

IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON. JUSTICE P. A. AKHIHIRO,

ON MONDAY THE

4TH DAY OF MAY, 2026

BETWEEN:

SUIT NO. B/155^D/2024

MRS. AMANDA OSARETIN EGBORO -----PETITIONER

AND

MR. LUCKY EGBORO -----RESPONDENT

JUDGMENT

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner on the 20th of February 2024. In her Petition, the Petitioner is seeking the following reliefs:

- a) *An order dissolving the marriage between the Petitioner and the Respondent having broken down irretrievably.*
- b) *An order granting the Petitioner the custody of the children of the marriage namely Omavwereoghene Egboro and Jayden Oghenetega Egboro.*
- c) *An order directing the Respondent to be paying to the Petitioner the school fees and health care of the twin children of the marriage.*
- d) *An order directing the Respondent to be paying to the Petitioner the sum of ₦100,000.00 only per month for the maintenance and upkeep of the twin children of the marriage.*

AND FOR SUCH ORDER as this Honourable Court may deem fit to make in the circumstances of this petition

The Petition was served on the Respondent via substituted means but he refused to appear before this Court to defend the petition. The matter was eventually fixed for hearing and the Petitioner opened her case and testified in proof of her Petition.

In her evidence, the Petitioner testified that she got married to the Respondent on the 22nd of April 2017 at the Ikpoba Okha Local Government Marriage Registry in Benin City. The marriage certificate was admitted in evidence as *Exhibit "A"*.

The Petitioner stated that before the marriage, she was concerned about genotype issues because she is AS genotype. She said that she asked the Respondent his genotype and the Respondent told her that he was AA. She stated that they conducted the Respondent's genotype before the wedding and the result showed that it was AA. The medical laboratory report from Dominion Diagnostic Laboratory dated 30/12/2016 was admitted in evidence as *Exhibit "B"*.

She further testified that on March 11 2019, she gave birth to twin boys. She said that sometime in January 2020, the children fell sick and were admitted at the UBTH Benin City. She said that when genotype tests were conducted on the children, the results showed that the two boys were SS genotype.

The Petitioner testified that she did another medical test at Fan Medical Laboratory and the result still showed that both children are having SS genotype. The medical reports for the two children from Fan Medical Laboratory dated 15/02/2020 were admitted in evidence as *Exhibits "C1" and "C2"* respectively.

The Petitioner also alleged that at the UBTH it was confirmed that she is AS genotype. She said that another medical test was conducted for the Respondent at a medical laboratory called LabCorp and the result showed that his genotype is SS. The medical test report from LabCorp dated 1st February, 2020 was admitted in evidence as *Exhibit "D"*.

The Petitioner stated that the Respondent went to Anambra State to run another genotype test and the result still came out as SS. The medical lab report from Hilltop Medical Laboratories, Nkpor, dated 11-02-2020 was admitted as *Exhibit "E"*.

The Petitioner stated that they did a final test at the Edo State Sickle Cell Centre at Golf Course Road, which also proved that the Respondent is SS. The medical

laboratory test result from the Edo State Sickle Cell Centre dated 06/01/2021 was admitted in evidence as *Exhibit "F"*.

The Petitioner alleged that whenever the children have their medical crisis, the Respondent always refuses to provide money for their treatment even when they are on admission. She stated that at most, the Respondent will use a cab to take them to her parents' house for her parents to take care of the children.

She said that in October 2021 she and the children were all sick, and the Respondent took a cab to her parents' house and dropped them there. She said that she was in her parents' house with the children for about three weeks before she returned to their house.

The Petitioner testified that at some point the Respondent started to deny paternity of the children. She alleged that she and her parents went to see the Respondent to confront him with his allegations of denying his paternity of their children, but the Respondent refused to see them and they left. The Petitioner stated that she went back on her own and discovered that the Respondent had packed from the house in that same 2021. She said that from 2021 till date, she doesn't know where the Respondent is.

The Petitioner testified that she wants the court to dissolve the marriage, and grant her custody of the children. She also wants the Respondent to be responsible for the school fees and health care of the two children, and for the Respondent to pay the sum of ₦100,000 per month for the maintenance and upkeep of the children.

Upon the conclusion of the Petitioner's evidence, the matter was adjourned for cross examination. Fresh hearing notice was issued and served on the Respondent, but he failed to appear in court to cross examine the Petitioner. The Respondent was then foreclosed from cross-examining the petitioner and the Petitioner was discharged from the witness box. The Petition was adjourned for defence or final address. Fresh hearing notices were again issued and served on the Respondent but he was not present to defend the suit. The Petition was then adjourned for final address.

In her Final Written Address, the learned counsel for the Petitioner, *Mrs. E.D. Johnson Oribhabor* formulated a sole issue for determination as follows:

“Whether from the pleading and evidence before this Honourable Court, the Petitioner has sufficiently proved her claims against the Respondent to entitle her to the claims.”

Arguing the sole issue for determination, the learned counsel submitted that a civil case is decided on the preponderance of evidence and she cited the case of ***WOMILOJU V. KIKI (2009) 16 NWLR (PT.1166) PG.143 @ 145 R.2.***

She posited that it is trite law that the onus of proof is on the Petitioner to satisfy the court that she is entitled to the claims she asserts on the evidence adduced by her.

