

**IN THE HIGH COURT OF JUSTICE**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIERO,**  
**ON FRIDAY THE**  
**17<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**BETWEEN:**

**SUIT NO. B/395<sup>D</sup>/2022**

**MR. IME NYA AKPAN -----PETITIONER**

**AND**

**MRS. EDIMA AKPAN -----RESPONDENT**

**JUDGMENT**

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner on the 27<sup>th</sup> of April 2022.

In his Petition, the Petitioner is seeking an order for the dissolution of his marriage on the following grounds:

- I. That the Respondent has committed adultery and the Petitioner finds it intolerable to continue to live with her;
- II. That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her; and
- III. That the Respondent has deserted the marriage for at least one year immediately preceding the presentation of this petition.

The Petition was served on the Respondent and she filed an Answer and a Cross- Petition. In her Cross-Petition, the Respondent claimed against the Petitioner as follows:

- I. An order of dissolution of the marriage between the parties on the ground that the marriage has broken down irretrievably;

- II. An order of Court of a monthly maintenance of N30,000.00 in addition to the already proposed medical bills and school fees of the Petitioner in his petition in favour of the Respondent;
- III. An order of court stopping the Petitioner from domestic assault against the Respondent and to be of good character whenever he has access to their only daughter.

At the hearing of the Petition, the Petitioner testified and closed his case. In his evidence, the Petitioner narrated how he got married to the Respondent on the 3<sup>rd</sup> day of March 2008 at the Kingdom Hall of Jehovah's Witnesses at Igieduma, Edo State according to Christian rites. He tendered their marriage certificate.

He stated that after their wedding, they cohabited together as husband and wife at Nsan Community in Ibiono Ibom Local Government Area of Akwa Ibom State between 2008 and 2009, at Igieduma between 2009 and 2014, at No. 13 Ascon Road off Benin-Auchi Road, Benin City, Edo State between 2014 and 2018 and lastly at No. 25, Secondary School Road, behind Ekosodin Quarters, behind the University of Benin, Benin City, Edo State between 2019 and 2021.

He said that the marriage is blessed with a daughter named Huldah Ime Akpan, born on the 25<sup>th</sup> of March 2016 and she is in the custody of the Respondent.

He alleged that sometime in 2014, the Respondent confessed before the judicial committee of their church that she had committed adultery with one Nnamdi Igwe who is now late.

That in 2021, the Respondent again confessed to the Petitioner that she committed adultery with two different men and with one Wisdom Ewede, a final year student of the University of Benin sometime in the year 2020.

According to the Petitioner, the judicial committee of their church adjudicated over the allegations of adultery, found the Respondent guilty and ex-communicated her from the Church.

He alleged that while the matter was still being investigated by the judicial committee, the Respondent came to their matrimonial home, removed her personal effects and has since refused to return home.

The Petitioner stated that the Respondent's adulterous conduct is intolerable to him and that the Respondent is in the habit of destroying their family pictures. He tendered one of such destroyed pictures at the trial.

He conceded that the Respondent can have custody of their daughter provided that she allows him to have access to her anytime he needs her. He agreed to be responsible for his daughter's school fees and medical bills in addition to a monthly maintenance sum of N10, 000.00 for her upkeep.

In defence to the Petition, the Respondent testified and informed the Court that the marriage between them has failed. She made some allegations of domestic violence against the Petitioner and also accused him of being impotent.

Although she denied committing adultery with Nnamdi Igwe, she did not deny committing adultery with the other two men, Jude Ehimen and Wisdom Ewede. In fact, she admitted under cross examination that she committed adultery because the Petitioner is impotent.

Furthermore, the Respondent did not deny the fact that she has deserted the Petitioner for over one year before the filing of this Petition.

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

In his final written address, the learned counsel for the Petitioner, *Godspower Onomrerhinor Esq*, formulated a sole issue for determination as follows:

***“Whether the petitioner has proved that his marriage has broken down irretrievably to warrant the grant of a decree of dissolution of marriage.”***

Arguing the sole issue for determination, the learned counsel referred to *Section 15 (1) of the Matrimonial Causes Act* which stipulates the grounds for granting a decree of dissolution of marriage.

