IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO
ON FRIDAY THE 27TH DAY OF NOVEMBER, 2026.

BETWEEN: ***SUIT NO. B/602D/2023***

MRS. HOPE IGHODALO..... PETITIONER/CROSS-RESPONDENT

AND

MR. MONDAY IGHODALO.....RESPONDENT/CROSS-PETITIONER

JUDGMENT

This judgment is in respect of a Petition for the dissolution of marriage dated the 23rd day of June, 2023 and filed on the 10th day of July, 2023. In the Petition, the Petitioner is seeking the following orders:

a. DECREE OF DISSOLUTION of the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably.

b. AN ORDER awarding custody of the three children of the marriage to the Petitioner.

c. AN ORDER of perpetual injunction restraining the Respondent from coming at least 100 meters close to the Petitioner, the Petitioner's house, place of work and from doing any act detrimental to the Petitioner's life and wellbeing.

d. AN ORDER directing the Respondent to pack out of the Petitioner's house at Amagba Quarters, near Urhobo Camp, Benin City.

e. AN ORDER directing the Respondent to pay N100,000.00 (One Hundred Thousand Naira) monthly for the upkeep of the children.

f. That the Petitioner have such order or further relief(s) as may be expedient.

The Respondent filed an Answer to the Petition and a Cross-Petition, which was deemed as properly filed and served by an order of this Court made on the 8th day of April, 2024. In the Cross-Petition, the Respondent/Cross-Petitioner, while repeating and adopting the averments in his Answer, claims as follows:

> ***(1) An Order for the dissolution of the marriage between the Respondent and the Petitioner as the marriage has broken down irretrievably.***
>
> ***(2) An Order for the Respondent to be paying the sum of N20,000.00 (Twenty Thousand Naira Only) every month for upkeep as that is what the Respondent can afford considering his take home pay after the loan deduction.***
>
> ***(3) The two children out of the three children are already above 18 years, the 1st son is 21 years while the 2nd child is 20 years, they can decide on who between the Petitioner/Respondent they want to stay/live with. While the last child can be with the Petitioner and be visiting the Respondent during holidays.***
>
> ***(4) An Order of this Honourable Court directing the Petitioner to stop laying claim to the Respondent's house at Abuja Way, Amagba Quarters, near Urhobo Camp, Benin City bought in the names of the two (2) sons of the marriage.***
>
> ***(5) An Order of perpetual injunction restraining the Petitioner from laying claim to the Respondent's house and from sending threat text messages to the Respondent by herself or through her agent, privies and or servants.***
>
> ***(6) And Any Other relief or reliefs this Honourable Court may deem fit to make in the circumstance of this case.***

At the hearing, each party testified in person and neither called any other witness. The Petitioner tendered her Certificate of Marriage which was admitted as Exhibit "A". The Respondent tendered his Pay Slip, admitted as Exhibit "B", and an Affidavit of Loss of Receipts made on the 18th day of May, 2017, admitted as Exhibit "C".

THE CASE OF THE PETITIONER:

The Petitioner's case as can be gleaned from her evidence is that she got married to the Respondent on the 22nd day of June, 2002 at the Kingdom Hall of Jehovah's Witnesses, Benin City, and that they were issued with a Marriage Certificate which was admitted as Exhibit "A".

In her oral testimony, she stated that after the wedding they lived at Agbonmoba Street, Aduwawa Quarters, Ogbelaka Quarters, Idehen Street off Jemila Road, Ikpoba Hill, and finally at Amagba Quarters, all in Benin City. She said that the marriage produced three children, namely: Jahswill Ighodalo, then aged 22 years; Tracy Ighodalo, then aged 21 years; and Princely Ighodalo, then aged 15 years.

She testified that she is in Court because the Respondent has been violent with her because he wants her to be giving him money, which she has been doing; that she has been the one paying the school fees of the children; that one night the Respondent beat her up and hit her head against the wall; and that the Respondent has some health challenges. She said that she left the matrimonial home more than three years ago because of the domestic violence, for her safety.

She further testified that she bought a parcel of land at Amagba Quarters, Benin City in 2015 in the name of their two sons.

She urged the Court to dissolve the marriage, to order the Respondent to pay the sum of N100,000.00 for the maintenance of the children, to allow the three children to remain with her, to order the Respondent to pack out of the Petitioner's house and to restrain the Respondent from coming within 100 meters of her house and place of work.

Under cross-examination, she stated that both parties sponsored the wedding ceremony and that she was working at Irowa Medical Centre when she met the Respondent. She denied that the Respondent enrolled her for the Senior School Certificate Examination or sponsored her training at the School of Nursing. She admitted that she started nursing school after she had her first children while she was living with her mother and stated that it was her mother who paid her school fees. She denied that the Respondent bought the land in the names of the two children, or that he borrowed money from a bank and from LAPO to

purchase it. She said she was not aware that the Respondent's take home pay is N46,000.00, or that he sold three of his landed properties to erect the building at Amagba.