Learned counsel submitted that the Petitioner has sufficiently discharged the onus of proof by her credible oral evidence and tendering of documents which were admitted as Exhibits A-F before this Court. She submitted that the evidence of the Petitioner was not contradicted by the Respondent and are deemed admitted.

She therefore submitted that the unchallenged and uncontradicted evidence of a party to any proceeding, can be acted upon by the court when the court and she relied on the cases of ***LEKA V. TYO (2007) 11 NWLR (PT 1045) PG 385 @ 389 R. 6; EGHAREVBA V. OSACUE (2009) 18 NWLR (PT.1173) 299@322, PARAS E-F*** and ***LAWAN V. YAMA (2004) NWLR (PT 877) PG 117.***

Learned counsel finally urged the Court to grant the reliefs of the Petitioner.

I have carefully gone through the evidence adduced at the trial together with the address of the learned counsel for the Petitioner. From the records contained in the Court’s file in this Petition, all through the case, the Respondent virtually abandoned the trial and never responded to all the Hearing Notices served on him.

This suit is therefore undefended; thus, the evidence of the Petitioner remains unchallenged. The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See the case of: ***Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663.***

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendant, the

burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See: *Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24.*

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See: *Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341.* Even where the evidence is unchallenged, the trial court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: *Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650.*

Applying the foregoing principles, I will evaluate the evidence adduced by the Petitioner to ascertain whether they are credible and sufficient to sustain the Petition.

I am of the view that the sole issue for determination in this Petition is *whether the Petitioner is entitled to the reliefs sought in this petition?*

In every civil action, including a matrimonial petition, the burden of proof is on the Claimant or Petitioner, as he who asserts must prove. Furthermore, the standard of proof required is on the preponderance of evidence or the balance of probabilities. See: *AGAGU V MIMIKO (2009) 7 NWLR (PT. 1140) 223.*

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 the irretrievable breakdown of the marriage. See *Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383*.

In the instant case, the Petitioner is seeking a Decree of Dissolution of Marriage on the ground that the marriage has broken down irretrievably. According to the testimony of the Petitioner the Respondent left their matrimonial home in late 2021. This suit was filed in February 2024. Thus, the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of this petition. Both parties have also lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent's failure to defend this suit can be seen as evidence of non-objection to a decree of dissolution being granted. See *Aderinwale v. Aderinwale (1976) 4 CCHCJ p.1201*.

As earlier stated, proof of one of the grounds or facts listed above is in the eyes of the law, conclusive proof of the irretrievable breakdown of marriage. See *Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383*.

In this Petition, the Petitioner has established two of the grounds as covered by *Section 15(2) (d) & (e) of the Matrimonial Causes Act*. I therefore hold that the Petitioner has successfully established that the marriage has broken down irretrievably.

On the issue of custody, the Petitioner is seeking custody of the two children of the marriage to wit: Jeremy Omavwereoghene Egboro and Jayden Oghenetega Egboro. On the subject of custody of the children of marriage, *Section 71(1) and (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.”

The Petitioner testified that the Respondent abandoned her with the children in her parents' house and that till date, she does not know where the Respondent resides. She also alleged that whenever the children have their medical crisis, the Respondent always refuses to provide money for their treatment even when they are on admission. Therefore, in the instant case and from all the uncontroverted facts and evidence led at the trial I believe that it is in the best interest of the children that custody be granted to the Petitioner. I therefore hold that custody of the children should be granted to the Petitioner.

On the issue of maintenance, the Petitioner is requesting for the sum of ₦100,000 monthly for the maintenance and upkeep of the twin children of the marriage. She is also seeking an order directing the Respondent to pay for the school fees and health care of the children.

It has been stated 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)*.

I am of the view that it is the duty of the Respondent to take care of his children, and the sum of ₦100,000 monthly for the two children is quite reasonable. The Respondent also did not lead any evidence to show that he would be unable to afford the maintenance of ₦100,000 monthly. As no direct evidence of the Respondent's income was provided, the Court is entitled to make a reasonable estimate. The Respondent also being the father of the children has a responsibility to contribute towards the education and health of the twin children. See, *Alabi v. Alabi (2007) LPELR-8203 (CA)*;

I therefore resolve the sole issue in favour of the Petitioner.

Having resolved the sole issue for determination in favour of the Petitioner, I hold that this Petition succeeds and I hereby make the following orders:

- a) An order dissolving the marriage between the Petitioner and the Respondent having broken down irretrievably;*
- b) An order granting the Petitioner the custody of the children of the marriage namely Omavwereoghene Egboro and Jayden Oghenetega Egboro;*
- c) An order directing the Respondent to be paying to the Petitioner the school fees and health care for the twin children of the marriage;*
- d) An order directing the Respondent to be paying to the Petitioner the sum of ₦100,000.00 only per month for the maintenance and upkeep of the twin children of the marriage.*

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. The Respondent shall pay the sum of ₦200,000.00 (Two Hundred Thousand Naira) as costs for this Petition.

P.A. AKHIHIERO
JUDGE
04/05/2026

COUNSEL:

- 1. Mrs. E.D. Johnson Oribhabor -----Petitioner**
- 2. Unrepresented-----Respondent**