

**IN THE HIGH COURT OF JUSTICE**

**IN THE BENIN JUDICIAL DIVISION**

**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,**

**ON WEDNESDAY THE**

**1<sup>ST</sup> DAY OF APRIL, 2026.**

**BETWEEN:**

**SUIT NO. B/267D/2024**

**MRS. KATE JOHNSON OBAYUWANA-----PETITIONER/RESPONDENT**

**AND**

**MR. JOHNSON OBAYUWANA-----RESPONDENT/CROSS-PETITIONER**

**JUDGMENT**

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner dated and filed on 16th of December 2024 seeking the following reliefs:

- 1) A Decree for the dissolution of the marriage contracted between the Petitioner and the Respondent on the ground that same has broken down irretrievably because the Petitioner cannot reasonably be expected to live with the Respondent; and that the Petitioner and the Respondent have lived apart for a continuous period of three years immediately preceding the presentation of this Petition; and***
- 2) Equal sharing of the joint properties of the Petitioner and Respondent situate at:***

- a) Uteh village, Unity street, off Covenant Road, Upper Mission, Benin City ( comprising of a completed building with 2-bedroom flat into 3 and one self-contained, with an uncompleted building of 2-bedroom flat with one self-contain and bedsitter;*
- b) A 50ft by 100ft virgin land at Saint Saviour Street, Benin City; and*
- c) A 6 bedroom passage house situated behind the motor park at Evboesi Town in Orhionmwon Local Government Area of Edo state.*

The Petition was served on the Respondent, and he filed an Answer and Cross Petition dated and filed on the 21<sup>st</sup> of February 2025 seeking the following orders:

- 1) A Decree of dissolution of the marriage celebrated on the 11<sup>th</sup> May, 2011 at the Marriage Registry, Oredo Local Government Area, Benin City, Edo State between the Cross-Petitioner and the Respondent on the ground that the marriage has broken down irretrievably; parties having lived apart for a continuous period of at least three (3) years immediately preceding the presentation of this cross-petition; and*
- 2) An Order of this Honourable Court directing the sale of the joint properties of the Cross-Petitioner and the Respondent viz: seven apartments situate at Uteh Village, Unity Street, Off Covenant Road, Upper Mission Extension, Benin City and 50ft by 100ft plot of land at Saint Saviour, Benin City and the proceeds shared between the Cross-Petitioner and Respondent in the ratio of 65% (to Cross-Petitioner) and 35% (to Respondent) proportion respectively.*

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 at the Marriage Registry, Oredo Local Government Area, Benin City, Edo State on the 11<sup>th</sup> day of May 2011. At the trial, she tendered the Marriage Certificate which was admitted as Exhibit "A".

She said that after the wedding, the Respondent and her cohabited at No. 17 Adima Street Benin City before the Respondent travelled to Canada sometime in October or November 2011.

She said that on the 22<sup>nd</sup> day of January 2013, she travelled to Canada to join the Respondent, and they lived together until the Respondent moved out of the house on the 25th day of June 2020, without her knowledge, thereby abandoning her.

She said that she later reached out to the Respondent and his family to know the whereabouts of the Respondent, but they were not forthcoming.

She alleged that the Respondent deserted her because of her inability to conceive of a child for him. She said that she suggested the option of surrogacy to the Respondent, and he agreed but she later discovered that he was having illicit affairs with other women. She said that when she confronted him, he claimed that he wants to have a child with one of the women.

She said that she objected to his extra-marital arrangement and the Respondent became infuriated and moved out of the house. According to her, since the Respondent left her on the 25th day of June 2020, he never returned.

The Petitioner informed the Court that the Respondent, and herself bought properties in the following locations:

a) Unity Street, off Covenant Road, Upper Mission, Benin city (a completed building with 2-bedroom flat into 3 and one self- contained, which also has an uncompleted building of 2-bedroom flat with one self-contain and a bed sitter (sic);

b) 50ft by 100ft virgin Land at Saint Savior, Benin City; and

c) 6-Bedroom passage house situated behind the motor park at Evboesi Town in Orhionmwon Local Government Area, Edo State.

She said that the above-mentioned properties should be shared equally between them in a just and equitable manner.

She alleged that the Respondent and herself started the buildings mentioned in paragraph (a) above. She said that she contributed financially towards the building

before the Respondent moved out of the house and since then, the Respondent has not sent any money towards the development of the said property.

She alleged that she was gainfully employed in Canada and received her monthly salary which was paid into their joint account.

She maintained that without any support from the Respondent, she completed one unit of the said property, rented out one flat and currently has her siblings living in the second flat where she lives whenever she is in the country.