She stated that she left the Respondent in April, 2022, and denied that she had stopped sleeping in the matrimonial home before she left. She denied that she confessed adultery to the Respondent, or that she has been sleeping with other men. She said she knows one Jefferson Aika but denied that she committed adultery with him. She stated that the house belongs to the first two children of the marriage and that she has no issue with the house so long as it belongs to her children. She said that the two senior children are now adults and that all three children are with her. She denied insulting the Respondent or instigating the children against him and stated that the Respondent did not make any effort to reconcile with her.

THE CASE OF THE RESPONDENT/CROSS-PETITIONER:

The Respondent's case as can be gleaned from his evidence is that he married the Petitioner in June, 2002 at the Kingdom Hall of Jehovah's Witnesses, Benin City, and that Exhibit "A" is their Certificate of Marriage. He testified that after the marriage they lived at St. Emmanuel Street close to Agbonmoba Road, at No. 2 Ogieva Street, Ikpoba Hill, at Idehen Street off Jemila Road, at Ogbelaka Street and finally at Abuja Way, Amagba, all in Benin City.

He confirmed that the marriage produced three children: Jahswill Eromosele Ighodalo (male), Tracy Omozuri Ighodalo (female) and Princely Ehizogie Ighodalo (male), and that the three children are presently with the Petitioner. He stated that the eldest child has graduated, that the second child has graduated from the School of Nursing, and that the third child is in Senior Secondary School Class Three. He said the first two children can decide where they want to stay, but that the last child can stay with the Petitioner and come to him during holidays.

He denied that the Petitioner is solely responsible for the upkeep of the children and stated that he sends money to the children directly and that they sometimes come to his office to collect money because the Petitioner does not allow them to come to his house.

He testified that on the 28th of May, 2023 the Petitioner summoned him to the Ministry of Women Affairs in Benin City, where he was asked to bring his salary structure and the parties were settled. He stated that after the settlement the Petitioner refused to come back home, and that on the 4th of June, 2023, he came home to find his gate open and his house empty; that the Petitioner had packed away everything, including his working documents and the title documents to his house, and that she came back a week later to pack away his curtains.

He testified that he is the owner of the house; that he took a loan from the Cooperative to build it, for which the Petitioner signed as his guarantor; and that he bought the land on which he built the house in the name of his two senior children. He tendered his Pay Slip (Exhibit "B") and the Affidavit of Loss of Receipts (Exhibit "C") and stated that he lost the receipts for building materials he purchased on the 18th of May, 2017. He said he will pay the sum of N30,000.00 per month for the upkeep of the children.

He denied that he has any health challenge affecting his functionality as a man and denied that he used to physically assault the Petitioner. He stated that the Petitioner confessed to him that she committed adultery with one Jefferson Aika and one Paul, both members of the Jehovah's Witness congregation, and also mentioned a doctor at Oredo Health Centre; that medical tests showed that she was infected with Staphylococcus, that he was also infected, and that he spent N1.6 million on treatment at Lily Hospital.

He further stated that he reported the matter to the congregation, that the Petitioner confessed her immorality to the church and was asked to repent, and that he also reported her conduct to her family who could not resolve the matter. He said the Petitioner was always insulting him and comparing him with other men, and that her behaviour is such that he cannot reasonably live with her anymore.

He testified that he sponsored the Petitioner to write her school certificate examination after their wedding, obtained the forms for her admission into the School of Nursing and Midwifery, transported her to school, and assisted her to secure employment as a midwife at Oredo Health Centre. He stated that she graduated in 2007 and got her job in 2010. He also stated that he sold three parcels of land at Iduowina to take care of the Petitioner and the children and used part of the proceeds to complete the house at Amagba.

He urged the Court to dissolve the marriage, to stop the Petitioner from parading herself as the owner of his house, to allow him to pay N30,000.00 per month for the upkeep of the children, to stop the Petitioner from sending people to threaten him, and to grant him access to the children.

Under cross-examination, he stated that he has no document to show that he paid the children's school fees, but that he used to give money to the Petitioner. He admitted that the Petitioner's mother was buried in the house at Amagba.

He stated that the Petitioner has packed out of the house for about three years. He stated that his total earnings as at January, 2024 was N108,858.06 and that his salary has changed since then. He said he is supposed to pay more than N30,000.00 but that he is still servicing debts which the Petitioner put him into; that he has no document to show the debts apart from the Pay Slip; and that Exhibit "B" shows a loan repayment of N9,666.40 and a deduction of N35,750.00 for the Edo State Cooperative, which he explained is what he pays monthly as his thrift as a member of the Cooperative. He conceded that the marriage has broken down irretrievably.

THE FINAL WRITTEN ADDRESSES:

At the close of evidence, the parties filed their final written addresses. The Respondent/Cross-Petitioner's final written address dated the 2nd day of April, 2026 and filed on the 7th day of April, 2026 was adopted by his learned counsel, ***Mrs.C.G. Ekejiuba,*** on the 4th day of November, 2026. The Petitioner's final written address dated the 20th day of June, 2026 was deemed adopted, her learned counsel being absent on that date.

