

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON FRIDAY THE
5TH DAY OF DECEMBER, 2025.

BETWEEN: **SUIT NO. B/337D/2024**
MRS. JULIET OSAREMWINDA **PETITIONER**
AND
MR. MAXWELL OSAREMWINDA **RESPONDENT**

JUDGMENT

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner on the 15th of April 2024. In her Petition, the Petitioner is seeking the following reliefs:

- 1) A Decree of Dissolution of Marriage against the Respondent on the following grounds:***
 - (a) The Respondent constructively and actually deserted the Petitioner in July 2016 by travelling abroad without her consent, and since he travelled abroad, he has totally abandoned the Petitioner and subjected her to financial and emotional neglect for almost eight years.***
 - (b) Even when the Respondent came back to Nigeria in December 2023, he made no attempt to cohabit or even visit the Petitioner, but totally avoided her like the plague.***
 - (c) The Respondent has been cohabiting with another woman since 2022, both in Nigeria and in Italy, and he has made known publicly his intention to marry her.***

- (d) As a result of the constructive and actual desertion of the Petitioner by the Respondent, the parties have lived apart since July 2016, i.e for a continuous period of over seven years before the filing of this Petition.*
- (e) The Respondent has behaved in such an unreasonable way that the Petitioner cannot reasonably be expected to remain in the Marriage any longer.*
- 2) An Order of this Honourable Court granting custody of the three children of the marriage to the Petitioner.*
- 3) An Order of this Honourable Court compelling the Respondent to take financial responsibility for the education of the three children of the marriage, and pay their school fees as and when due unfailingly henceforth, which are outlined below:*

JOAN OSAREMWINDA: *The current School fees is N24,000.00 (Twenty-Four Thousand Naira) only, per term.*

MIGUEL OSAREMWINDA: *The current School fees is N19,000.00 (Nineteen Thousand Naira) only, per term.*

MARVEL OSAREMWINDA: *The current School fees is N19,000.00 (Nineteen Thousand Naira) only, per term.*

- 4) An Order of this Honourable Court compelling the Respondent to pay a monthly sum of N300,000.00 (Three Hundred Thousand Naira) only, for the maintenance and upkeep of the three children of the marriage.*

The Petition was served on the Respondent and he filed an Answer and a Cross-Petition. In his Cross-Petition, the Respondent seeks the following Orders:

- a) A decree of dissolution of his marriage on the ground that the marriage has broken down irretrievably and the Cross-Petitioner finds it intolerable to live and cohabit with the Cross-Respondent and that the Cross Petitioner has suffered emotional and psychological torture from the Cross-Respondent which have affected the Cross-Petitioner's mental health and sanity.*
- b) The Cross-Petitioner shall be responsible for the education of the children of marriage and pay their school fees until they finish their tertiary education.*
- c) Cross-Petitioner to have unhindered access to the children of the marriage.*
- d) Cross-Petitioner to have unhindered access to the children of the marriage through his family members i.e. the brother or sister anytime being that the*

Cross Petitioner is not in Nigeria and also the children be allowed the visit Cross Petitioner family members.

e) Respondent/Cross Petitioner to Pay N40,000 monthly as maintenance of the children

At the hearing of the Petition, the Petitioner testified and closed her case. In her evidence, the Petitioner testified that she got married to the Respondent on the 14th of April, 2012 at the Oredo Local Government Council, Marriage Registry. The Marriage Certificate was tendered in evidence and admitted as exhibit "A".

The Petitioner testified that immediately after the wedding, they lived at Adesagbon Street, off Okhoro Road, Benin City. She said that they have three children, two boys and a girl. To wit: Joan Osaremwindi aged 13 years; Migel Osaremwindi (M) aged 11 years; and Marvel Osaremwindi (M) aged 8 years.

The Petitioner testified that after the wedding when she had her second child the Respondent told her that he was travelling, just a week before he travelled. According to her, the Respondent traveled to Italy and came back eight years later. She said that upon his return, the Respondent asked her to undergo some traditional rituals to ascertain whether she was with a man while the Respondent was abroad and to make sure that she will not be with any man when he travels back.

She said that she did not perform the rituals because she is a Christian and she did not consent to the Respondent travelling abroad. She said that when the Respondent came back from Italy, he did not stay in their matrimonial home.

