross examination by G. U. Odia Esq. the witness stated that they last cohabited in 2007, 2009 as stated in his petition was a typographical error. He has not set his eyes on the Respondent for five years. He has not sent anything to the Respondent but through his children. He is aware that the landlord and his wives buy things from the Respondent. That the landlord promised to give the Respondent N600,000.00 when he challenged him he said it was a joke. It is not true that when he was attacked it was his son that brought the cultists, the Respondent instigated his son to lead the troops. He did not beat the Respondent, he did not accuse the Respondent of witchcraft. He did not accuse the Respondent of poisoning him. The Respondent tried to poison him by replacing the fish in his food and poisoned pawpaw. No. 92 Igbinedion street is not his personal house. The money for the house was brought by one Moses.

The house is owned by his brother Oghogho Uwaifo. All done there was done in the name of Oghogho Uwaifo. He did an agreement for purchase of land in his brother's name at Ehaekpen Street at Eguavoen documentary, he went there with the Respondent who signed as a witness. He delivered the documents to the owner in the year 2010. Oghogho is also called Jolly. He had many parcels of land he has sold all. He does not have land at Evbotubu community. He will be surprised to see a document showing that he owns a land at Evbotubu. He sees the document, then he was living at No. 20 Osa Street. His former landlord was working in Port authority. He was at No. 92 Igbinedion Street when he bought the land at Evbotubu. Surveyor F. U. Iyawe was a witness. His wife was a witness. He identified the document. Deed of Transfer dated 5/12/1977 was admitted in evidence as exhibit 'B' The property at No. 92 Igbinedion was completed when they packed into it. It is over five years since tenants live in the house. The yearly rent is about N200,000.00. There are seven lock-up stores. It is one of the flats he converted into stores. He left the flat on the 13/12/2009. The flat costs N10,000 a month each store rent is N3,500.00. He knows one Mrs. Imasuen of Quality Maternity home. He will be surprised if he consented to the Respondent tying her womb. He started communicating with the children, he gave them money for shoes and school bag.

DW1 testified her names are Agnes Imasuen, she is a midwife. She knows the Petitioner and Respondent. The Petitioner is her first Cousin, The Respondent is his wife. She is on subpoena to testify. She knows Quality Maternity Home that is her place of work at No. 27 Ehmoikha Street off Uyi Technical road. Sometimes in 1998 about 14 years ago, when they had their last baby at Quality Maternity home, the couple informed the Doctor prior to the delivery of the baby that they were not going to have any more children. They informed the Doctor that the Respondent's womb be tied. They both discussed with the doctor. After delivery on the second day the Doctor gave them the consent form which they signed. The Doctor now performed the surgery on the Respondent. Thereafter they did not see them again. Dr. Osayande performed the operation, he was working in the U.B.T.H.

Under cross examination, the witness stated that Dr. Osayande is no longer working in the U.B.T.H., he is no longer working there. The Petitioner and Respondent informed the doctor that they were no longer interested in having issues. She was not present when they were discussing it.

Under re-examination she stated that she was not present when the operation Was done. It was when the parties were discussing with the Doctor she was present. She was present when the consent form was filled.

Under further cross-examination the witness stated that the consent form was filled on the date of delivery, the following day the surgery was done. The Doctor took the Respondent's case file away, there are no records of treatment of the Respondent in the hospital. She saw the Petitioner signing the Consent. She is not here to tell lies. The Petitioner is her brother.

DW2 testified her names are Magdalene Uwaifo, she is a Petitioner, she knows the Respondent. He is her husband. They got married on the 29/9/1984. They lived at No. 10 Noma Street, thereafter Esigie Street, thereafter Agho street. They finally lived at No. 92 Igbinedion Street, Evbotubu Quarters, their own house. They bought the land, laid the foundation and built the house. The money they used was collective effort between her and the Petitioner. Her signature is on the document as a witness. They had four children two boys and two girls. Esosa male born in June 1884 died 2nd April 2006. There has been no previous proceeding for divorce. After the marriage they had many problems fighting on many occasions. The physical assault on her was too much to bear, she had to opt out in 2008 for the sake of her life with the aim that when tension cools down there will be possible reconciliation. For three years all efforts at reconciliation by family and friends proved abortive. She was the one prompting to reconcile. There was a time she went to the house and was driven out with kicks and blows by the Petitioner never to enter the compound. On two other occasions she called the Petitioner whereby he insulted her that she was a witch and should think of repenting. While she was working the Petitioner accused her of having affair. He accused her of having affairs with one Mr. Osarhenrhen at Osa Street her landlord. He also accused her of having affairs with her boss at

