

**IN THE HIGH COURT OF JUSTICE**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIERO,**  
**ON TUESDAY THE**  
**10<sup>TH</sup> DAY OF MARCH, 2026.**

**BETWEEN:** **SUIT NO. B/1092D/2023**  
**MRS. GLORY AKUGBE AKPONOME-----PETITIONER**  
**AND**  
**MR. JEREMIAH AKPONOME -----RESPONDENT**

**JUDGMENT**

This Judgment is in respect of a Petition for a decree of Judicial Separation filed on behalf of the Petitioner on the 14<sup>th</sup> of December 2023. In her Petition, the Petitioner is seeking the following reliefs:

- 1) *A Decree of Judicial Separation of the Petitioner from the Respondent.*
- 2) *An Order of custody of the children of the marriage in favour of the Petitioner with reasonable access to the Respondent at a period agreeable between the Petitioner and Respondent.*
- 3) *An Order of Maintenance in favour of the children of the marriage in the sum of ₦300,000 to be paid by the Respondent monthly, besides their school fees and medical bills.*
- 4) *An Order of Perpetual Injunction restraining the Respondent, his agents, assigns and representatives from accessing, beating, assaulting, harassing, molesting, intimidating, threatening or abusing the Petitioner (physically, verbally, virtually or by any other means) and invading her privacy until cohabitation is restored.*

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) An Order of this Honourable Court directing the Petitioner to return to her matrimonial home for the marriage has not broken down irretrievably.*
- b) An Order of this Court granting Custody of the 3 children of the Marriage to the Respondent/Cross Petitioner or On the alternative, Court Order granting Unfettered/unrestricted access to the children and a situation where the children will spend holiday with the Respondent and the Respondent would visit them at will and at all time.*
- c) AN ORDER directing the Respondent to pay the sum of #9,000.00 as monthly allowance considering the fact that the Respondent spends virtually all he earns on health and the Respondent will also be in charge of the children's tuition and hospital bill.*
- d) That the cross petitioner may have further or other orders and/or reliefs as maybe deemed just to grant in the circumstance*

At the hearing of the Petition, the Petitioner testified for herself and called one witness, PW1, Mrs. Agatha Ndidi Orugboh who testified that she is the Headmistress of Odaro Primary School, Obarenren, along the Benin-Akure Road, Benin City. She alleged that the Petitioner is one of her teachers.

The PW1 stated that on the 27<sup>th</sup> of November 2023, the Respondent came to her school and went straight to the Petitioner's classroom. He alleged that the Respondent later came to see her, to seek her permission to allow the Petitioner go with him. She said that the Petitioner later came to join them.

The witness alleged that unknown to the Petitioner, the Respondent had taken the Petitioner's phone while the Respondent was in her classroom. She said that when the Petitioner came to join them, she asked the Respondent if he had taken her phone and the Respondent confirmed that the phone was in his pocket.

She stated that the Petitioner then asked him to give her the phone but the Respondent requested her to wait a little.

The PW1 testified that when the Petitioner realized that the Respondent wasn't going to hand over the phone, the Petitioner tried to take her phone from Respondent's pocket, but the Respondent gave her a slap.

The PW1 said that she was taken by surprise and tried to hold the Respondent, but the Respondent bent her hand until she started shouting for him to let go of her hand, that he was hurting her.

She said that they later managed to collect the phone from the Respondent, and that the Respondent called the Petitioner several unprintable names such as prostitute, “ashawo” and even accused her of sleeping around with her former Headmaster and others. She stated that before they could make some phone calls, the Respondent escaped from the school premises.

In her evidence, the Petitioner testified that she was lawfully married as a Spinster to the Respondent, then a Bachelor, at the Egor Local Government Marriage Registry, Benin City, on the 8<sup>th</sup> day of November 2008, according to Christian rites. The original copy of the marriage certificate was admitted as Exhibit “A”

The Petitioner testified that after their marriage, they lived together at Ugbolu Community along Asaba-Ila Road, Asaba, Delta State, between 2008 and 2011 and later moved to Agbor where they lived at a rented place at Palace Road, Agbor-Obi, Agbor, between 2011 and May 2017. She further testified that they moved into their own house at No. 5, John Hilary Street, New Uhomere Quarters, Agbor-Obi, Agbor, Delta State where they lived together between May 2017 and the 31<sup>st</sup> of August 2023 when cohabitation ceased.