She stated that in the early years after he travelled, he was caring but later he was only concerned about his children, leaving her out of the picture, causing her emotional torture, and the marriage started crashing from there. The Petitioner stated that the Respondent had no interest in her and only wanted to talk to his children.

The Petitioner also testified that she found out that the Respondent was living with another woman and this destabilized her the more. She said that the marriage crashed even before the Respondent came home, and the ritual was just an excuse.

The Petitioner alleged that when she refused to do the ritual, the Respondent returned her bride price. She said that the Respondent refused to come close to her or eat her food. She also said that the Respondent told her that two members of his family died because their wives refused to perform the rituals.

The Petitioner testified that the Respondent has gone back to Italy. According to her the Respondent first travelled in July, 2016 and since then they have not lived together. She stated that her three children are in school and they attend Igbimovia

Group of Schools. She said that she pays their school fees. The school fees receipts were tendered in evidence and admitted as Exhibits “B”, “B1” and “B2”.

Petitioner testified that she wants this court to dissolve the marriage, mandate the Respondent to continue to take care of their children, grant her custody of the three children, order the Respondent to pay her ₦300,000 as maintenance per month, and that the Respondent should be responsible for the school fees of the children in addition to the ₦300,000 maintenance.

The Petitioner admitted that she is aware that the Respondent filed an Answer and a Cross Petition, and she is not the person who deserted the respondent because she refused to perform the rituals. She restated that the Respondent did not obtain her consent before he travelled and that the respondent is living with another woman.

The Petitioner testified that she does not have any objection to the family visiting the children, but she maintained the children cannot go and visit his family unless he is around. She said that she does not agree that the respondent should only pay the sum of ₦40,000 per month as maintenance.

Under cross examination, the Petitioner testified that she was living with the Respondent in their family house when they got married. She said that the Respondent’s relatives were living in the said family house and before their wedding they performed a traditional marriage ceremony under Benin native law and custom.

The Petitioner also stated during cross examination that when the Respondent was abroad, he was sending money to her for the upkeep of the children, and she is not aware of how the Respondent’s father died.

Thereafter the Petitioner closed her case.

This suit was adjourned for defence and the Respondent was granted leave to testify in Court via Zoom since he is based outside Nigeria.

In his defence and in proof of his Cross-Petition, the Respondent adopted his written statement on Oath as his evidence in chief. He also added that he is willing to pay the sum of ₦100,000 per month for the upkeep of his children.

In his written statement on oath, the Respondent stated that the Petitioner and he discussed, deliberated and agreed that the Respondent/Cross-petitioner should travel abroad to enhance the fortunes of the family and that the Petitioner gave her consent to him before he travelled abroad.

The Respondent also stated that he never procured any visa but travelled abroad through land and that it was the Petitioner that bought the provision, clothes and other things that he took along with him when he travelled by land.

The Respondent stated that he did not and has never abandoned the Petitioner nor subjected her to emotional and financial neglect when he travelled abroad in 2016 and when he visited Nigeria in 2023.

He alleged that he sends the Petitioner money for her upkeep, running of the home/family and calls the Petitioner often to check on her. He also stated that he often uses her sister Osamede Michael's First Bank Account, with Account Number 3199422213 to send money to the Petitioner's First Bank Account Number 3179639785, with account name, DISI JULIET AMIEBENOMO.

The Respondent further stated that he never left the petitioner to fend for herself and the children and that he has always sent the Petitioner money for her upkeep and running of the home. He said that whenever the Petitioner calls him, he picks and if did not pick, it is because of work, and he always returns the call.

The Respondent said that he has not at any time told the Petitioner that he is not interested her rather he cares and communicates with wife and the children. He stated that he never abandoned nor neglected the Petitioner emotionally and financially for over seven years but was and is communicating with her frequently and always and sends money to her for her upkeep and the children.

The Respondent further affirmed that he is not cohabiting with anybody abroad nor with Precious Alliu and he doesn't know where the Petitioner conjured the name from. He said that all he is concerned about is his work, taking care of his family and God willing bringing them over to join him abroad/oversea, although he is presently unemployed.