Water Board, that caused problems at home. She was not having affairs with these persons. Mr. Osarherhen was a contractor in Warri, his family resided here. It was not possible and it is not true that Mr. Osarherhen could open a supermarket for her. Mr. Osarherhen was having two wives and his wives came to buy things from her on credit when he comes back he is unable to clear the debt. She was forced by the Petitioner to resign from her job at water board as a result of the Petitioner's accusation that she should resign as the children were not being cared for and how much was she earning. When she resigned the Petitioner gave her the sum of N10,000.00 which she used to set up the provision store. She thought it was gift but he later asked for the money. She paid back. There was an incident whereby the Petitioner locked her out of the matrimonial home. Minor issues were enough to spark up the petitioner. He accused her of not being honest on how much she will put up to the family upkeep. The home became a place of terror. When she hears his bike, she will begin to arrange things. She was always going to the hospital for treatment for malaria till a doctor diagnosed she was suffering from anxiety neurosis. The situation became worse when she lost her first son. The Petitioner accused her of killing her son that she was a witch. The Petitioner said she should leave his house that she was a witch. The Petitioner said she should leave the house, giving her the beating of her life at any minor argument. After the 3rd child the Petitioner said he did not want children anymore. They explored several family planning, the long term family planning they did resulted in bleeding, they discussed, she took it out. Within two months she got pregnant. From the date of the pregnancy till delivery, she was in hell, prior to the delivery of that child there was a beating the Petitioner gave to her, she had to run to her father's house for a safe delivery. The Petitioner pleaded with her father, she came back. Prior to the delivery, the Petitioner said there is a family Planning that is permanent. She agreed that the surgery is done at U.B.T.H., he has planned it with his Cousin (DW1) to do it in their maternity. After the delivered the woman invited the doctor to her clinic and the surgery was done. Before the surgery they were asked if they wanted it. They agreed and they signed a consent form. The surgery was done at Quality Maternity home. DW1 is her husband's Cousin who testified on subpoena. The day prior to her leaving the matrimonial home Peter joined his father against her as the Petitioner had already turned him against her that she is a witch and will kill him as she killed his brother. It is not possible for her to instigate Peter against the father. She was not aware that

Peter chased the Petitioner with cutlass until after it occurred. Before she left the matrimonial home Peter was in Oghara Polytechnic. She always gave Peter financial assistance. On a certain date he requested for the sum of N25,000.00 which his father promised to give to him to enable him resign from the cult. She gave him the money. The Petitioner has not repaid the money. After she left the matrimonial home she got to see the children, the Petitioner will drive her out. On a certain date she went with clothes and provisions. The Petitioner drove her out, as she was leaving her two daughters ran after her with their bags. She decided that since she could not give birth again she should take the children along with her. A week later she went to the Petitioner's house and took the children away in the Petitioner's absence as the children were not willing to wait for him. On their way the Petitioner called their eldest daughter who informed him that they were going away with her. He replied that if they were going away with her, he will not be financially responsible for them. On a certain date she requested for money for stew, the Petitioner said he had no money. She made starch and soup which led to the Petitioner quarrelling and beating her up. She saw blood on the floor. Three days later she informed the Petitioner that she was leaving, he agreed. The Petitioner threatened to kill her, the night before she left the Petitioner was going up and down sharpening his cutlass and oiling his gun, he threatened to butcher her up. The house at No. 92 Igbinedion street was built by her and her husband. She does not know why he told court the house belongs to his brother. She identified Exhibit 'B'. When they moved in there were two uncompleted flats. They built some stores. There were about 7 to 8 stores amounting to about N500,000 per annum for rent. She has not been receiving any part of that rent till date. Uptil the date she received the Petition in December 2011 the Petitioner has not been financially responsible for the children. The Petitioner after the service of the Petition called the children and promised to be giving them N2, 000.00 monthly for lunch. She did not attempt to poison the Petitioner. The Petitioner accused her of poisoning his rice. He also informed Mama Julius she poisoned pawpaw for him to eat. The Petitioner has abandoned her for a marriage of over twenty seven years, she is now a barren woman, she cannot give birth. She wants compensation. The Petitioner is a high time farmer at Ekemwan road farming cassava, melon and pepper. At a time he was in the rubber business. He is a contractor. She left the petitioner almost four years ago. She does not know