In the Respondent/Cross-Petitioner's final written address, learned counsel formulated a sole issue for determination, to wit:

> ***"Whether this Honourable Court can grant the reliefs sought by the Respondent/Cross Petitioner."***

Arguing the issue, learned counsel submitted that the parties are agreed that a valid marriage was conducted between them, as evidenced by Exhibit "A". Counsel referred to ***Section 15(1) and (2) of the Act*** and submitted that proof of one of the facts in ***Section 15(2)(a)–(h)*** is conclusive proof of irretrievable breakdown, citing ***Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383*** and ***Orere v. Orere (2017) LPELR-42160(CA).***

The Learned Counsel submitted that the Respondent testified that the Petitioner committed adultery with one Jefferson Aika, confessed it, and infected him with Staphylococcus, and that this evidence was neither controverted nor challenged; and further that the Petitioner insults and abuses the Respondent and deprives him of sexual intercourse. He urged the Court to hold that the marriage has broken down irretrievably by virtue of ***Section 15(2)(b) and (c) of the Act***.

Learned counsel further submitted that the Petition is incompetent because the Petitioner's verifying affidavit is dated the 10th day of July, 2022, a date earlier than the Petition which is dated the 23rd day of June, 2023, so that the affidavit could not have verified the Petition. Counsel relied on ***Order V Rule 10(1), (2) and (3) of the Matrimonial Causes Rules*** and on the cases of ***Abbah v. Abbah (1973) 3 ECSLR 214; Unegbe v. Unegbe (2004) 11 NWLR (Pt. 884) 332; Samuel v. Samuel (2019) LPELR-48471(CA); Madukolu v. Nkemdilim (1962) 2 SCNLR 341*** and ***Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508,*** and urged the Court to hold that it lacks jurisdiction to entertain the Petition and to grant the Cross-Petition in its entirety.

On maintenance, counsel submitted that Exhibit "B" shows that the Respondent cannot afford N100,000.00 monthly, that he offered N30,000.00 in evidence, and that the Petitioner, a nurse whose career was enhanced by the Respondent, is able to contribute to the welfare of the children. On the house at Abuja Way, counsel submitted that the Petitioner presented no proof of ownership; that the burial of her mother in the house is no proof of ownership; that both parties alluded to the fact that the land was bought in the names of the two children; and that the Court lacks the vires to order the Respondent to pack out of the house. On custody, counsel submitted that the first two children are adults who can decide where to live, while the last child may remain with the Petitioner with access to the Respondent during holidays. He urged the Court to dismiss the Petition and grant the Cross-Petition.

In the Petitioner's final written address, learned counsel, ***Henry Amaechi Nwaozor Esq***., did not formulate any specific issue for determination. Counsel submitted that it is apparent from the pleadings and the evidence that both parties desire that the marriage be dissolved; that the parties have been living apart due to the violent nature and conduct of the Respondent; and that by virtue of ***Section 15(2) of the Act*** the marriage has broken down irretrievably.

The learned counsel urged the Court to grant custody of the children to the Petitioner and to order the Respondent to provide for their welfare, education and health. Counsel also conceded that the welfare, education, health and all the necessaries of the children should be provided by the Respondent.

DETERMINATION:

I have carefully considered all the processes filed in this suit, together with the evidence led, the exhibits admitted in the course of the hearing and the addresses of the respective counsel to the parties. I observed that the Respondent also filed a Cross-Petition in this suit. So, in essence, there are two Petitions before the Court. However, the Respondent has raised a threshold objection to the competence of the Petition which must be resolved first, as it touches on the jurisdiction of the Court to entertain the Petition. In the event I am of the view that the issues to be resolved in this suit are as follows:

> ***1. Whether the Petition is incompetent for want of a valid verifying affidavit;***
>
> ***2. Whether the Petitioner or the Respondent/Cross-Petitioner has established that the marriage has broken down irretrievably;***
>
> ***3. What orders ought to be made as to the custody and maintenance of the children of the marriage; and***
>
> ***4. Whether either party is entitled to the reliefs relating to the house at Abuja Way, Amagba Quarters, and to the injunctive reliefs sought.***

I will now proceed to resolve the four issues seriatim.

ISSUE 1: WHETHER THE PETITION IS INCOMPETENT FOR WANT OF A VALID VERIFYING AFFIDAVIT

Order V Rule 10(1) of the Matrimonial Causes Rules provides as follows:

> ***"A petitioner shall, by affidavit written on his petition and sworn to before his petition is filed – (a) verify the facts stated in his petition of which he has personal knowledge; and (b) depose as to his belief in the truth of every other fact stated in the petition."***

It is not in dispute that the Petition was filed together with an affidavit headed "VERIFYING AFFIDAVIT" sworn by the Petitioner, in which she deposed that the facts stated in the Petition are within her personal knowledge and are true to the best of her knowledge and belief, and that the affidavit exhibits a copy of the Certificate of Marriage. The complaint of the Respondent is that the jurat of the affidavit bears a date in the year 2022, whereas the Petition itself is dated the 23rd day of June, 2023.