The Respondent/Cross-petitioner also stated that he married the Petitioner under the Esan native law and custom as well as under the statute. He said that he paid the Petitioner's bride price and gave the Petitioner's family hot drinks, gin, beer and several alcoholic drinks as part of the Petitioner family rites for the traditional marriage. He then alleged that though the Petitioner and her family claims to be Christians, the church they attend don't take alcohol or approve it but the Petitioner and her family accepted it as part of the traditional rites for marrying the Petitioner.

The Respondent stated that his own father Michael Osaremwinda died because of his mother's infidelity and his uncle Eghosa Osaremwinda also died few weeks after his return from abroad upon having sex with the wife, and from the finding of the Elders of the family, they said the wife was cheating on her husband (Eghosa Osaremwinda) and that was what led to the death of the Eghosa Osaremwinda.

The Respondent stated that when he returned to Nigeria in 2023, the Elders and family of the Respondent said they don't want what happened to his father and uncle

to happen to him hence they requested her to perform some traditional rites before the Respondent can resume sexual relationship with her.

He said that the Petitioner refused to perform the traditional rites.

The Respondent stated that the Petitioner was not accused of infidelity but that his family said that it is proper for the rite to be done having lived apart for eight years to forestall and avoid any negative consequence.

The Respondent testified that he was surprised and shocked when the Petitioner and her family returned to the Respondent and his family the Petitioner's bride price and said the Petitioner is no longer interested in the marriage.

The Respondent stated that notwithstanding that the Respondent and her family have returned her bride price, he still calls the petitioner, sends her money for her upkeep and running of the family. He alleged that it is the Petitioner that dumped him and their marriage by returning the bride price to him and his family. The Respondent concluded by saying that the Petitioner is no longer interested in the marriage. He therefore asked the court to dismiss the petition of the Petitioner

The Petitioner in response to this filed a Reply to the Respondent's Answer and Cross Petition. In her Reply, the Petitioner denied several assertions in the Respondent's Answer and restated that the Respondent never at any time told her anything about his plans to travel until barely a week to his departure date.

At the conclusion of their evidence, the learned counsel for the parties filed their written addresses which they adopted as their final arguments in support of their Petition and Cross-Petition respectively.

In his final written address, the learned counsel for the Petitioner, *I.O. Usifoh Esq.*, formulated a sole issue for determination as follows:

“Whether the Petitioner has established that the Marriage between her and the Respondent has broken down irretrievably, in line with the Provisions of Section 15 (2) of the Matrimonial Causes Act, Cap M7 LFN 2004, to entitle her to be granted a Decree of Dissolution of Marriage by this Honourable Court, as well as the ancillary reliefs contained in her Petition.”

Arguing the sole issue for determination, learned counsel submitted that under the Matrimonial Causes Act, the sole ground for dissolution of a marriage is that the marriage has broken down irretrievably. He also submitted that it is competent for this Court to dissolve the Marriage once it is convinced that the Marriage has broken down irretrievably.

Learned counsel further submitted that for this Court to come to the conclusion that the Marriage between the Parties has broken down irretrievably, the Petitioner must satisfy the Court of any of the following facts, among others:

1. That since the marriage, the Respondent has committed adultery, and the Petitioner finds it intolerable to live with the Respondent,
2. That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent;
3. Desertion by the Respondent for a continuous period of one year immediately before the Petition;
4. The Parties have lived apart for a continuous period of two years immediately before the Petition, and the Respondent does not object to the Petition;
5. The Parties have lived apart for a continuous period of three years, etc.

Learned counsel relied on *Section 15 (2) of the Matrimonial Causes Act, Cap M7 LFN 2004*. Learned counsel argued that in the instant case, the Petitioner has satisfied the provisions of *Section 15 (2) of the Matrimonial Causes Act*, both in her pleadings and evidence, in particular reference to Numbers 2, 3, 4, and 5 above. In this, learned counsel relied on the Petitioner's Notice of Petition, dated the 5th of February, 2024, and the Petitioner's Evidence-in-Chief, which she gave before this Court on the 8th of April, 2025.

Learned counsel also submitted that the Petitioner led Evidence copiously on the fact that the Respondent did not inform her that he was travelling abroad to Italy, until about a week to his departure date in July 2016, when it was already too late for her to do anything about it, because at that point, the Respondent was only telling the Petitioner for her information, and not because he was seeking her consent or permission. Learned counsel stated that in effect, the Respondent travelled abroad to Italy without seeking the Petitioner's consent or permission.