The Petitioner testified that right from the onset of their marriage, the Respondent has subjected her to endless physical, verbal and psychological abuse. She said that despite the intervention of their family members, the Respondent has refused to change.

The Petitioner testified that sometime in April 2023, the Respondent once again beat her up and inflicted serious injuries on her, including her left arm. She said that in order to preserve her life and sanity, she left the matrimonial home at No. 5, John Hilary Street, New Uhomere Quarters, Agbor-Obi, Agbor for Benin City on the 31<sup>st</sup> of August 2023. The Petitioner testified that consequently, she and the Respondent have lived apart ever since.

The Petitioner stated that their marriage is blessed with three children and she gave the particulars of the three children.

The Petitioner testified that the marriage has broken down irretrievably and that right from the onset of the marriage, the Respondent has sought, unreasonably, to control the use of her money.

She alleged that she started working as a teacher since 2008 and she has nothing to show for the salaries she has been earning since she has no savings of her own, but she did not mind, provided everything was running smoothly at home.

She stated that in 2017 when they packed into their own house, she was happy that she had something that would comfort her in view of her sacrifices.

She alleged that sometime in 2020, she brought up the idea of having her own property, but the Respondent vehemently rejected it.

She said that in 2022, she once again brought up the idea before the Respondent, asking for his permission to allow her to purchase a piece of property for herself since God had blessed them with their own house.

She alleged that the Respondent had set up something for his own family in their hometown, where they can always fall back upon, so she requested the Respondent to allow her to be in charge of her salary so that she can do something for herself. She said that the Respondent still rejected the suggestion.

The Petitioner stated that the Respondent said that the Petitioner cannot use her salary to set up anything for herself. She said that as a result, a family meeting was called in September 2022 in her hometown at Osasimwionba Community in Benin.

She alleged that subsequently, at a meeting of members of her family and the Respondent's family, his family decided that the Respondent should allow the Petitioner to make use of her own money to set up something for herself.

The Petitioner stated that she thought the matter had been resolved so she took a loan of ₦600,000 to invest in an oil business. She said that to her surprise, the Respondent asked her to return the loan.

She mentioned some instances where the Respondent physically assaulted her and tendered a digital photograph which was admitted as Exhibit "B".

The Petitioner alleged that in order to preserve her life and sanity, she left the matrimonial home at No. 5, New Uhomere Quarters, Agbor-Obi, Agbor for Benin City on the 31<sup>st</sup> of August 2023 and has lived apart from the Respondent ever since.

She alleged that she never had the intention of leaving her matrimonial home but that it was the Respondent's conduct that forced her out of her matrimonial home.

The Petitioner that sometime in the year 2018, the Respondent committed adultery with a female Youth Corper who was sent to serve in the school where he teaches and subsequently decided to forgive him in the belief that he would turn a new leaf but things grew worse.

In his defence and in proof of his Cross-Petition, the Respondent adopted his written statement on Oath as his evidence in chief and testified that he was lawfully married to the Petitioner.

The Respondent stated that his marriage with the Petitioner has not broken down irretrievably and expressed optimism that things will work out fine. He said that he has not relented in supporting his family. He mentioned the various sums of money that he has been sending to the Petitioner for the upkeep of their children.

He alleged that he is in serious debt because of his expenses over his health challenges. He said that after deductions for his medical bills and the loan he is paying, he is only left with less than ₦15,000.00 in his account. He tendered his Statement of Account which was admitted as exhibit “D” and his medical report which was admitted as Exhibit “E”.

He denied being violent to the Petitioner and maintained that he was not against the Petitioner running her own business with her funds.

Upon the conclusion of evidence, the learned counsel for the Petitioner addressed the Court and the Respondent informed the Court that he had read the written address of the Petitioner’s counsel. He submitted that their relationship should be restored and he pleaded for access to his children or custody.

In his final written address, the learned counsel for the Petitioner, **Godspower Onomrehinor Esq.**, formulated four (4) issues for determination as follows:

- (a) Whether the Petitioner has successfully proved that the marriage has broken down irretrievably to warrant the grant of an order of judicial separation?***
- (b) In view of the best interests of the children, who is in the best position to be granted custody of the children of the marriage?***
- (c) Whether, in view of the evidence led, a perpetual injunction should not be made against the Respondent?***
- (d) Whether the Respondent has met the requirements of the law to warrant the grant of an order of restitution of conjugal rights?***

Arguing the first issue for determination, learned counsel submitted that Issue (a) concerns whether the Petitioner has successfully proved that the marriage has broken down irretrievably so as to warrant the grant of an order of judicial separation. Counsel submitted that she has. He stated that under the Matrimonial Causes Act, the ground for the grant of a dissolution of marriage is the same as that for the grant of an order of judicial separation. He argued that the ground is that the marriage has broken down irretrievably.