She alleged that she contributed towards the purchasing and building of the other three properties. She said that she is in possession of the title documents of the properties they purchased at Unity Street, off Covenant Road, Upper Mission, Benin City.

She alleged that title documents of their properties at Saint Savior Street Benin City and the 6 Bedroom passage house situated behind the motor park at Evboesi town in Orhionmwon Local Government Area, Edo State are in the custody of the Respondent.

She said that the marriage between them has broken down irretrievably as a result of the Respondent deserting her by moving out of the house without her knowledge and not disclosing his whereabouts to her till date.

In his defence and in proof of his Cross-Petition, the Respondent adopted his written statement on Oath as his evidence in chief.

In his written statement on oath, the Respondent stated that he was responsible for all the Petitioner's travelling expenses to Canada.

He said that he supported her to settle down comfortably in Canada, sent her to school and assisted her to secure her previous and her current jobs.

He alleged that the Petitioner and he lived together in Canada until he moved out of the apartment on the 25th day of June 2020 to save his life from the very toxic environment created by the Petitioner in the matrimonial home.

He said that he never discussed the issue of surrogacy with Petitioner. He said that they visited nine Doctors, including two IVF Clinics in Canada on a referral/transfer basis and from the results of her examinations and tests, the Doctors in the two different IVF Clinics said that the Petitioner was not a candidate for IVF with her own eggs, and that the Petitioner had the option of using donor eggs or adoption if she wants to have kids.

He said that none of the Doctors said that the Petitioner had a problem carrying a baby in her womb. He tendered a receipt and some documents from an Egg bank and they were admitted as Exhibit "B".

He narrated the several efforts they made to get the Petitioner to get pregnant through different medical procedures and tendered some documents to show the various sums which they spent on the medical procedures. He said that all the medical procedures failed completely.

He alleged that it was after all the fertility treatments failed that the Petitioner opened up to him that she knew and was told long before they married that she could not have kids of her own. He said that she pleaded with him to forgive her and support her to adopt a child. He said that the Petitioner told him to look for a woman who will bear children for him.

He said that all the medical tests conducted by them in Canada revealed that the infertility was on the part of the Petitioner alone.

The Respondent alleged that he incurred a debt on his credit card for the sum of \$6,775.00 when they ran out of funds during the IVF procedures. He said that the Petitioner told him to settle the debt alone because she earned far less than what the Respondent was earning and he eventually defrayed the debt alone.

The Respondent alleged that the Petitioner was into fetish practices and that on several occasions, she threatened to deal with him spiritually if she leaves her.

The Respondent denied having any extra-marital affairs with other women.

He alleged that he advanced the sum of over N1,000,000.00 (One Million Naira) to the Petitioner to facilitate her suggested plan to adopt a child through lawful means

from Nigeria. He said that he learnt that the Petitioner abandoned the adoption plan and went straight to buy a piece of land at Iyowa Community, near Oluku, Benin City, with the money which he gave to her for adoption and started building a house without telling him. He tendered a First Bank transfer receipt to substantiate his claims.

He said that the Petitioner lied to some people that she was pregnant but that she later suffered a miscarriage.

He said that the Petitioner developed anger and bitterness for him and threatened to kill herself and put the blame on him.

He said that he no longer trusted her and became afraid of being poisoned by the Petitioner and he finally moved out of the house on the 25th of June 2020.

He alleged that the Petitioner was aware of his movement because he told her about it. He said that he also informed the Petitioner's eldest brother, Mr. Nosakhare Ekhaguere, who is a retired Assistant Commissioner of Police, to let him know that he moved out of the house due to the reasons earlier mentioned and more.

The Respondent alleged that he opened the joint account in 2010 and operated it alone as his personal account with considerable savings in the account before the Petitioner joined him in Canada in 2013. He said that he added the Petitioner as joint owner of the account when she came to Canada so that she could have a credit card/access to funds while attending school. He said that she operated the account when she started working for some time before she opened separate accounts for herself. He alleged that even when the account was jointly operated by both parties at some point, what the Petitioner earned as wages was not up to half of what he was earning and contributing to the joint account from his multiple jobs and streams of income.

The Respondent alleged that the cars mentioned by the Petitioner were not bought from fund from the joint account. He said that the car sold by Petitioner without his consent was acquired solely by him. He said that the Toyota Sienna which he bought for his mother was bought in Nigeria with his personal money. He said that at the time these vehicles were bought, the Petitioner was already operating a different account which she opened in late 2018, whereas both vehicles were bought in 2020

when parties were no longer operating a joint account. He tendered six First Bank Receipts for the purchase of Toyota Sienna vehicle and other vehicle expenses, and they were admitted as Exhibits “H1” “H2”, “H3, “H4”, “H5” and “H6” respectively.