Two observations are apposite. First, ***Order V Rule 10(1)*** requires that the verifying affidavit be "sworn to before his petition is filed". Even on the Respondent's own showing, the affidavit was sworn before the Petition was filed on the 12th day of July, 2023. Secondly, the affidavit refers in terms to "this petition" and to the facts "contained in this petition", and it was filed with the Petition as part of the same set of processes.

Furthermore, the Petitioner testified that she signed her deposition in this suit on the 10th day of July, 2023, two days before the Petition was filed. In the circumstances, I am of the view that the reference to the year 2022 in the jurat is, in all probability, a clerical slip for 2023. Such a slip is a defect in form. By ***Section 113 of the Evidence Act, 2011***, the Court may permit an affidavit to be used, notwithstanding that it is defective in form, if the Court is satisfied that it has been sworn before a person duly authorised. There is no suggestion in this case that the affidavit was not sworn before a Commissioner for Oaths.

Furthermore, the Matrimonial Causes Rules themselves make provision for the effect of non-compliance. By ***Order XXI of the Rules***, non-compliance with the Rules shall not render proceedings void unless the Court so directs, but the proceedings may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court thinks fit. The Rules further provide that an application to set aside proceedings for irregularity shall not be allowed if it is not made within a reasonable time, or if the party making the application has taken a relevant step after knowledge of the irregularity.

In the instant case, the Respondent was served with the Petition and its accompanying processes in 2023. He did not, at any stage, apply to set aside the Petition for irregularity. Rather, he sought and obtained an extension of time to file his Answer and Cross-Petition, joined issue with the Petitioner on the merits, cross-examined her, testified in his own defence and in support of his

Cross-Petition, and raised the objection for the first time in his final written address, more than three years after the Petition was filed. In the case of ***Olabiwonnu v. Olabiwonnu (2014) LPELR-24065(CA),*** the Court of Appeal, applying ***Order XXI of the Matrimonial Causes Rules,*** rejected an invitation to declare proceedings and a judgment a nullity for non-compliance with ***Order V Rule 10(1)*** where the complaining party had raised no objection when served and had participated in the trial. Per ***Abiriyi, JCA:***

> ***"When an irregular procedure is adopted with the acquiesce of a party to a civil action such irregular procedure cannot be a ground of appeal."***

Similarly, in the case of ***Notoma v. Notoma (Appeal No. CA/IB/352/2018, delivered on the 16th day of July, 2024),*** the Court of Appeal held that, as long as the verifying affidavit was sworn to before the petition was filed and accompanied the petition, the provisions of ***Order V Rule 10(1)*** would have been substantially complied with, and that non-compliance does not render the proceedings void unless the Court so directs.

The decision in ***Unegbe v. Unegbe (supra)*** relied upon by the Respondent is distinguishable. In that case, the respondent, upon being served with the petition, promptly filed a motion to strike it out for non-compliance with ***Order V Rule 10(1),*** and the complaint was that the affidavit was not written on the petition at all. Here, the complaint concerns only the date in the jurat of an affidavit that was sworn before filing and accompanied the Petition, and it was raised at the tail end of the proceedings after the Respondent had taken several fresh steps.

From the foregoing, I am of the view that the defect complained of is a mere irregularity which does not render the Petition incompetent or rob this Court of jurisdiction. In the exercise of the discretion conferred on the Court by ***Order XXI of the Matrimonial Causes Rules***, I hereby relieve the Petitioner from the consequences of the irregularity. The first issue is therefore resolved in favour of the Petitioner.

ISSUE 2: WHETHER THE MARRIAGE HAS BROKEN DOWN IRRETRIEVABLY

In every civil action, including a matrimonial petition, the burden of proof is on

the Claimant or Petitioner, as he who asserts must prove. 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.*** 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. See ***Section 82(1) of the Act.***

A Cross-Petition is in the same category as a counter-claim. It is an independent claim, and the Cross-Petitioner must prove the averments in the Cross-Petition upon which he relies. See the cases of ***Nwanya v. Nwanya (1987) 3 NWLR (Pt. 62) 697 at 704;*** and ***Otti v. Otti (1992) 7 NWLR (Pt. 252) 187 at 212.***

Exhibit "A", the Certificate of Marriage, establishes the marriage between the parties celebrated on the 22nd day of June, 2002 under the Marriage Act. Both parties agree on the marriage, and I so find.