Learned counsel relied on the provisions of **Section 15(2) of the Matrimonial Causes Act** and submitted that a party needs to prove at least one of the eight facts.

Furthermore, he referred the Court to *Section 39 of the Matrimonial Causes Act* which provides that: ***“Subject to this Part, a petition under this Act by a party to a marriage for a decree of judicial separation may be based on one or more of the facts and matters specified in sections 15(2) and 16(1) of this Act.”***

Learned counsel further submitted that the question to be asked is whether the Petitioner has established any of the above eight facts. He submitted that she has established the fact stated in *section 15(2)(c) of the Matrimonial Causes Act*, namely that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. Counsel argued that since the marriage the Respondent has been violent and physically, verbally, psychologically, and financially abusive. According to counsel, the Respondent does not want the Petitioner to grow economically but rather wants to enslave her. Counsel described the Respondent as a traditional African man who does not believe in empowering a woman. He therefore submitted that the Petitioner has successfully proved that the Respondent has engaged in conduct which she cannot reasonably be expected to tolerate, and that as a result the marriage has broken down irretrievably. Counsel therefore urged the Court to resolve Issue (a) in the affirmative.

On the effect of a decree of judicial separation, counsel submitted that such a decree does not dissolve the marriage. Rather, as provided by *section 41 of the Matrimonial Causes Act*, it relieves the Petitioner from the obligation to cohabit with the Respondent while the decree remains in operation, but it does not affect the marriage status, rights, and obligations of the parties. Counsel further submitted that whenever the Respondent turns a new leaf, the parties may choose to resume cohabitation, and at that time either party may apply for a discharge of the separation order. According to counsel, this is the essence of the suit: not to terminate the marriage but to reform the Respondent.

Counsel further referred to *section 45 of the Matrimonial Causes Act* which provides that: ***“Where, after the making of a decree of judicial separation, the parties voluntarily resume cohabitation, either party may apply for an order discharging the decree; and the court shall, if both parties consent to the order, or if the court is otherwise satisfied that the parties have voluntarily resumed cohabitation, make an order discharging the decree accordingly.”***

On this second issue, Counsel submitted that Issue (b) concerns who is in the best position to be granted custody of the children of the marriage. Counsel submitted that the Petitioner is in the best position. He argued that in matters of custody, the law provides that the interest of the child is the paramount consideration. Counsel referred to *section 71(1) of the Matrimonial Causes Act* which provides that: ***“In proceedings with respect to the custody, guardianship, welfare, advancement***

*or education of children of a marriage the court shall regard the interests of those children as the paramount consideration and subject thereto, the court may make such order in respect of those matters as it thinks proper.”*

Counsel also relied on the case of *Williams v. Williams (1982) 2 NWLR Pt. 54 at 66–67 ratio 7* and submitted that the Petitioner has had custody of the three children since she left the matrimonial home on 31st August 2023, a period of more than two years, and that she has single-handedly cared for them with very little support from the Respondent. Learned Counsel itemized the expenses incurred on the children.

Learned counsel submitted that the Respondent admitted during trial that he had neither visited the children nor knew where they lived or the schools they attended. Counsel argued that despite this, the Respondent is asking for custody. He submitted that the Respondent has neither shown sufficient interest nor demonstrated the capacity to care for the children. Counsel further argued that the Respondent stated that he needed the first son back so he could use him as manpower for his poultry business, which counsel described as child labour. Learned counsel therefore submitted that the best interests of the children would be served if formal custody is granted to the Petitioner, while the Respondent may have access on terms to be determined by the Court.

Arguing his third issue, learned counsel submitted that Issue (c) concerns whether a perpetual injunction should be granted restraining the Respondent from further assault on the Petitioner. Counsel submitted that such an order should be granted because although the Petitioner is physically separated from the Respondent, the Respondent remains a threat. He argued that even after the Petitioner left the matrimonial home in Agbor, Delta State, the Respondent traced her to Benin, Edo State and assaulted her.

Learned counsel referred to *section 33 of the 1999 Constitution (as amended)* which provides for the right to life. He also referred to *section 34(1)(a)(b) of the Constitution* which guarantees the right to dignity of the human person. Learned counsel submitted that by constantly subjecting the Petitioner to violent acts and verbal abuse, the Respondent has threatened the Petitioner’s right to life and dignity of the human person.