Learned counsel also submitted that the Petitioner led Evidence to the effect that soon after the Respondent got to Italy, he distanced himself from the Petitioner, and stopped communicating with her. He maintained that the Respondent's emotional and financial neglect of the Petitioner occasioned great emotional, mental and psychological trauma on the Petitioner.

Learned counsel submitted that as if all that wasn't enough, the Respondent started cohabiting and having an affair in Italy with a woman named Precious Alliu, whom he flaunted on his social media handles. He said that where friends and relatives of the Petitioner saw it, and drew the Petitioner's attention to it, the Respondent

eventually put the said Precious Alliu in the family way, and the said Precious Alliu gave birth to a child for him. This the learned counsel stated occasioned more emotional and mental and psychological anguish and trauma on the Petitioner.

Learned counsel further reiterated the circumstances that led to the Petitioner filing her Petition for Dissolution of Marriage before this Court. He submitted that in light of these circumstances, it is crystal clear that the Petitioner has led sufficient credible evidence to establish the fact that the marriage between her and the Respondent has broken down irretrievably.

Learned counsel further submitted that the Grounds for the Petitioner's Petition are, firstly, Constructive and Actual Desertion of the Petitioner by the Respondent, secondly, that the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent, and thirdly, that the Parties have lived apart for over seven years immediately before the presentation of the Petition.

Learned counsel posited that the act of the Respondent in travelling abroad without the consent of the Petitioner, amounts to Constructive Desertion. He further submitted that it is also in Evidence before this Court that in the second or third year of the Respondent's sojourn in Italy, he cut off communication completely with the Petitioner, and neglected her emotionally and financially, which occasioned great mental, emotional and psychological trauma on the Petitioner. He said that even while the Respondent was still in Italy, before the Respondent returned to Nigeria after seven years in Italy, he had already distanced himself from the Petitioner, and therefore that that is further evidence of Desertion.

Learned counsel submitted that on a calm perusal of the Petitioner's pleadings and Evidence led in support, it becomes glaringly obvious that the Respondent is guilty of all the six above-listed requirements needed to establish Constructive Desertion. On this ground, learned counsel stated that the Petitioner has sufficiently made out a case of Constructive Desertion against the Respondent. He further submitted that Constructive Desertion is a valid ground for Dissolution of Marriage, and that where it is sufficiently established, the Court has no other choice than to hold that the Marriage has broken down irretrievably. On this learned counsel relied on the cases of: *NANNA V. NANNA (2005) LPELR-7485 (CA); (2006)3 NWLR (Pt. 966) P.1 at P.10; UZOCHUKWU V. UZOCHUKWU (2014) LPELR-24139(CA).*

Learned counsel therefore urged this Court to hold that the Petitioner has successfully established that the Marriage between her and the Respondent has broken down irretrievably.

He further submitted that the Petitioner has shown by credible evidence that the Parties have been living apart for over seven years before the presentation of the

Petitioner's Notice of Petition. In this regard, learned counsel relied on the Petitioner's Pleadings and Evidence.

In the light of these, learned counsel urged this Court to hold that the Petitioner has satisfied the requirement stipulated in ***Section 15 (2) of the Matrimonial Causes Act***, namely that the Parties have lived apart for more than three years before the presentation of the Petition.

On the ancillary reliefs claimed by the Petitioner, learned counsel submitted that the Respondent has agreed to take responsibility for the education of the children of the Marriage, e.g. their School Fees, books, etc. He stated that the Respondent has also agreed that the Petitioner should have custody of the children of the Marriage.

Learned counsel stated that the Respondent also wants unhindered access to the children of the Marriage, through his family members because he is not in Nigeria, and also wants the children of the Marriage to be allowed to visit his family members. Learned counsel said that while the Petitioner is not opposed to the Respondent's brother or sister being allowed to visit or see the children of the Marriage, she is however vehemently opposed to the children of the Marriage visiting or spending time with the Respondent's relatives when the Respondent himself is not there, because she is concerned for their safety.

Learned counsel posited that the Petitioner is also claiming for the sum of ₦300,000.00 (Three Hundred Thousand Naira) only, per month, from the Respondent for the maintenance and upkeep of the three children of the Marriage. He submitted that in view of the current harsh economic climate prevailing in the country, the amount the Petitioner is claiming is reasonable in the circumstance, and urged this Court to uphold same.