He said that the Petitioner never gave him any financial support for the purchase of any vehicle, including the one which she sold.

He said that he gave huge amounts of money to the Petitioner’s mother on two occasions to start a business and placed the Petitioner’s mother on monthly allowance before the marriage broke down completely in 2020, but the Petitioner did not extend the same benevolence to his own mother.

He alleged that the Petitioner has not carried out any work in the jointly owned property at Uteh Village/Upper Mission since both parties visited Nigeria in March 2019. He said that the last work done in the property was the gate which he bought and installed when they visited Nigeria in March 2019. He tendered a receipt of payment of the sum of N200,000.00 for the gate, excluding the installation cost paid on June 24, 2019, after he returned to Canada. The First Bank Receipt for the sum of N200,000 for the purchase of the gate was admitted as Exhibit “I”.

He maintained that the Uteh/Upper Mission land and property were jointly acquired by both parties with him contributing a greater percentage of the money used for acquiring the land and developing the building to its present stage. He said that the name on the Land Transfer Agreement is supposed to be Kate and Johnson Obayuwana, which is the name that is on the 2016 survey documents covering the property, not Kate Johnson Obayuwana as stated on it. He said that they planned to reflect their joint names when they acquire a Certificate of Occupancy (C of O) for the landed properties, but the correction was not done because the search for solution to the Petitioner’s reproductive health problems overwhelmed both parties when they got to Nigeria in 2019. He tendered the Deed of Transfer as a receipt as Exhibit “J” while the survey plan was admitted as Exhibit “J1”.

He emphasized that the land and the house where his aged mother lives in the village were not acquired with money from the joint account. First, he said that the land was a gift from one Mr. Pullen Iduozee, AKA Mr. PU, a member of his family, to his aged mother. Secondly, he said that he built the house (six rooms passage house) on

the land from his savings/personal line of credit approved by his bank. He tendered the certified official document and other relevant documents to prove that he had a personal line of credit with BMO Bank of Montreal. A document titled “To Whom It May Concern” dated 04/02/2014 was admitted as Exhibit “K” while the BMO Bank of Montreal document was admitted as Exhibit “K1”.

He pleaded that the properties which he jointly acquired with the Petitioner should be sold and the proceeds of the sale should be shared in the ratio of 35% (to Petitioner) and 65% (to the Respondent).

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 her final written address, the learned counsel for the Petitioner, *A.A. Makanjuola Esq.* formulated two issues for determination as follows:

- 1) Whether the marriage between the Petitioner and the Respondent has not broken down irretrievably to warrant the grant of a decree nisi pursuant to Section 15(1) and (2) of the Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004; and*
- 2) Whether properties standing in the individual names of the Petitioner and the Respondent, including those acquired during the pendency of the marriage constitute matrimonial property liable to settlement or distribution upon dissolution of the marriage*

Thereafter, the learned counsel argued the two issues seriatim.

#### **ISSUE ONE:**

*Whether the marriage between the Petitioner and the Respondent has not broken down irretrievably to warrant the grant of a decree nisi pursuant to Section 15 (1) and (2) of the Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004.*

Arguing this first issue, learned counsel referred to *Section 15(1) of the Matrimonial Causes Act* and submitted that in the instant case, both parties have, by their

pleadings and oral testimony, demonstrated that they have lived apart for more than three years immediately preceding the presentation of this petition. She said that the Respondent has also not objected to the grant of a decree, as evidenced in his Answer and Cross-Petition.

She maintained that this situation falls squarely within the contemplation of *Section 15(2)(e) of the Act*.

She submitted that the Courts have consistently held that once the evidence before the Court satisfies any of the conditions listed under *Section 15(2) of the Act*, the Court should not hesitate to grant a decree nisi. She relied on the cases of *OKONKWO V. OKONKWO (2014) LPELR-24027 (CA)*, *ONOH V. ONOH (2022) LPELR-58390 (CA)* and *IKE V. IKE (2018) LPELR-45105 (CA)*.

She therefore urged the Court to grant a *Decree Nisi* dissolving the marriage between the parties as prayed.

#### **ISSUE TWO:**

*Whether properties standing in the individual names of the Petitioner and the Respondent, including those acquired during the pendency of the marriage constitute matrimonial property liable to settlement or distribution upon dissolution of the marriage.*

Learned counsel submitted that by virtue of *Section 72 of the Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004 (MCA)*, the Court's discretion to make property settlement orders must be exercised in such manner as the Court considers just and equitable in the circumstances of the case.