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 wilfully 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 three 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 this Act;

(h) that the other party to the marriage has been absent from the petitioner for such 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 the case of ***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. See ***Ibrahim v. Ibrahim (supra) and Damulak v. Damulak (2004) 8 NWLR (Pt. 874) 151***. It follows that the mere fact that both parties desire the dissolution of their marriage is not, by itself, sufficient. See ***Nanna v. Nanna (2006) 3 NWLR (Pt. 966) 1,*** where the Court of Appeal, relying on ***Akinbuwa v. Akinbuwa (1998) 7 NWLR (Pt. 559) 661***, held that a petition will be dismissed if the statutory fact is not proved, notwithstanding that the divorce is desired by both parties.

I should state at the outset that the facts in ***Section 15(2)(e) and (f) of the Act*** are not available to the parties. The Petitioner testified that she left the matrimonial home in April, 2022, while the Petition was presented on the 12th day of July, 2023, a period of about fifteen months. The parties had therefore not lived apart for two years immediately preceding the presentation of the Petition. The submission of the learned counsel for the Petitioner that the parties "have been living apart" can therefore only be relevant as part of the circumstances surrounding the conduct complained of.

THE PETITION:

The Petitioner pleaded three grounds, namely: that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him; that the

Respondent continued to deny her conjugal rights; and that the marriage has broken down irretrievably. The third "ground" is not a fact under ***Section 15(2) of the Act*** but the conclusion which the Court is invited to draw from the proof of a fact. The second, as pleaded, is better treated as part of the conduct relied upon under ***Section 15(2)(c),*** since the marriage was clearly consummated and produced three children.

Two sets of facts call for proof under ***Section 15(2)(c) of the Act***. The Petitioner must prove the conduct complained of and must then prove that, by reason of it, the Petitioner cannot reasonably be expected to live with the respondent. See the cases of ***Damulak v. Damulak (supra)*** and ***Nanna v. Nanna (supra)***. The test is objective: whether a right-thinking person, looking at the conduct of the respondent and the circumstances and characters of the parties, would conclude that the Petitioner cannot reasonably be expected to live with the Respondent.

Some of the allegations in the Petitioner's deposition, namely that the Respondent collected money from her to take care of other women, that he incurred debts of millions of naira for her to pay, and that he was unfaithful, were not pleaded in the Petition. It is trite that facts not pleaded go to no issue; and because parties are bound by their pleadings, evidence received on facts not pleaded must be expunged from the record. See the case of ***MOROHUNFOLA V. KWARA STATE COLLEGE OF TECHNOLOGY (1990) LPELR-1912(SC) (PP. 11-12 PARAS. G)*** I shall therefore discountenance that part of her evidence.

Equally, the allegation that the Respondent deceived the Petitioner into the marriage while knowing that he had a health challenge affecting his manhood is not established. The marriage produced three children, the last of whom was born in 2010. The Petitioner did not tender any medical evidence, and her testimony on the point was confined to the bare statement that the Respondent "has some health challenges". The Respondent denied the allegation on oath. The allegation of denial of conjugal rights fares no better. In the Petition it is pleaded that the denial lasted "for more than ten years", the Respondent also denied this allegation.

The crux of the Petitioner's oral evidence is the allegation of domestic violence. She testified that the Respondent "has been violent" with her, that one night he beat her up and hit her head against the wall, and that she left the matrimonial home for her safety because of the domestic violence. The Respondent denied

that he used to physically assault the Petitioner. Curiously, however, in paragraph 18 of his Answer, the Respondent pleaded that "at a time, the Respondent had to use force on the Petitioner", and in paragraph 19 he pleaded that the Petitioner had been refusing him "except the Respondent uses force on the Petitioner". A party is bound by his pleadings, and by ***Section 123 of the Evidence Act, 2011,*** no fact need be proved in any civil proceeding which the parties, by their pleadings, are deemed to have admitted. These averments, made by the Respondent himself in the context of the intimate relations of the parties, lend considerable support to the Petitioner's account that she was subjected to physical force in the marriage.

It is also not in dispute that the dispute between the parties got to the point where the Ministry of Women Affairs had to intervene, that the matter was reported to the parties' congregation and to the Petitioner's family, that all these efforts at reconciliation failed, and that the Petitioner has lived apart from the Respondent since April, 2022. The Respondent himself conceded under cross-examination that the marriage has broken down irretrievably.

I am mindful that in matrimonial cases it is highly desirable that the evidence of the parties be corroborated by independent evidence. See ***Ibrahim v. Ibrahim (supra).*** In the instant case, the corroboration is supplied by the Respondent's own admissions in his pleadings.

Upon a juxtaposition of the evidence, I am of the view that the Petitioner has established, to the reasonable satisfaction of the Court, that since the marriage the Respondent has behaved in such a way that she cannot reasonably be expected to live with him, within the meaning of ***Section 15(2)(c) of the Act***. No reasonable person can expect a wife to continue to live with a husband who has physically assaulted her and who admits in his own pleadings to the use of force on her, more so when she has had to leave the home for her safety and all efforts at reconciliation have failed.