what he is doing now. She wants the court to grant her reliefs as per paragraph 10.

Under cross-examination by V. N. Eluma Esq. the witness stated that it is not true that while she was in the matrimonial home she did not acquire any property. The land they built their house was a joint effort. She bought the refrigerator, one of the beds, household equipments like pots, cutlery utensils. She has a receipt for the refrigerator which is in the cupboard which key is in possession of the Petitioner. The purchase of the house, she signed as a witness and co-buyer. There is nothing like co-buyer in Exhibit B. She knows one Oghogho Uwaifo. The Petitioner sent her to pay some money into his account. She was not in the habit of leaving the matrimonial home and coming back. It is not true that she took the children away because she was capable of taking care of them. The reason why she took them away was because the Petitioner was oppressing them. She gave as a reason in her letter of resignation that she was resigning for personal reasons. She could not recall the date she slept outside the matrimonial home to visit a bereaved friend which was over 28 years ago. She is now 48 years old. She believed the Doctor when he said she had anxiety neurosis, the Doctor asked her if she had any problems and that she should think less. DW1 said she was present and was not present. DW1 made these statements because, the DW1 was present when they signed the documents for the operation but was not present in the operating room though present in the hospital when the operation was done. She did not discuss the issue of N25,000.00 with the Petitioner, it is between her and her son.

G. U. Odia Esq. of learned Counsel for the Respondent formulated three issues for determination.

1. Whether in the circumstances of this case, the petition and cross petition for the dissolution of the marriage should be granted at the instance of the Respondent.

2. Whether the court should grant the order of maintenance of the children in the sum of N30,000.00 monthly for feeding; N30,000 yearly for clothing and also order that the Petitioner be responsible for their school fees and medical bills having conceded custody to the Respondent.
3. Whether the Respondent/Cross Petitioner is entitled to the court's order for alimony and damages as constituted in her paragraphs 10 B(iv) to d, in her cross-petition.

On Issue one Counsel submitted that the grounds on which a petition for a decree for the dissolution of marriage can be brought to court are provided for in Section 15(2) (a) –(h). That the facts for which both parties seek the dissolution of the marriage are mainly, (1) intolerable behaviour and (2) desertion. Counsel submitted that the Petitioner's grounds were baseless and unfounded as he could not give any reasonable fact in evidence to support his petition. His evidence were inconsistent and were particularly discredited under cross-examination. He only set out the machinery to putting an end to the relationship when he started to behave cruelly toward the Respondent, refusing to be tolerant and exhibiting acts of violence in furtherance to the threatening of the Respondent's life and thereby forcing the Respondent out of the matrimonial home and later deserted her. That the evidence of the Respondent in support of the facts relied upon for the dissolution of the marriage is more probable and should be believed by the court. She gave evidence of the unwarranted beatings she received from the petitioner, the cruelty of the Petitioner shown and exhibited toward her, unreasonable suspicion of adultery and desertion after she was forced out of the matrimonial home with the threat to kill her with gun and or cutlass. She moved out in fear of imminent danger to her life, particularly the night before she moved out of the house and expected that the Petitioner will have a rethink and call her back but alas, it was the Petitioner that came to court to seek an order of dissolution after deserting the Respondent for over 3 years.