She said that the general rule in the division and separation of properties among couples is to add all the properties together and to share them equally. She said that it does not matter if one party was the sole breadwinner.

According to her, any property purchased while the marriage subsists is presumed to be jointly purchased and jointly owned by the couple hence the properties must be shared equally.

Counsel posited that a court in determining the extent of the property to be settled, would consider the circumstances of the case including the fortune of the parties and their responsibility. She said that the court has a wide discretionary power to share properties in a manner that is just and equitable and she relied on the decision of the Supreme Court in the case of ***UKEJE V. UKEJE (2014) 11 NWLR (PT. 1418) 384*** where it was held that each spouse retains ownership of property acquired in his or her own name unless joint ownership or contribution is established.

She said that in the instant case, evidence was led to establish that the Petitioner contributed to the purchase of the three properties', particularly the one at Upper Mission, Benin City.

She submitted that it is trite law that unchallenged and credible evidence, if admissible, should be accepted and acted upon by the Court as held in the cases of ***OAN OVERSEAS AGENCY V. BRONWEN ENERGY TRADING LTD (2022) 11 NWLR (PT. 1842) 489 (SC)***; ***MILITARY GOVERNOR OF LAGOS STATE V. ADEYIGA (2012) LPELR-7836(SC)***; and ***EGBUNIKE V. ACB LTD (1995) 2 NWLR (PT. 375) 34***.

Furthermore, she posited that the Respondent deliberately refused to provide the Court with the Deed of Transfer of the property situate at Saint Savior in order to solely acquire the property without any recourse to the Petitioner even when the Deed of Transfer to the said was pleaded by both parties even after been given a notice to produce same.

She said that the Petitioner testified that she contributed to the three properties, and the personal line of credit the Respondent mentioned was paid back with the money from the joint account.

She maintained that marriage does not extinguish the separate proprietary rights of either spouse. She relied on the cases of ***OBIAKOR V. OBIAKOR (2018) LPELR-44369(CA)*** ***OKERE V. AKALUKA (2014) 15 NWLR (PT. 1430) 230*** and submitted that the Courts must distinguish personal property from matrimonial property.

She submitted that the preponderance of evidence supports that the Petitioner single handedly completed and maintained the property situated at Upper Mission and

Saint Saviour which she said was not controverted by the Respondent and is liable to settlement and urged the Court to so hold.

She relied on the case of *SUNMONU V. SUNMONU (2021) LPELR-56002(CA) (Pp. 20 -21 paras B-E)* on the interpretation of *section 72(1) of the Matrimonial Causes Act* that the properties that may be settled by the court are not restricted to properties owned jointly by the parties but rather the overriding consideration would be whether the Court considers it just and equitable to make the order in the circumstances of a particular case.

She submitted that what is paramount is that the property should have been purchased in the course of the marriage or where the property was purchased before the marriage, that the payment for the property or some development on the property was completed after and in the course of the marriage, and the contribution of each party to the cost of purchasing or developing the property. See the case of *SUNMONU V. SUNMONU (SUPRA) (Pp. 21 -22 paras F-G)*.

Learned counsel contended that the contribution of a party does not necessarily have to be in the nature of a cash for the purchase or development of the property. She said that it can be by way of moral and/or financial contribution to the other spouse and the home in general. See *SUNMONU V. SUNMONU (SUPRA)*.

She maintained that in the instant case, the Petitioner contributed financially, emotionally and otherwise during the course of the marriage.

Counsel maintained that it would not be just and equitable for the Petitioner to leave the marriage of over ten years with the Respondent empty handed or with little just because she doesn't have a child.

She urged the Court to resolve issue 2 in favour of the Petitioner.

In conclusion, she urged the Court to grant the decree of dissolution of marriage as prayed by both the Petitioner and Respondent, and discountenance, dismiss, and refuse all other reliefs sought in the Respondent's Cross-Petition.

In her final written address, which she adopted the learned counsel for the Respondent, *Mrs. C.O. Omozuhiomwen* formulated three issues for determination as follows:

- 1) WHETHER FROM THE CIRCUMSTANCE OF THIS CASE AND THE EVIDENCE LED BEFORE THIS HONOURABLE COURT, THE MARRIAGE BETWEEN THE PETITIONER AND THE RESPONDENT HAS BROKEN DOWN IRRETRIEVABLY?**
- 2) WHETHER THE JOINT PROPERTIES OF THE MARRIAGE ARE LIABLE TO BE SOLD AND THE PROCEEDS SHARED BETWEEN THE PETITIONER AND THE RESPONDENT IN THE RATIO OF 35% TO THE PETITIONER AND 65% TO THE RESPONDENT? And**
- 3) WHETHER THE PROPERTY OF AGED MRS. OREGBE OBAYUWANA (RESPONDENT'S MOTHER) SITUATE BEHIND THE MOTOR PARK AT EVBOESI TOWN IN ORHIONMWON LOCAL GOVERNMENT AREA, EDO STATE CONSTITUTES A JOINT PROPERTY OF THE MARRIAGE, OR WHETHER THE PROPERTY OF AGED MRS. OREGBE OBAYUWANA (RESPONDENT'S MOTHER) IN EVBOESI IS EVIDENTLY EXCLUDED PROPERTY FOR AGED MRS. OREGBE OBAYUWANA?**

Thereafter, the learned counsel argued the three issues seriatim.

**ISSUE ONE:**

**WHETHER FROM THE CIRCUMSTANCE OF THIS CASE AND THE EVIDENCE LED BEFORE THIS HONOURABLE COURT, THE MARRIAGE BETWEEN THE PETITIONER AND THE RESPONDENT HAS BROKEN DOWN IRRETRIEVABLY.**

Arguing this first issue, the learned counsel submitted that the marriage between the Petitioner and the Respondent has broken down irretrievably since the parties have lived apart for a continuous period of at least 3 years immediately preceding the presentation of this petition.

She referred to the provisions of *Section 15 of the Matrimonial Causes Act, 1970* and submitted that proof of one of the facts listed therein is sufficient for the court to hold that the marriage has broken down irretrievably.

She submitted that the Cross Petitioner has fulfilled the provision of *Section 15 (f) of the Matrimonial Causes Act*, by leading evidence to show that both parties have lived apart for a continuous period of at least three years immediately preceding the presentation of this cross petition, hence it is palpably clear that the marriage has broken down irretrievably. She urged the Court to so hold.

**ISSUE TWO:**

***WHETHER THE JOINT PROPERTIES ARE LIABLE TO BE SOLD AND THE PROCEEDS SHARED BETWEEN THE PETITIONER AND THE RESPONDENT IN THE RATIO OF 35% TO THE PETITIONER AND 65% TO THE RESPONDENT***

Counsel submitted that *Section 72 Matrimonial Causes Act, Cap M7 LFN 2004*, empowers this Honourable Court to make orders with respect to settlement of property of the parties to a marriage.

She maintained that the guiding principle, as enunciated in several authorities, is that settlement of property upon dissolution must be based on equity, fairness, and contribution of the parties.

Learned counsel posited that during the subsistence of the marriage, both parties acquired joint properties. He referred to Exhibit “J” which is the Deed of Transfer covering the parcel of land situate at Uteh Village, Unity Street, Off Covenant Road, Upper Mission Extension, Benin City. She said that although Exhibit “J” bears the name of the Petitioner, the Respondent pleaded in paragraph 32 of his Consequential Amended Answer and Cross Petition and also gave evidence in paragraph 44 of his Additional Written Statement on Oath deposed to on 21<sup>st</sup> February 2025, the facts that led to the erroneous insertion of “Kate Johnson Obayuwana” in the deed instead of “Kate and Johnson Obayuwana”, hence Exhibit “J1” which is the Survey Plan covering the same parcel of land bears the correct name of both parties.

She said that this piece of evidence was not challenged by the Petitioner who also requested the Court to share the property between the parties.

She urged the Court to adopt the sharing ratio of 65% to the Respondent and 35% to the Petitioner which reflects the evidence of earnings and contributions shown in Exhibit “L” in accordance with the principle of equity and fairness.

She submitted that the Petitioner’s insistence on equal sharing is not supported by either the law or the facts of this case. She said that equal division can only be justified where there is equal contribution which she maintained is not the situation here. She referred to the case of *Odusote v. Odusote (2012) 3 NWLR (Pt. 1288) 478*, where the Court held that contribution need not always be monetary, but the Court must take into account who contributed what, directly or indirectly, towards the acquisition of matrimonial property. She also referred to the case of *Oghoyone v. Oghoyone (2010) 3 NWLR (Pt. 1182) 564* where the Court emphasized that equality of sharing does not automatically apply in every case, and that the peculiar facts and contributions of the parties must guide the Court.

She maintained that the evidence before this Court shows clearly that though the properties in dispute were jointly acquired during the subsistence of the marriage, the Respondent was the party who bore the substantial financial burden of acquisition. She said that the Respondent earned more and contributed more into the joint account which was used to acquire and develop the properties.

She relied heavily on the case of *Aguolu v. Aguolu (2025) LPELR 80269 (CA)*.