Learned counsel concluded his argument by urging this Court to hold that the Petitioner has established that the Marriage between her and the Respondent has broken down irretrievably, and to order a Decree of Dissolution of the said Marriage, and grant all other ancillary reliefs therein.

In his written address which he adopted the learned counsel for the Respondent, ***E. C. Udemba, Esq.***, formulated two issues for determination as follows:

- 1) Whether the Petitioner has established grounds for the dissolution of the marriage***
- 2) Whether the Cross-Petitioner has established grounds for the dissolution of the marriage and other reliefs sought***

In arguing his first issue learned counsel for the Respondent stated that the Petitioner/Cross-Respondent testified before this Court that the Respondent/Cross-Petitioner is a good father and takes good care of the children by meeting all their needs. He stated that the Petitioner knowing fully well what she was doing in Nigeria in the absence of the Respondent refused to perform the necessary rites to avert and prevent the death of the Respondent.

Learned counsel further submitted that the Cross-Petitioner has stated that he lost his father and uncle because of his mother and uncle wife's infidelity respectively. He said that the Petitioner/Cross-Respondent never proffered any solution or way out but rather returned her bride price to the Respondent/Cross-Petitioner and his family.

Learned counsel submitted that the Petitioner/Cross-Respondent never complained about the behaviour of the Respondent/Cross-Petitioner as it relates to her being abandoned, not being taking care of, or the Respondent/Cross-Petitioner having another wife or child.

Learned counsel stated that the issue of the marriage started when the family of the Respondent/Cross-Petitioner asked the Respondent/Cross-Petitioner and the Petitioner/Cross-Respondent to subject themselves to some family rites to avert and prevent the Respondent/Cross-Petitioner's death peradventure the Petitioner/Cross-Respondent committed adultery. Learned counsel stated that the Petitioner refused to submit herself to the rites but rather decided to return her bride price.

Learned counsel further stated that the Petitioner/Cross-Respondent should not be believed as it relates to her testimony and evidence on the issue of adultery, desertion and the Respondent not taking care of her but instead only the children. He ended his argument on the first issue by urging this Court to disregard and discountenance the Petitioner evidence and dissolve the marriage between the Petitioner and the Cross-Petitioner based on the testimony and evidence of the Respondent/Cross-Petitioner, in addition to granting all the Respondent/Cross-Petitioner's reliefs.

In arguing his second issue, learned counsel submitted that the Cross-Petitioner testified on the 10th day of July, 2025, in line with his pleadings, which provide that the marriage has broken down irretrievably and the Cross-Petitioner finds it intolerable to live and cohabit with the Cross-Respondent and also that the Cross-Petitioner has suffered emotional and psychological torture from the Cross-Respondent which have affected the Cross-Petitioner's mental health and sanity.

Learned counsel for the Respondent also argued that the Cross-Petitioner because of the situation of Nigeria and to better the fortune of his family, discussed with the Cross-Respondent to travel oversea/abroad. He stated that the Respondent/Cross-

Petitioner risked his life with the knowledge of the Petitioner/Cross-Respondent in travelling abroad through the desert in 2016. He submitted that the Respondent/Cross-Petitioner never procured any visa but travelled abroad through land and it was the Petitioner/Cross-Respondent that bought the provision, clothes and other things that the Respondent/Cross-Petitioner used in travelling oversea/abroad through land.

Learned counsel restated the Respondent/Cross-petitioner's evidence in his statement on oath in that the Respondent was always sending money to the Cross-Respondent and children after he travelled abroad, and that he never abandoned the Petitioner/Cross Respondent.

Learned counsel submitted that it is the Petitioner that deserted the Respondent/Cross Petitioner by returning the bride price of the marriage to the Respondent and his family, because she is not interested in the marriage anymore.

Learned counsel also submitted that the although the Cross-Petitioner in his relief stated that he will be providing ₦40,000 monthly for his children upkeep, however, when testifying on the 10th day of July, 2025 the Respondent/Cross-Petitioner stated that he will look for and even borrow to make the monthly upkeep the sum of ₦100,000.