On Issue two Counsel submitted that the Petitioner in his petition is not asking for custody of the two girls, Orobosa and Ewaen now about the ages of 17 and 15 years old respectively nor did he give evidence contrary to the Respondent's assumption of custody before now and her prayer for same in her cross petition. The Respondent gave evidence in support of the facts and circumstances upon

which the children had to be taken into her custody, not because she has the means to care for them but to avoid or rescue a situation where the children will be subjected to an emotional trauma from the attitude of the Respondent toward them. The Respondent has shown that the Petitioner has neglected to care for these children since November, 2008 until December, 2011 when he sent N4,000 to them and after which the neglect has continued. That Section 70 (1) of the Matrimonial Causes Act empowers this Honourable court to make maintenance order in favour of the children of the marriage, particularly when they have not attained the age of 21 years. **Hayes V Hayes Reported in Vol. 1 Selected Matrimonial Cases (2002) pg. 207 at 209 r. 2 by Funmi Quadri.**

That the Respondent has shown in evidence (not rebutted) that she earns about N30,000 (depending on the deductions). It is in evidence that she rented an apartment where she resides with their two daughters. After paying for rent and transport how would she manage the remainder to care for herself and the welfare of the two children with her without the support of the Petitioner? The Respondent showed by Exhibit B and her evidence that the Petitioner is a man of means who own the premises known as No. 92, Igbinedion Street, Evbotubu Quarters, Benin City where he collects rent from 2 flats and 8 stores and from squatters in the said premises. The Petitioner who had set out to deny ownership of the said building gave in during cross-examination when he was confronted with Exhibit B, the document of purchase of the land in his name and witnessed by the Respondent and even though he lied again, he gave evidence as to what he earns from that premises. Evidence before court shows that he earns between N500,000 and N700,000 per annum from No.92, Igbinedion Street, farming, rubber and contractor business he is doing. Counsel submitted that the Petitioner is capable of paying maintenance allowances for the feeding, clothing, school fees and medical bills of the two children in custody of the Respondent and therefore urged the court to grant the reliefs in paragraph 10 b (i) to (iii) of the cross-petition.

On Issue three Counsel submitted that the Respondent is entitled to alimony from the time that the Petitioner forced her out of the matrimonial home in November, 2008 until this marriage is dissolved and urged the court to grant the relief as sought for in paragraph 10 b (iv) of the Respondent's cross-petition. The Respondent has also shown that she is entitled to the relief in paragraph 10 b(v), the sum of N25,000 given their son (Peter) on the instruction of the

Petitioner. That the Respondent led evidence to show that she is entitled to relief 10(c) of her cross-petition when she said that she never anticipate that her marriage with the Petitioner will come to end this way and that was why she succumbed to the Petitioner's pressure and insistence that she undergo a permanent family planning. The Petitioner denied being aware or that he gave consent to the operation and it was for this reason that on the application of the Respondent, DW1 who was the matron of the maternity home and also the cousin of the Petitioner was subpoenaed by this court and she gave evidence that both the Petitioner and the Respondent were in the maternity home and both of them spoke with the Doctor and signed the consent form before the operation was performed. That both parties in their pleadings agree that the family planning operation was done and so what is relevant in the evidence of DW1 is that the Petitioner was at the clinic and consented to the operation. This is in rebuttal of the evidence of the Petitioner denying knowledge of the family planning operation. That the Respondent gave clear and uncontradicted evidence of how the Petitioner mounted pressure on her and the different type of planning she was made to undergo, how the last one failed that resulted to the pregnancy of the last child of the marriage and then reaction of the Petitioner that made her to agree to the operation which was carried out immediately after the birth of the fourth/last child because he insisted he does not want more children. That the award of cost is entirely within the discretion of the court.

V. N. Eluma of learned Counsel for the Petitioner formulated three issues for determination.

1. Whether the Petitioner has proved that he is entitled to an order of dissolution of the marriage between him and the Respondent.
2. Whether the Respondent is entitled to her reliefs sought as regards maintenance/feeding and clothing of the children and their medical bills.
- 3, Whether the Respondent is entitled to her reliefs sought as regards alimony and unilateral tying of her womb in view of the circumstances of this petition.