She urged the Court to resolve this issue in favour of the Respondent and grant his reliefs as prayed in his Cross Petition.

**ISSUE THREE:**

**WHETHER THE PROPERTY OF AGED MRS. OREGBE OBAYUWANA (RESPONDENT’S MOTHER) SITUATE BEHIND THE MOTOR PARK AT EVBOESI TOWN IN ORHIONMWON LOCAL GOVERNMENT AREA, EDO STATE CONSTITUTES A JOINT PROPERTY OF THE MARRIAGE, OR WHETHER THE PROPERTY OF AGED MRS. OREGBE OBAYUWANA**

***(RESPONDENT'S MOTHER) IN EVBOESI IS EVIDENTLY EXCLUDED PROPERTY FOR AGED MRS. OREGBE OBAYUWANA?***

Learned counsel submitted that the said property at Evboesi Village belongs to the Respondent's aged mother and does not constitute a joint property of the marriage between the Petitioner and the Respondent.

She said that by *Section 72 of the Matrimonial Causes Act*, this Honourable Court has power to make orders relating to property acquired by the parties to a marriage.

She maintained that for property to be liable to settlement in matrimonial proceedings, it must be shown to have been acquired by the husband and/or wife during the subsistence of the marriage.

She maintained that property standing in the name of, and belonging to, a third party such as a parent is outside the jurisdiction of the matrimonial court. She referred the Court to Exhibit "K" which is the document evidencing the gifting of the said property to the Respondent's mother for a token of N20,000 for wine on the 4<sup>th</sup> of February 2014. She said that this clearly establishes that the property situate behind the motor park at Evboesi Town is known and recognized as the personal property of the Respondent's mother and title documents of the property are in her name.

She submitted that marriage does not confer ownership rights over the property of a spouse's parent. She relied on the case of *Okonkwo v. Okonkwo (2014) LPELR-24027(CA)* where the Court of Appeal held that property not acquired by either spouse cannot be treated as part of matrimonial property in a divorce settlement. She also relied on the case of *Anyaegbunam v. Osaka (2000) 5 NWLR (Pt. 657) 386* and urged the Court to hold that the property situate behind the motor park at Evboesi Town, Orhionmwon L.G.A., Edo State, is the exclusive property of the Respondent's mother and does not form part of the matrimonial assets for distribution.

She urged the Court to resolve this issue in favour of the Respondent.

Finally learned counsel submitted that evidence of the Respondent/Cross-Petitioner in this case is not controverted or challenged and as such is deemed admitted and

relied on the authority of *UBA PLC v. V.G.S. Ind. Nig. Ltd (2011) 8 NWLR (Pt.1250) 590 CA*.

She urged the Court to grant the 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 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 ground that same has broken down irretrievably because the Petitioner cannot reasonably be expected to live with the Respondent; and that the Petitioner and the Respondent have lived apart for a continuous period of three years immediately preceding the presentation of this Petition.

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) & (f) of the Matrimonial Causes Act**; to wit on the grounds of intolerable behavior and have lived 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 the 25th day of June 2020, 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 one 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 three years immediately preceding the presentation of the petition.

In essence, the Petitioner has established one 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 for the dissolution of the marriage contracted between the Petitioner and the Respondent on the ground that same has broken down irretrievably because the Petitioner cannot reasonably be expected to live with the Respondent; and that the Petitioner and the Respondent have lived apart for a continuous period of three years immediately preceding the presentation of this Petition; and
- 2) Equal sharing of the joint properties of the Petitioner and Respondent situate at:
  - a) Uteh village, Unity street, off Covenant Road, Upper Mission, Benin City ( comprising of a completed building with 2-bedroom flat into 3 and one self-contained, with an uncompleted building of 2-bedroom flat with one self-contain and bedsitter;
  - b) A 50ft by 100ft virgin land at Saint Saviour Street, Benin City; and
  - c) A 6 bedroom passage house situated behind the motor park at Evboesi Town in Orhionmwon Local Government Area of Edo state.

From the foregoing, it is apparent that the first relief for the dissolution of the marriage has succeeded.