Learned counsel therefore submitted that the Cross-Petitioner has established the grounds for the dissolution of the marriage and other reliefs sought. He therefore urged this Court to grant all the reliefs as provided and stated in his Cross-Petition.

I have carefully considered the processes filed in this Petition and Cross-Petition, the evidence adduced by the parties and the submissions of their learned counsel.

It is settled law that for the purposes of trial and proof of a petition, a petition and a cross petition are independent and separate claims, such that the failure of one does not automatically translate into the success of the other because each of them would be determined by the Court premised upon the evidence proffered by the parties thereof in support of their claims. See **UZOKWE V. UZOKWE (2016) LPELR-40945(CA) (PP. 22-23 PARAS. F)**.

Since there is a Petition and a Cross-Petition, I am of the view that the issues for determination are as follows:

- 1. Whether the Petitioner is entitled to the reliefs sought in the Petition; and***
- 2. Whether the Cross-Petitioner is entitled to the reliefs sought in the Cross-Petition.***

ISSUE 1:

Whether the Petitioner is entitled to the reliefs sought in the Petition?

It is imperative to note that in divorce proceedings the Petitioner is required to strictly prove her averments in the petition, irrespective of any admission by the Respondent to the petition. See *Section 82 (1) of the Matrimonial Causes Act* and the cases of *ADEPARUSI V. ADEPARUSI (2014) LPELR - 41111 (CA)* and *BAKARE V. BAKARE (2016) LPELR 41344 (CA)*.

In the instant case, the Petitioner is seeking a Decree of Dissolution of Marriage on the following grounds:

- I. That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent;***
- II. Desertion by the Respondent for a continuous period of one year immediately before the Petition;***
- III. The Parties have lived apart for a continuous period of two years immediately before the Petition, and the Respondent does not object to the Petition;***
- IV. The Parties have lived apart for a continuous period of three years, etc..***

By virtue of *Section 15(2) of the Matrimonial Causes Act*, the Court upon hearing a petition for dissolution of a marriage shall hold that the marriage has broken down irretrievably if, but only if the petitioner satisfies the Court of one or more of the following facts namely:

- 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 a 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 of restitution of conjugal rights made under the law; and***

h) that the other party to the marriage has been absent from the petitioner for such a time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

In effect there are eight grounds for divorce and proof of one of these grounds or facts is in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage. See ***Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383.***

A Court cannot dissolve a marriage or declare a marriage to have broken down though it appears the marriage has broken down irretrievably unless one of the listed facts is established by the petitioner. The law requires that the petitioner should state clearly the specific ground or grounds for divorce as listed in ***Section 15(2)*** above. See ***Ibrahim v. Ibrahim (supra) and Damulak v. Damulak (2004) 8 NWLR (Pt. 874) 151.***

The law provides that in matrimonial causes, a matter or fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court. Thus in divorce suits, a decree shall be pronounced if the Court is satisfied on the evidence that a case for the petition has been proved.

In the instant case the Petitioner is seeking the dissolution of the marriage on the grounds as contained in ***Section 15(2) (c), (d), (e) & (f) of the Matrimonial Causes Act***; to wit on the grounds of intolerable behavior, desertion, living apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted, and have living apart for a continuous period of at least 3 years immediately preceding the presentation of the petition. It should be noted that proof of one of these grounds or facts is in the eyes of the law, conclusive proof of the irretrievable breakdown of the marriage. See ***Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383.***

In the instant case, both the Petitioner and the Respondent gave evidence testifying that they have been living apart since 2016, that is more than the required minimum of 3 years since this suit was filed in 2024. The Respondent also stated in his Answer and Cross-Petition that he does not object to the decree of dissolution being granted.

I am therefore of the opinion that the Petitioner has successfully established two of the conditions for the grant of a decree of dissolution of marriage, namely that the parties 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 a decree being granted, and also that the parties have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition.

In essence, the Petitioner has established two of the grounds to prove the irretrievable breakdown of the marriage. As earlier stated, proof of one of these grounds or facts

is in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage. See *Ibrahim v. Ibrahim* (2007) 1 NWLR (Pt. 1015) 383.