Counsel then referred to reports and publications on domestic violence, including the case of *Osinachi Nwachukwu*, an article on BBC Online dated 29 April 2025 titled “*Husband of late Nigerian gospel singer sentenced to death*”, and publications on domestic violence by the **University of Minnesota Human Rights Library** and the **United States Conference of Catholic Bishops** discussing the global impact of domestic violence.

He emphasized the sanctity of life and referred to biblical passages *Genesis 2:24* and *Exodus 20:13*, submitting that life is more important than marriage and must not be sacrificed on the altar of marriage. Counsel therefore urged the Court to grant the order of perpetual injunction.

Arguing his fourth issue, learned counsel submitted that the Respondent has not met the legal requirements for the grant of restitution of conjugal rights. Counsel referred to *section 47 of the Matrimonial Causes Act*. He submitted that the Respondent failed to prove that the Petitioner had no just cause for refusing to cohabit with him and argued that it was the Respondent's intolerable conduct that drove the Petitioner out of the matrimonial home. Counsel also referred to *section 18 of the Matrimonial Causes Act* on constructive desertion. Learned counsel relied on the case of *Theresa Ekanem v. Stanley Ekanem (1975) 1 NWLR 235*, where the court held that where unreasonable behaviour causes separation, the party responsible is guilty of desertion.

Counsel further submitted that the Respondent has not complied with the requirements of *section 49 of the Matrimonial Causes Act*, particularly the requirement for a written conciliatory request for cohabitation prior to filing the petition.

In conclusion, learned counsel urged this Court to grant all the prayers contained in the Petition and dismiss the Respondent's 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 Judicial Separation on the grounds of intolerable behaviour and constructive desertion. It is worthy of note that a decree of judicial separation may be based on one or more of the facts which may ground a petition for dissolution of marriage as specified in *Sections 15(2) and 16(1) of the Matrimonial Causes Act*. See, *E. I. Nwogugu, "Family Law in Nigeria" Third Edition, page 245*. The effect of a decree of judicial separation is that it relieves the petitioner from the obligation to cohabit with the other party to the marriage while the decree remains in operation. The grant of a decree of judicial separation therefore does not cause the termination of a valid marriage and both parties to the decree continue to remain for all other purposes as husband and wife.

Notwithstanding, if after making the decree of judicial separation, the parties voluntarily resume cohabitation, either party may apply for an order discharging the decree. See, *E. I. Nwogugu, "Family Law in Nigeria" Third Edition, page 246-247*.

By virtue of *Section 15(2) of the Matrimonial Causes Act*, the facts on which a Court upon hearing a petition for dissolution of a marriage shall hold that the marriage has broken down irretrievably as follows:

- 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 the grant of a decree of judicial separation 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 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 judicial separation on the ground as contained in *Section 15(2) (c) of the Matrimonial Causes Act*; to wit on the ground of intolerable behavior. It is important to note that proof of one of the grounds or facts contained in *Section 15(2)* 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, the Petitioner testified that right from the onset of the marriage the Respondent had subjected her to persistent physical, verbal and psychological abuse. She gave several instances of such conduct. According to her testimony, sometime in 2022 the Respondent violently attacked her in the matrimonial home in the presence of his own mother and pinned her down while hitting her neck and back with his fists to the extent that she could not turn her neck thereafter. She further testified that the Respondent's mother had to massage her neck with hot water for two days.

The Petitioner also testified that sometime in April 2023 the Respondent again assaulted her and inflicted injuries on her body including her left arm. In proof of this assertion, the Petitioner tendered a digital photograph of the injury which was admitted in evidence as **Exhibit "B"** while the accompanying certificate of compliance was admitted as **Exhibit "B1"**.

The Petitioner further narrated the incident which occurred on the 27th of November 2023 at her place of work, Odaro Primary School, Obarenren, Benin City. According to her, the Respondent came to her classroom, secretly took her phone from her table and later slapped her in the presence of the Headmistress and another teacher when she attempted to retrieve the phone from him.

This aspect of the Petitioner's evidence was corroborated by PW1, Mrs. Agatha Ndidi Orugboh, the Headmistress of the school, who testified that the Respondent indeed slapped the Petitioner and used abusive language against her in the school premises. PW1 also testified that when she attempted to intervene, the Respondent twisted her hand, causing her pain.