THE CROSS-PETITION:

The Respondent/Cross-Petitioner relies on ***Section 15(2)(b) and (c) of the Act***, namely adultery which he finds intolerable, and the behaviour of the Petitioner.

On adultery, the Respondent's evidence is that the Petitioner confessed to him that she committed adultery with one Jefferson Aika and one Paul, and that she

mentioned a doctor at Oredo Health Centre; that she also confessed before a panel of their congregation; and that medical tests showed that she had an infection which she passed on to him. The Petitioner, who testified before the Respondent, denied each of these allegations on oath under cross-examination. Contrary to the submission of learned counsel for the Respondent, the allegations were therefore not unchallenged. Adultery is a grave allegation. Apart from the *ipse dixit* of the Respondent, there is no independent evidence of it. No member of the congregation or of the panel before whom the confession was allegedly made was called as a witness, no record of the panel's proceedings was tendered, no medical report or test result was tendered, and none of the persons named was called. Upon these facts, I am not reasonably satisfied that the Petitioner committed adultery. The allegation under ***Section 15(2)(b) of the Act*** therefore fails.

On behaviour, the Respondent alleged that the Petitioner insulted him and compared him with other men, instigated the children against him and denied him sexual relations. The Petitioner denied these allegations under cross-examination and there is no independent evidence of them. However, the Respondent's evidence that, after the settlement at the Ministry of Women Affairs, the Petitioner came to the house in his absence and packed away virtually all the household items, his working documents and the title documents to the house, and returned a week later to remove the curtains, was pleaded in paragraph 6 of his Answer and was not challenged in cross-examination. It is settled that evidence which is relevant, uncontradicted and not discredited under cross-examination may be acted upon by the Court.

However, I am of the view that notwithstanding, the aforesaid conduct of the Petitioner is not sufficient to sustain the Cross-petition under ***Section 15(2)(c) of the Act.***

Upon a careful consideration of the evidence, I am of the view that the Respondent/Cross-Petitioner has not established, to the reasonable satisfaction of the Court, the facts upon which he relies under ***Section 15(2)(b) and (c) of the Act.*** However, since both parties seek the dissolution of the marriage and the Court has found, on the Petition, that the marriage has broken down irretrievably, the first relief in the Cross-Petition is, in effect, overtaken by the decree which the Court will pronounce on the main Petition.

In the event, I hold that the marriage between the Petitioner and the Respondent has broken down irretrievably by virtue of ***Section 15(2)(c) of the Act***. The second issue is resolved in favour of the Petitioner.

ISSUE 3: CUSTODY AND MAINTENANCE OF THE CHILDREN OF THE MARRIAGE

Section 71(1) of the Act 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 those children as the paramount consideration; and subject thereto, the court may make such order in respect of those matters as it thinks proper."***

By ***Section 71(4) of the Act***, where the Court makes an order placing a child of a marriage in the custody of 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. Similarly, ***Section 1 of the Child's Rights Act, 2003***, which has been domesticated in Edo State by the ***Child Rights Law of Edo State, 2007***, provides that in every action concerning a child, the best interest of the child shall be the primary consideration.

In the case of ***Williams v. Williams (1987) 2 NWLR (Pt. 54) 66***, the Supreme Court, per Karibi-Whyte, JSC, stated that the determination of the welfare of a child is a composite of many factors; that what the court deals with is the lives of human beings, which ought not to be regulated by rigid formulae; and that all the relevant factors ought to be considered, the paramount consideration being the welfare of the child. In ***Odogwu v. Odogwu (1992) 2 NWLR (Pt. 225) 539 at 560***, the Supreme Court further held that, if possible, the Court may consult the wishes of the child in considering what order ought to be made.

At the time of this judgment, Jahswill Eromosele Ighodalo, born on the 9th day of June, 2003, is 23 years old, and Tracy Omozuri Ighodalo, born on the 9th day of November, 2004, is 22 years old. Both of them have completed their tertiary education. They are adults who are entitled to decide for themselves where they wish to live. The jurisdiction of the Court in matrimonial causes with respect to custody relates to the infant children of the marriage, as is apparent from the

definition of "matrimonial cause" in ***Section 114(1) of the Act***, and a "child" under ***Section 277 of the Child's Rights Act, 2003*** is a person under the age of eighteen years. Accordingly, no order as to custody can properly be made in respect of the two elder children. Both parties are in agreement on this point.

The only child of the marriage who is still a minor is Princely Ehizogie Ighodalo, born on the 26th day of April, 2010, who is now 16 years old and in Senior Secondary School Class Three. The evidence is that he has lived with the Petitioner, together with his elder siblings, since she left the matrimonial home in April, 2022, a period of more than four years.

In his pleadings, in his evidence-in-chief and in the final address of his counsel, the Respondent agreed that the last child should remain with the Petitioner and visit him during holidays. Although towards the end of his evidence-in-chief he stated that he "can have custody of the last child", he led no evidence of any arrangement for the care of the child, and that isolated statement is at variance with his pleaded case.