On Issue 1 Counsel submitted that the Petitioner has proved on a preponderance of evidence that Respondent's intolerable behaviour of adultery which occasioned her frequent packing out of the matrimonial home several times to advance her course of promiscuity is such that the Petitioner cannot be expected to continue to live with the Respondent as husband and wife. The Respondent admitted in her pleadings and during cross-examination that she packed outside the matrimonial home to rent her private apartments and not to reside with any of her family members or relations, coupled with the fact that the Respondent has equally admitted that the marriage be dissolved hence facts already admitted as in this petition need no further proof; sections 20, 21 and 123 of the Evidence Act 2001.

On Issue two Counsel submitted that the maintenance of the last two children of the marriage is important hence the Petitioner gave copious evidence of how the Respondent conspired with cultists in order to chase him away from 92, Igbinedion Street to seek safety elsewhere they have vowed to eliminate him since the Respondent has enlisted cultists to eliminate the Petitioner. However the Petitioner gave evidence that he engages in daily job and earns meager allowance with which he uses to sustain himself and send to his children. That it is also in evidence that Petitioner acquired a landed property at Igbinedion Street in his name but for his brother overseas, if it were otherwise, the Petitioner will not abandon his house/home and went elsewhere to rent an apartment where he has to pay rent to his landlord monthly or yearly as the case may be. That the court grants maintenance to the last two children of the Petitioner in view of the financial circumstances of the Petitioner to the tune of N6, 000 monthly.

On Issue three counsel submitted that the Respondent is not entitled to her reliefs as endorsed in paragraphs 10b (iv) to d of her cross petition. That the Respondent on her own several times walked out of the matrimonial home to further advance her promiscuous lifestyle by renting a private apartment hence she did not go and reside with any of her family members or relations therefore it will be an affront on justice if the Respondent is awarded alimony as that will be tantamount to giving her a pat on the back. Counsel submitted that he totally agree with the submission of the defence counsel to the extent that alimony is the financial provision made by a husband for his wife while the marriage relationship continues to exist until the dissolution of the marriage; **Hayes V**

Hayes therefore the respondent is not entitled to alimony as that will further encourage her promiscuous and adulterous life style. The Petitioner does not have the means presently to pay the Respondent alimony in retrospect. That the Respondent is not also entitled to the sum of N25,000 given to her son, Peter because the Petitioner was not there when the said Peter told the Respondent that the Petitioner agreed to pay the said sum. In addition, the Respondent failed woefully in her evidence to satisfy the court that the Petitioner has the wherewithal financially to pay damages; Section 131 (1) Evidence Act 2011. Counsel submitted that the Respondent failed to satisfy the burden of proof required in proof of her cross-petition **Ogoyone V Oghoyone (2000) 20 WRN 130 at 135 ratio 8** hence the defence counsel's submission cannot take the place of evidence which the Respondent failed to proffer in proof of her cross-petition. **Lawal V Oloruntoba-Ojo (2004) 48 WRN 88** the Respondent on her own volition without any compulsion or force from the Petitioner willingly submitted herself to tying of her womb without the consent of the Petitioner. That if the medical records or case file of the Respondent has been produced before the court by the DW1 the effect would have been unfavorable hence the court is invited to invoke the provision of section 167 (d) of the Evidence Act 2011 to disregard the Respondent's evidence as lacking substance; therefore not entitled to damages of any sort as it relates to family planning therapy. That DW1 cannot be said to be a witness of truth as she contradicted herself under cross examination when at first she said she was present and not present. That the court cannot pick and choose from these two contradictory statements from DW1 hence the court is enjoined to disregard the evidence of DW1 in totality; **Anyaegbu V Hussaini (2001) 5 WRN 91.**

I have read the pleadings, evidence, and submissions of Counsel. From the evidence before me, the following issues shall be considered.