It is pertinent to note that under cross-examination the testimony of PW1 was not discredited in any material respect. The Respondent himself admitted during his testimony that he slapped the Petitioner during the incident at the school.

The Respondent however attempted to justify his action by stating that the Petitioner tried to dip her hand into his pocket to retrieve the phone. Be that as it may, no circumstance can justify an act of physical violence, particularly in a public environment such as a school where the Petitioner was carrying out her professional duties.

Furthermore, the Respondent denied that he had ever been violent towards the Petitioner during the marriage. However, his admission that he slapped the Petitioner at her place of work lends credence to the Petitioner's assertion that the Respondent has a violent disposition.

In matrimonial proceedings such as this, a party is not required to prove misconduct beyond reasonable doubt. By virtue of *Section 82(1) of the Matrimonial Causes Act*, the Court only needs to be satisfied that the facts relied upon by the Petitioner have been established to the "*reasonable satisfaction of the court*".

In the present case, the evidence of repeated physical assault, verbal abuse and intimidation as narrated by the Petitioner and corroborated by PW1 clearly demonstrates conduct on the part of the Respondent which the Petitioner cannot reasonably be expected to tolerate.

The law is well settled that where a spouse's conduct makes continued cohabitation unreasonable or unsafe, the Court is entitled to hold that the marriage has broken down irretrievably under *Section 15(2)(c) of the Matrimonial Causes Act*. See, *Olagundoye v. Olagundoye (1976) ENR 255; Ayangbayi v. Ayangbayi (1979) 10-12 CCHCJ 225; Salako v. Salako (1973) 11 CCHCJ 105; Shasore v. Shasore (1977) 5 CCHCJ 1023*.

See also, *Ibrahim v. Ibrahim (2007) 1 NWLR (Pt.1015) 383*, where the Court held that once a petitioner establishes any of the facts listed under **Section 15(2)**, the Court is bound to hold that the marriage has broken down irretrievably.

Having carefully evaluated the evidence before this Court, I am satisfied that the Petitioner has successfully established that the Respondent has behaved in such a manner that she cannot reasonably be expected to continue to live with him.

Consequently, I hold that the Petitioner has proved the ground contained in **Section 15(2)(c) of the Matrimonial Causes Act**. Accordingly, the Petitioner is entitled to the relief of Judicial Separation.

With respect to the issue of custody of the children, the law is settled that the paramount consideration of the Court in matters concerning custody is the best interest and welfare of the children. See **Section 71(1) of the Matrimonial Causes Act**.

The evidence before the Court shows that since 31st August 2023, the children have been living with the Petitioner. The Petitioner testified that she has been responsible for their accommodation, feeding, school fees and medical needs. The Respondent also admitted during his testimony that he does not presently know where the children are residing and that he has not visited them.

The Respondent further stated that he can only afford the sum of ₦30,000 monthly for their upkeep. While the Court recognizes the Respondent as the biological father of the children, the evidence before the Court shows that the children have been stable under the care of the Petitioner and that disrupting that arrangement may not be in their best interest.

I therefore hold that the best interest of the children will be served if custody remains with the Petitioner. However, the Respondent, being the father of the children, shall be entitled to reasonable access to the children.

On the issue of maintenance, the Petitioner requested the sum of ₦300,000 monthly in addition to school fees and medical expenses. The Respondent on the other hand testified that his current salary is about ₦150,000 monthly and that he suffers from diabetes which requires regular medical treatment.

In considering an application for maintenance, the Court must take into account the means, earning capacity and financial obligations of the parties. Having considered the evidence before the Court, I am of the view that the sum of ₦300,000 monthly is excessive in the circumstances of this case. However, the Respondent must make some reasonable contribution towards the welfare of his children.

Accordingly, the Respondent shall pay the sum of ₦100,000 monthly as maintenance for the three children pending further order of the Court. The Respondent shall also contribute towards the children's educational and medical expenses when necessary.

With respect to the prayer for perpetual injunction, the evidence before the Court shows that there have been instances of physical confrontation between the parties, including the incident at the Petitioner's place of work.

In order to preserve peace and prevent further conflict between the parties, it is appropriate that the Court grants an order restraining acts of harassment or intimidation. Consequently, the Petitioner is entitled to an order restraining the Respondent from harassing, assaulting, threatening or intimidating her in any manner whatsoever.