The Respondent made allegations against the morals of the Petitioner, but these were not proved, and there is nothing before the Court to show that the Petitioner has been anything other than a caring mother to the children. In my view, it is in the best interest of Princely to remain in the stable environment in which he has lived for the past four years, with his mother and his siblings, while maintaining a meaningful relationship with his father. Given his age, his own wishes as to the timing and frequency of his visits to his father ought to be respected.

Accordingly, custody of Princely Ehizogie Ighodalo shall be granted to the Petitioner, with reasonable access to the Respondent, including during school holidays, at such times as may be agreed between the parties having regard to the wishes of the child.

On maintenance, ***Section 70(1) of the Act*** empowers the Court, in proceedings with respect to the maintenance of children of the marriage, to make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances. However, by ***Section 70(4) of the Act***, the power of the Court to make an order with respect to the maintenance of children of the marriage shall not be exercised for the benefit of a child who has attained the age of 21 years unless the Court is of

opinion that there are special circumstances that justify the making of such an order for the benefit of that child. The two elder children are above 21 years and have completed their education, and no special circumstances have been shown. The question of maintenance is therefore confined to Princely.

The Petitioner pleaded and testified that she requires the sum of N100,000.00 monthly for the upkeep of the three children. In her final written address, her learned counsel urged the Court to award N300,000.00 monthly. That figure was neither pleaded nor supported by any evidence. It is settled that an address of counsel, no matter how brilliant, cannot take the place of evidence. See ***Niger Construction Ltd v. Okugbeni (1987) 4 NWLR (Pt. 67) 787***. The claim for N300,000.00 is therefore discountenanced.

The Respondent pleaded that he can only afford N20,000.00 monthly, and in his evidence, he offered N30,000.00. He tendered his Pay Slip, Exhibit "B", which shows that his total earnings as at January, 2024 was N108,858.06. He admitted under cross-examination that his salary has changed since then, and that of the deductions shown on Exhibit "B", the sum of N35,750.00 is his monthly thrift contribution to the Edo State Cooperative, while N9,666.40 is a loan repayment. A thrift contribution is a form of savings for the benefit of the Respondent himself. It cannot be treated as a debt which reduces his capacity to maintain his child. The Respondent also stated that he engages in farming, the products of which he uses for the family. He admitted that he is "supposed to pay more than N30,000.00", and he produced no document to substantiate the other debts which he claims to be servicing.

On the other hand, it is common ground that the Petitioner is gainfully employed as a nurse/midwife with the Edo State Government health service and that she has been bearing the greater part of the burden of the upkeep and education of the children since 2022. The obligation to maintain a child of the marriage rests on both parents according to their means.

Having regard to the means and earning capacity of the parties, the age and educational needs of the child, who is in his final year of secondary school and about to proceed to tertiary education, and the prevailing economic conditions, I am of the view that the Respondent should pay the sum of N50,000.00 (Fifty Thousand Naira) monthly for the upkeep of Princely, and should in addition bear one-half of his school fees and medical expenses, upon production of the relevant bills or receipts.

ISSUE 4: THE HOUSE AT ABUJA WAY, AMAGBA QUARTERS AND THE INJUNCTIVE RELIEFS

By her relief (d), the Petitioner seeks an order directing the Respondent to pack out of "the Petitioner's house at Amagba Quarters, near Urhobo Camp, Benin City". By his reliefs (4) and (5), the Respondent seeks an order directing the Petitioner to stop laying claim to "the Respondent's house" at Abuja Way, Amagba Quarters, which he says was bought in the names of the two sons of the marriage, and an order of perpetual injunction restraining her from laying claim to the house.

By ***Section 72(1) of the Act***, the Court may, in proceedings under ***the 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.

The property to be settled must be property to which the parties, or either of them, is entitled, and a party who seeks a settlement must place before the Court material evidence of his or her entitlement and contribution. Marriage alone does not confer an automatic right to a share of property acquired during the marriage. In the recent case of ***Aguolu v. Aguolu (2025) LPELR-80269(CA),*** the Court of Appeal, per ***Senchi, JCA***, held that a spouse cannot merely assert a right to a share of matrimonial property without demonstrating the material basis upon which such a claim could be considered fair and equitable by the Court. See also ***Kafi v. Kafi (1986) 3 NWLR (Pt. 27) 175***.

Incidentally, in the instant case, neither party sought a settlement of property under ***Section 72 of the Act***. Each party claims the house as his or her own. Yet, remarkably, both parties agree that the land on which the house stands was acquired in the names of their children. The Petitioner testified that she bought the land in 2015 in the name of their two sons, and under cross-examination she stated unequivocally that "the house belongs to the first two children of the marriage" and that she has no issue with the house so long as the house belongs to her children. The Respondent, for his part, testified that he bought the land in the name of his two senior children, although in his Answer he named the two sons, Jahswill and Princely, as the persons in whose names the land was bought.

Neither party tendered any document of title, receipt of purchase or building approval in respect of the property.