On the relief of equal sharing of the joint properties of the Petitioner and Respondent situated at the earlier mentioned locations, it is settled law that in proceedings for the ancillary relief for settlement of property after dissolution of a marriage, the Court is guided by the provisions of *Section 72(1) and (2) of the Matrimonial Causes Act* which provides as follows:

*“(1) The Court may, in proceedings under this Act, by order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of, the marriage, such a settlement of property to which the parties are, or either of them is, entitled (whether in possession or reversion) as the Court considers just and equitable in the circumstances of the case.*

*(2) The Court may, in proceedings under this Act, make such order as the Court considers just and equitable with respect to the application for the benefit of all or any of the parties to, and the children of, the marriage of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements on the parties to the marriage, or either of them.”*

The said provision empowers the Court to order a party to settle any property or properties to which he or she is entitled on any or both parties to the marriage as the Court may consider just and equitable. See the following cases on the point: ***ANIETO vs. ANIETO (2019) LPELR (47223) 1 at 24-25, OGUNLESI vs. OGUNLESI (2019) LPELR (51154) 1 at 24-26 and OGUNNUBI vs. OGUNNUBI (2021) LPELR (53497) 1 at 29-31.***

From the provisions of ***section 72 of the Matrimonial Causes Act***, the overriding consideration is for the Court to consider what is just and equitable under the circumstances of the case. This is based on what the Court considers just and equitable in the circumstances of a particular case.

In the case of ***DOHERTY vs. DOHERTY (2010) ALL FWLR (PT 519) 1165***, it was stated that the purport of the provisions of Section 72 of the Matrimonial Causes Act is that settlement of property is based on what the Court considers just and equitable in the circumstances of a particular case. The provision gives the Court a lot of discretion on the issue. See also the cases of ***IGWEMOH vs. IGWEMOH (2014) LPELR (46807) 1 at 22-23*** and ***IGBUWE vs. IGBUWE (2023) LPELR (60748) 1 at 27-29.***

The plain, natural and grammatical construction of ***Section 72(1) of the Matrimonial Causes Act*** is that the Court can make an order of settlement in respect of property which is jointly owned by the parties or property in which it has been established that the parties made contributions to acquire.

Furthermore, the clear wording of the provision is that the order can be made in respect of property ***“to which the parties are, or either of them is, entitled...”***

The overriding consideration would seem to be not whether it is joint property, but whether the Court considers it just and equitable to make the order in the circumstances of the case. It is a matter which the stipulation seems to have left entirely to the discretion of the Court. It is based on what the Court considers just and equitable in the circumstances of a particular case. See the cases of ***DOHERTY vs. DOHERTY (supra) and ANIETO vs. ANIETO (supra).***

In her Petition, the Petitioner is seeking equal sharing of the following properties which she claimed are jointly owned by both parties:

- a) The buildings at Uteh village, Unity street, off Covenant Road, Upper Mission, Benin City;
- b) A 50ft by 100ft virgin land at Saint Saviour Street, Benin City; and
- c) A 6-bedroom passage house situated behind the motor park at Evboesi Town in Orhionmwon Local Government Area of Edo state.

It is pertinent to note that although she listed landed properties at the three locations listed above, the Petitioner only produced the title document in respect of the buildings at Uteh Village. The Petitioner alleged that the title documents of the land at Saint Saviour Street and the 6-Bedroom passage house at Evboesi Town are with the Respondent.

On his part, the Respondent maintained that the Uteh/Upper Mission land and property at Saint Saviour Street were jointly acquired by both parties with him contributing a greater percentage of the money used for acquiring the land and developing the building to its present stage.

However, he maintained that the land and the house where his aged mother lives in the village were not acquired with money from the joint account. He said that the land was a gift from one Mr. Pullen Iduozee, AKA Mr. PU, a member of his family, to his aged mother.

Furthermore, he said that he built the house (six rooms passage house) on the land from his savings/personal line of credit approved by his bank. He tendered the relevant documents to prove the point.

He pleaded that the properties which he jointly acquired with the Petitioner should be sold and the proceeds of the sale should be shared between them in the ratio of 35% to Petitioner and 65% to the Respondent.

The issue at stake now is whether the building at Evboesi Community where the Respondent's mother resides is part of the joint property of the parties and whether all the joint properties should be shared equally as canvassed by the Petitioner.

At this stage, the point must be made that in a proceeding to partition or settle matrimonial property it is important to consider whether or not the property or properties in questions were acquired by both parties or one of them during the

pendency of the marriage and if so what was the contribution of each party to the cost of acquisition. See the following cases: ***MUELLER VS. MUELLER (2006) 6 NWLR (PT. 977) 627; IBEABUCHI VS. IBEABUCHI (2016) LPELR - 41268 (CA) AND ADEROUNMU VS. ADEROUNMU (2003) 2 NWLR (PT.803) 1;*** and ***OGUNJOBI V. OGUNJOBI (2021) LPELR-52894(CA) (PP. 37-38 PARAS. F).***

Furthermore, it is settled law that where a purchase of property is made in the name of another that that other person holds the property for the benefit of the person who advanced money for the purchase of the property. The law, in such a situation, presumes that the intention was that the property should be held in trust by the third-party transferee. In such cases, the transferee holds the property in trust for all the persons who contributed to paying for it with each having beneficial interest proportionate to the amount of purchase money he advanced. See the decision of the Supreme Court in the case of ***MADU V. MADU (2008) LPELR-1806(SC) (PP. 27 PARAS. B).***

Applying, the foregoing principles to the instant case, it is noteworthy that although the Petitioner alleged that she is working in Canada and that she contributed to the purchase and the building of these properties, she did not tender any document to show her sources of income or receipts to show her alleged expenditures. It was only the Respondent who tendered such documents.