The next issue to consider is whether the Petitioner is entitled to the reliefs which she seeks in this Petition. In this Petition, the Petitioner is seeking the following reliefs:

- 1) A Decree of Dissolution of Marriage against the Respondent.**
- 2) An Order of this Honourable Court granting custody of the three children of the marriage to the Petitioner.**
- 3) An Order of this Honourable Court compelling the Respondent to take financial responsibility for the education of the three children of the marriage and pay their school fees as and when due unfailingly henceforth.**
- 4) An Order of this Honourable Court compelling the Respondent to pay a monthly sum of N300,000.00 (Three Hundred Thousand Naira) only, for the maintenance and upkeep of the three children of the marriage**

From the foregoing, it is apparent that the first relief for the dissolution of the marriage has succeeded. On the relief of custody, it is trite that when deciding the issue of custody, the trial Court exercises a judicial discretion and in exercising that discretion the Court should take the following factors into consideration: These are the ages of the children, education, welfare and general upbringing, the arrangements made for their accommodation and the conduct of the parties to the marriage.

Indeed, the interest of the children always should be of paramount consideration. See the following cases: *Otiti v Otiti* (supra); *Nana v Nana* (2006) 3 NWLR (966)1; *Williams v Williams* (1987) 2 NWLR (54) 66; *Odogwu v. Odogwu* (1992) 2 NWLR (225) 539.

Also, from the available evidence, it is clear that the Respondent is not opposed to the order granting custody of their 3 children to the Petitioner as they are already in the Petitioner's custody and all he is seeking is access to the children for himself and his family. Moreover, all three children are minors and currently residing in Nigeria while the Respondent resides abroad. Thus, it is only fair and just to grant the Petitioner custody of the three children who appear to be well cared for in Nigeria.

On the relief requesting for an order of this court compelling the Respondent to take financial responsibility for the education of the three children of the marriage and pay their school fees as and when due unfailingly henceforth, the Petitioner tendered three receipts in evidence showing the school fees for each of the 3 children in a term. On account of the evidence proffered by the Petitioner I am of the opinion that the Respondent has a duty of care towards his children. Flowing from the Respondent's evidence, it appears that the Respondent himself is not opposed to

bearing the responsibility of paying his children's school fees as he requested this court for an order that he shall be responsible for the education of the children of marriage and pay their school fees until they finish their tertiary education.

Finally, the relief of monthly maintenance will be granted but an appropriate sum will be determined after I consider the Cross-Petition.

On the whole, Issue 1 is resolved in favour of the Petitioner.

ISSUE 2:

Whether the Cross-Petitioner is entitled to the reliefs sought in the Cross-Petition.

As earlier stated in this judgment, a Petition and a Cross-Petition are independent and separate claims, such that each of them would be determined by the Court premised upon the evidence proffered by the parties thereof in support of their claims. See ***UZOKWE V. UZOKWE (2016) supra.***

In his Cross-Petition, the Respondent is seeking the following reliefs:

- a) A decree of dissolution of his marriage on the ground that the marriage has broken down irretrievably and the Cross-Petitioner finds it intolerable to live and cohabit with the Cross-Respondent and that the Cross Petitioner has suffered emotional and psychological torture from the Cross-Respondent which have affected the Cross-Petitioner mental health and sanity.***
- b) The Cross-Petitioner shall be responsible for the education of the children of marriage and pay their school fees until they finish their tertiary education.***
- c) Cross-Petitioner to have unhindered access to the children of the marriage.***
- d) Cross-Petitioner to have unhindered access to the children of the marriage through his family members i.e. the brother or sister anytime being that the Cross Petitioner is not in Nigeria and also the children be allowed the visit Cross Petitioner family members.***
- e) Respondent/Cross Petitioner to Pay N40,000 monthly as maintenance of the children***

In respect of the first and second reliefs, I have already held that the marriage will be dissolved on the ground that the parties have been living apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted; and also that the parties have been living apart for a continuous period of at least 3 years immediately preceding the presentation of this Petition. I have also held that the Cross-Petitioner shall be responsible for the education of the children of marriage and pay their school

fees until they finish their tertiary education. Consequently, the first and second reliefs in the Cross-Petition will be granted.

Next is the relief granting the Cross-Petitioner unhindered access to the children of the marriage and for the Cross-Petitioner to have unhindered access to the children of the marriage through his family members, and for the children to be allowed the visit by the Cross-Petitioner's family members.