In the face of the Petitioner's own sworn testimony that the house belongs to the children, her claim that the house belongs to her cannot stand. She has not established any right in the property which would entitle her to an order ejecting the Respondent from it. The evidence is that the property has been the matrimonial home of the parties, that the Respondent has continued to live there since the Petitioner left in April, 2022, and that the burial of the Petitioner's mother in the compound was with the Respondent's permission. Relief (d) of the Petition therefore fails.

By the same token, the Respondent has not established that the house is his own. On his own showing, the land was acquired in the names of the children. Exhibit "C", an affidavit by which he deposed to the loss of receipts for building materials in 2017, shows at best that he purchased some building materials; it is not a document of title and does not establish exclusive ownership of the house. The children in whose names the land was acquired are not parties to this suit. It is settled that a court will not make an order which affects the interest of a person who has not been made a party to the proceedings. See the case of ***Green v. Green (1987) 3 NWLR (Pt. 61) 480***. This Court will therefore not make any declaration as to the title to the property in favour of either party.

However, in view of the Petitioner's unequivocal disclaimer on oath that she has no personal claim to the house, and the concession of both parties that the land was acquired in the names of the children of the marriage, there is no live controversy between the parties as to the ownership of the property which calls for an injunction. It is settled law that an order of perpetual injunction is usually given as a necessary consequential relief to safeguard the rights of a claimant where a declaratory order has been made in his favour. See the case of ***Anyanwu & Ors v. Uzowuaka & Ors (2009) 13 NWLR (Pt. 1159) 445***. No, such right has been established by the Respondent in this suit.

The Respondent's further claim to restrain the Petitioner from "sending threat text messages" to him is not supported by any evidence. No text message was tendered, and in his oral evidence the Respondent spoke instead of the Petitioner sending people to threaten him in his house, without any particulars of the persons, the dates or the threats. Therefore, that limb of relief (5) is bound to fail.

Finally, by relief (c), the Petitioner seeks an order restraining the Respondent from coming within 100 meters of her, her house and her place of work, and from doing any act detrimental to her life and wellbeing. ***Section 109 of the Matrimonial Causes Act*** empowers the Court to grant an injunction, by interlocutory order or otherwise, in any case in which it appears to the Court to be just or convenient to do so. I have found that the Respondent was violent towards the Petitioner during the marriage. However, there is no evidence of any act of violence, harassment or molestation by the Respondent since the Petitioner left the matrimonial home in April, 2022, more than four years ago. An order restraining the Respondent from coming within 100 meters of the Petitioner's house would, moreover, impede the access to Princely which the Court has granted the Respondent. I am therefore not disposed to grant the order in the wide terms sought. In my view, the justice of the case will be met by an order restraining the Respondent from assaulting, molesting or harassing the Petitioner.

The fourth issue is accordingly resolved partly in favour of the Petitioner and partly against both parties.

CONCLUSION:

On the whole, the Petition succeeds in part, and the Cross-Petition succeeds in part. I hereby make the following orders:

> ***1. The objection of the Respondent/Cross-Petitioner to the competence of the Petition is overruled, and the Petitioner is relieved from the consequences of the irregularity in the date of the jurat of her verifying affidavit pursuant to Order XXI of the Matrimonial Causes Rules;***
>
> ***2. A Decree of Dissolution of the marriage celebrated between the Petitioner, Mrs. Hope Ighodalo, and the Respondent, Mr. Monday Ighodalo, on the 22nd day of June, 2002 at the Kingdom Hall of Jehovah's Witnesses, Benin City, is hereby granted on the ground that the marriage has broken down irretrievably, the Respondent having behaved in such a way that the Petitioner cannot reasonably be expected to live with him;***
>
> ***3. Custody of Princely Ehizogie Ighodalo, born on the 26th day of April, 2010, is hereby granted to the Petitioner, with reasonable access to the***

Respondent, including during school holidays, at such times as may be agreed between the parties having regard to the wishes of the child;

4. No order is made as to the custody of Jahswill Eromosele Ighodalo and Tracy Omozuri Ighodalo, who have attained the age of majority and are free to decide where they wish to reside;

5. The Respondent shall pay to the Petitioner the sum of N50,000.00 (Fifty Thousand Naira) monthly for the upkeep of Princely Ehizogie Ighodalo, commencing from the end of December, 2026, and shall in addition bear one-half of the school fees and medical expenses of the said child upon production of the relevant bills or receipts, until the said child attains the age of 21 years or completes his first tertiary education, whichever is earlier;

6. Relief (d) of the Petition, for an order directing the Respondent to pack out of the house at Amagba Quarters, near Urhobo Camp, Benin City, is refused; and

7. The Respondent is hereby restrained from assaulting, molesting or harassing the Petitioner.

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
27/11/2026

<u>COUNSEL</u>:

H.A. Nwaozor Esq.....Petitioner

Mrs C.G. Ekejiuba..... Respondent/Cross-Petitioner