1. Whether there was a valid marriage between the Petitioner and Respondent.
2. Whether the marriage between the Petitioner and Respondent has broken down irretrievably
3. Custody and maintenance of the children

4. Alimony.

On Issue 1, the Petitioner in paragraph '1' averred as follows:-

Paragraph '1'

The Petitioner, then a bachelor was lawfully married to the Respondent, then a spinster on the 29/9/1984 at Oredo Local Government Marriage Registry, Benin City in accordance with the Marriage Act. The Petitioner shall rely on a copy of the Marriage Certificate at the hearing of this petition.

The marriage Certificate NO393/84/85 dated the 29th September 1984 was admitted in evidence as Exhibit 'A'. In the instant case it is clear that there is a valid marriage between the Petitioner and Respondent.

On Issue 2, the Petitioner and Respondent are in agreement that the parties have lived apart for a continuous period of over three years.

I find from the evidence before me, that the Petitioner was persistently cruel to the Respondent by inflicting beatings upon her which led to the Respondent leaving the matrimonial home. The Petitioner also threatened to kill the Respondent with gun and cutlass the day prior to her leaving the marriage, in the present circumstances, it cannot be said that the Respondent deserted the Petitioner as the Petitioner was the party responsible for the constructive desertion.

On Issue 3 the two daughters of the marriage are in custody of the Respondent, they shall remain in custody of the Respondent. The Petitioner was a callous father to these children. He refused to give them financial assistance because they chose to live with their mother the Respondent. It is evidence before court that after the petition was served on the Respondent he called the children that he will be giving them N2,000.00. I also find that the Petitioner is capable and has the means to provide for his children. The court therefore grants reliefs 10 (b) (i) (ii) (iii) of the cross petition.

On Issue 4 the Petitioner is not a witness of truth, the Petitioner told court that the house at No. 92 Igbinedion Street belongs to his brother, Exhibit 'B' was tendered to contradict him. The address of Counsel that he acquired the house for his brother cannot take the place of evidence. The Petitioner and Respondent have been married for over 37 years. The Petitioner was so quarrelsome and vicious and instilled terror in the mind of the Respondent. The Petitioner's attitude is quite reprehensible. Bearing in mind his falsehood where he told court the Respondent tied her womb on her own volition. The Petitioner informed the court of the rent he collects from the property at No. 92 Igbinedion Street. I find that the Respondent in the circumstances of the case is entitled to alimony bearing in mind that she is now incapable of bearing any more children and the best part of a woman's life is over. The Petitioner shall pay to the Respondent a monthly sum of N20,000.00 as alimony. Relief 10(b) (v) is not proved. Relief 10(b) (c) is not proved as there is no evidence that the Petitioner forced the Respondent to tie her womb. The evidence before the court was that the parties signed a consent form.

I find as fact the following:-

1. That the Petitioner was persistently cruel to the Respondent.
2. That the parties have lived apart for a continuous period of three years immediately preceding the presentation of the petition.
3. That the marriage between the Petitioner and Respondent has broken down irretrievably

In view of the following, the judgment of the court is as follows:-

1. That the marriage solemnized between the Petitioner and Respondent at the Oredo Local Government Registry on the 29th day of September, 1984 is hereby dissolved.
2. Accordingly, I pronounce an order of Decree Nisi

3. The Order of Decree Nisi shall be made absolute at the expiration of three (3) months from the date hereon, unless sufficient cause is shown to the contrary.
4. That the Petitioner shall be responsible for the school fees and medical bills of the two daughters in custody of the Respondent.
5. That the Petitioner pays the sum of N30, 000.00 monthly to the Respondent for the feeding of the two children in her custody.
6. That the Petitioner pays the sum of N30, 000.00 yearly for the clothings of the children.
7. That the Petitioner pays N20, 000 monthly as alimony to the Respondent.
8. The Petitioner to bear the cost of this Petition.

HON. JUSTICE G. O. IMADEGBELO
J U D G E
23/1/2014

COUNSEL:

V. N. Eluma Esq.,	.....	.....	.....	.....	.....	.....	Petitioner
G. U. Odia Esq.,	.....	.....	.....	.....	.....	.....	Respondent