Furthermore, although the Petitioner tendered a Deed of Transfer to show that the land at Uteh was purchased in her name, the Respondent explained that he provided the funds and that he expected the Petitioner to include his name on the Deed of Purchase. However, as I already posited, where a purchase of property is made in the name of another, that other person holds the property for the benefit of the person who advanced money for the purchase of the property. The transferee holds the property in trust for all the persons who contributed to paying for it with each having beneficial interest proportionate to the amount of purchase money he advanced. See the case of ***MADU V. MADU (2008) Supra.***

Again, as regards the property at Evboesi which is presently occupied by the Respondent's aged mother, I observed that the only document relating to that land is the receipt of purchase (Exhibit "K") which is in the name of the Respondent's

mother. There is nothing to show that it is part of the matrimonial property of the parties. I hold that it is not one of the joint properties of the parties.

Incidentally, in this suit, even though the Petitioner's contribution to acquisition of the properties listed in the Petition were not substantiated with sufficient documentary evidence, the Respondent has agreed that Court should order the sale of the properties situate at Uteh Village and Ihinmwinrin Village, off Saint Saviour Road in Benin City, while the proceeds from the sale should be shared between the Petitioner and Respondent on a pro rata basis of 35% to Petitioner and 65% to Respondent respectively, in view of the contributions made by parties in acquiring the properties. I am of the view that the sharing formula is just and equitable giving the circumstances of this case.

Sequel to the foregoing, I hold that issue one is substantially 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:

- 1) A Decree of dissolution of the marriage celebrated on the 11<sup>th</sup> May, 2011 at the Marriage Registry, Oredo Local Government Area, Benin City, Edo State between the Cross-Petitioner and the Respondent on the ground that the marriage has broken down irretrievably; parties having lived apart for a continuous period of at least three (3) years immediately preceding the presentation of this cross-petition; and***
- 2) An Order of this Honourable Court directing the sale of the joint properties of the Cross-Petitioner and the Respondent viz: seven apartments situate at Uteh Village, Unity Street, Off Covenant Road, Upper Mission Extension, Benin City and 50ft by 100ft plot of land at Saint Saviour, Benin City and***

***the proceeds shared between the Cross-Petitioner and Respondent in the ratio of 65% (to Cross-Petitioner) and 35% (to Respondent) proportion respectively.***

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 three years immediately preceding the presentation of the Petition. I have also held that the properties situate at Uteh Village and Ihinmwinrin Village, off Saint Saviour Road in Benin City should be sold while the proceeds from the sale should be shared between the Petitioner and Respondent on a pro rata basis of 35% to Petitioner and 65% to Respondent/Cross-Petitioner respectively, in view of the contributions made by parties in acquiring the properties.

On the whole, I hold that the Cross-Petition also succeeds and issue two is resolved in favour of the Respondent/Cross-Petitioner.

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

- 1) ***A Decree of dissolution of the marriage celebrated on the 11th May, 2011 at the Marriage Registry, Oredo Local Government Area, Benin City, Edo State between the Petitioner/Respondent and the Respondent/Cross-Petitioner on the ground that the marriage has broken down irretrievably; parties having lived apart for a continuous period of at least three (3) years immediately preceding the presentation of this Petition and Cross-Petition; and***
- 2) ***An Order of this Honourable Court directing the sale of the joint properties of the Petitioner/Respondent and the Respondent/Cross Petitioner, to wit: seven apartments situate at Uteh Village, Unity Street, Off Covenant Road, Upper Mission Extension, Benin City and parcel of land measuring 50ft by 100ft at Saint Saviour, Benin City and the proceeds of the sale should be shared between the Petitioner/Respondent and the Respondent/Cross-Petitioner in the ratio of 65% (to the Respondent/Cross-Petitioner) and 35% (to Petitioner/ Respondent) proportion respectively.***

*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**  
**01/04/2026**

**COUNSEL:**

- 1. A.A. Makanjuola Esq.....Petitioner/Respondent**
- 2. Mrs. C. O. Omozuhomwen.....Respondent/Cross-Petitioner**