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) An Order of this Honourable Court directing the Petitioner to return to her matrimonial home for the marriage has not broken down irretrievably.***
- b) An Order of this Court granting Custody of the 3 children of the Marriage to the Respondent/Cross Petitioner or in the alternative, Court Order granting Unfettered/unrestricted access to the children and a situation where the children will spend holiday with the Respondent and the Respondent would visit them at will and at all times.***
- c) AN ORDER directing the Respondent to pay the sum of #9,000.00 as monthly allowance considering the fact that the Respondent spends virtually all he earns on health and the Respondent will also be in charge of the children's tuition and hospital bill.***
- d) That the cross petitioner may have further or other orders and/or reliefs as maybe deemed just to grant in the circumstance***

In respect of the first reliefs, I have already held that the decree of judicial separation will be granted on the ground that the Respondent has behaved in such a way that

the Petitioner cannot reasonably be expected to live with him. Consequently, the first relief in the Cross-Petition cannot be granted.

This is because the relief sought by the Cross-Petitioner is in substance one for restitution of conjugal rights, which presupposes that the party against whom the order is sought has withdrawn from cohabitation without just cause or excuse.

By virtue of ***Section 47 of the Matrimonial Causes Act***, a decree of restitution of conjugal rights may only be granted where the Court is satisfied that the refusal to cohabit is without just cause.

In the instant case, the evidence before this Court clearly shows that the Petitioner left the matrimonial home due to persistent conflict and acts of violence which she attributed to the conduct of the Respondent. The testimony of the Petitioner regarding the incident of physical assault at her place of work was corroborated by PW1, the Headmistress of the school, whose evidence remained largely unshaken under cross-examination. Furthermore, the Respondent himself admitted under cross-examination that he slapped the Petitioner during the altercation at the school premises. In matrimonial proceedings, conduct which exposes a spouse to violence, humiliation or intimidation constitutes just cause for withdrawal from cohabitation.

In the circumstance, I am satisfied that the Petitioner had just cause to withdraw from cohabitation with the Respondent. The Cross-Petitioner has therefore failed to establish the legal requirements for an order compelling the Petitioner to return to the matrimonial home. The first relief in the Cross-Petition therefore fails.

With respect to the second relief relating to custody of the children, as earlier stated the law is settled that in matters concerning custody of children of a marriage, the paramount consideration of the Court is the welfare and best interest of the children. See ***Section 71(1) of the Matrimonial Causes Act***.

In the course of this judgment under Issue 1, this Court has already considered the question of custody and held that the welfare of the children will be best served if custody remains with the Petitioner, with reasonable access granted to the Respondent.

The evidence before the Court shows that the children have been living with the Petitioner since August 2023, and that she has been responsible for their care, schooling and welfare. The Respondent himself admitted during his testimony that he does not presently know where the children reside and that he has not been visiting them.

In the circumstance, the Court cannot disturb the existing arrangement which appears to be in the best interest of the children. Accordingly, the second relief in

the Cross-Petition seeking custody of the children fails. However, the alternative relief granting the Respondent unfettered/unrestricted access to the children will be granted.

With respect to the third relief, the Cross-Petitioner seeks an order directing that he pays the sum of ₦9,000 monthly allowance while assuming responsibility for tuition and hospital bills, it must be stated that the issue of maintenance has already been addressed in Issue 1 above. This relief is therefore refused.

Finally, the fourth relief seeking any further orders as the Court may deem just cannot succeed in the absence of proof entitling the Cross-Petitioner to any of the substantive reliefs sought. In the final analysis, the Cross-Petition of the Respondent is dismissed save for the relief of access to the children by the Respondent.

Having resolved both issues, I hereby grant the following orders:

- 1) A Decree of Judicial Separation of the Petitioner from the Respondent;***
- 2) An Order of custody of the children of the marriage in favour of the Petitioner with reasonable access to the Respondent at a period agreeable between the Petitioner and the Respondent;***
- 3) An Order of Maintenance in favour of the children of the marriage in the sum of ₦100,000 to be paid by the Respondent monthly, besides their school fees and medical bills; and***
- 4) An Order of Perpetual Injunction restraining the Respondent, his agents, assigns and representatives from accessing, beating, assaulting, harassing, molesting, intimidating, threatening or abusing the Petitioner (physically, verbally, virtually or by any other means) and invading her privacy until cohabitation is restored.***

***I make no order as to costs.***

**P.A. AKHIHIRO  
JUDGE  
10/03/2026**

**COUNSEL:**

1. ***Godspower Onomrehinor Esq. ....Petitioner***
2. ***S. Azuka Esq. ....Respondent***