It should be noted that the Petitioner has no objection to allowing the Cross-Petitioner unhindered access to the children. Therefore, the third relief succeeds. However, the Petitioner objects to the Cross-Petitioner having unhindered access to the children of the marriage through his family members and the children being allowed to visit the Cross Petitioner's family members.

Regarding granting access to the children of the marriage, ***Section 71(1) (4) of the Matrimonial Causes Act 1990*** provides as follows:

“In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the Court shall regard the interests of these children as the paramount consideration; and subject thereto, the Court may make such order in respect of those matters as it thinks proper”

“Where the court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by the other party to the marriage, or by the parties or a party to the marriage, as the case may be.”

In the instant case, I believe the Petitioner has a right to be concerned about the safety of her children. I do not think that the Petitioner is being unreasonable in stating that while she is not opposed to the Respondent's brother or sister being allowed to visit or see the children of the Marriage, she is however vehemently opposed to the children visiting or spending time with the Respondent's relatives when the Respondent himself is not there, because she is concerned for their safety.

On this note, the fourth relief of the Respondent/Cross-Petitioner fails as the Respondent/Cross-Petitioner is not granted unhindered access to his children through his family members and the children until they reach the age of majority are not allowed to visit the family of the Respondent/Cross-Petitioner in the absence of the Petitioner/Cross-Respondent and the Respondent/Cross-Petitioner.

Regarding maintenance, the Respondent stated that he is requesting for an order of Court to pay the sum of ₦40, 000 monthly as maintenance for the children. However

in court, he testified that he is willing to pay the sum of ₦100,000 monthly for the upkeep of his children.

It is trite law that on the award of maintenance in matrimonial proceedings, the Court shall have regard to the means, earning capacity and the conduct of the parties to the marriage and all other relevant circumstances. See *Section 70(1) of Matrimonial Causes Act*. See also the cases of *HAYES v. HAYES (2000) 3 NWLR (648) 276 at 294*; and *ODUSOTE V. ODUSOTE (2011) LPELR-9056(CA) (PP. 31-33 PARAS. C)*.

In the instant case, the Respondent has agreed to pay the sum of ₦100,000 monthly as maintenance. However, in her Petition, the Petitioner is claiming the sum of ₦300,000 monthly. It must be noted that in our present world, the rights and duties of spouses to make financial provisions are gradually moving towards equal footing basis.

Many wives are today more financially empowered than their husbands, so the Courts are fast moving away from the old rule whereby, they virtually ordered financial provisions in favour of the wife. Law to be useful, must always reflect the norms and developmental stages reached in a society, where it will apply. See the case of *HAYES v HAYES [2000] 3 NWLR (Pt. 648) 276*.

In the instant case, the Respondent gave evidence to the effect that he is currently unemployed. The Petitioner did not lead any evidence to rebut this fact. A husband must not be impoverished by an order of maintenance which he cannot afford. See the case of *MUELLER V. MUELLER (2005) LPELR-12687(CA) (PP. 18-20 PARAS. D)*. Furthermore, the upkeep of the child should be the joint responsibility of both parties.

Consequently, I think the sum of ₦100,000 monthly which the Respondent has agreed to pay can be awarded since he is also paying the school fees of the children.

Therefore, on the whole, I hold that the Cross-Petition also succeeds to some extent and issue two is resolved in favour of the Respondent.

Having resolved the two issues in favour of each of the respective parties, I hereby make the following orders:

- a) *A decree of dissolution of this marriage on the ground that the marriage has broken down irretrievably on the facts that both parties 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 a decree being granted, and also that the parties have lived apart for a continuous*

period of at least 3 years immediately preceding the presentation of the petition.

- b) The Respondent/Cross-Petitioner shall be responsible for the education of the children of marriage and pay their school fees until they finish their tertiary education.*
- c) The Respondent/Cross-Petitioner is to have unhindered access to the children of the marriage.*
- d) The Respondent/Cross Petitioner is to pay the sum of ₦100,000 monthly as maintenance of the children*

I hereby Order a Decree Nisi which will be made a Decree Absolute after three months unless there is a cogent reason to vary same. I make no order as to costs.

P.A. AKHIHIERO
JUDGE
5/12/2025

COUNSEL:

- 1. I.O. Usifoh Esq.....Petitioner**
- 2. E. C. Udemba, EsqRespondent**