He submitted that the Petitioner has successfully satisfied the facts listed in *section 15 (2) (b), (c) and (d) of the Matrimonial Causes Act*. He said that these facts border on adultery, behaving in such a way that the Petitioner cannot reasonably be expected to tolerate and deserting him for a continuous period of at least one year immediately preceding the presentation of this Petition.

He posited that in proof of the allegation of adultery, the Petitioner gave the names of the three men with whom the Respondent had committed adultery as well as vivid details about the dates, places and circumstances of each adultery.

He said that the Respondent denied committing adultery with the first man, one Nnamdi Igwe but admitted committing adultery with the other two men, Jude Ehimen and Wisdom Ewede. He submitted that this, without more, satisfies the requirements of *section 15 (2) (b) of the Matrimonial Causes Act* as respects adultery.

In respect of the ground of intolerable behavior, Counsel posited that the Petitioner gave evidence that the Respondent was in the habit of destroying family pictures, including the ones they took at assemblies and conventions. He stated that he had repeatedly warned her to stop this habit but that she refused. He said the respondent once tore her image out of an enlarged picture which they took at an assembly. That the enlarged picture is EXHIBIT B in this case while EXHIBIT B1 is a photo album showing many empty spaces from which the respondent had removed her pictures.

He said that the Petitioner cannot reasonably be expected to tolerate this habit of the Respondent destroying family pictures. He submitted that this piece of evidence satisfies the requirements of *section 15 (2) (c) of the Matrimonial Causes Act* as respects behavior which the petitioner cannot reasonably be expected to tolerate.

On the aspect of desertion for at least one year immediately preceding the presentation of this petition, counsel posited that the Petitioner gave evidence that the Respondent left the matrimonial home at No. 25, Ekosodin Quarters, Benin, on Monday the 8<sup>th</sup> day of March 2021 and has since refused to return. He said that from that date till the 27<sup>th</sup> of April 2022 when this case was filed in court, makes a total of one year and nineteen days that the respondent has deserted the matrimonial home. He therefore submitted that the Petitioner has also successfully met the requirements of *section 15 (2) (d) of the Matrimonial Causes Act* as respects desertion for one year.

In conclusion, he urged the Court to resolve the lone issue for determination in favour of the Petitioner and to grant all the reliefs in this Petition including the sum of N10, 000 which the Petitioner has agreed to pay as the monthly maintenance for the only child of the marriage, besides her school fees and medical bills.

In his written address which he adopted the learned counsel for the Respondent, *Solomon Omoregie Esq.*, formulated a sole issue for determination as follows:

***“Whether the Respondent is entitled to her Reliefs sought when both parties have consented to the dissolution of the marriage?”***

Arguing the sole issue, the learned counsel submitted that from the evidence of the Respondent, the Petitioner has subjected the Respondent to so much domestic violence that she cannot reasonably be expected to continue to live with him. He submitted that by virtue of *section 15(2) (c) of the Matrimonial Causes Act*, the marriage has broken down irretrievably. He also relied on the case of *ANYAGBAYI VS. ANYAGBAYI (1970) H.C.L.R 1 AT P.6*.

Furthermore, counsel posited that from the evidence, the parties have been living apart for a continuous period of at least one year immediately preceding the filing of this Petition and by virtue of *section 15(2) (d) of the Matrimonial Causes Act*, which is a ground for the dissolution of the marriage.

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

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

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

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

**ISSUE 1:**

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

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

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

- I. That the Respondent has committed adultery and the Petitioner finds it intolerable to continue to live with her;***
- II. That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her; and***
- III. That the Respondent has deserted the marriage for at least one year 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) (b), (c) & (d) of the Matrimonial Causes Act**; to wit on the grounds of adultery, intolerable behavior and desertion respectively. I will consider the evidence adduced in proof of each of these grounds.

In respect of the allegation of adultery, it is settled law that adultery as a matrimonial wrong must be specifically pleaded and clearly proved. See **OBAJIMI V. OBAJIMI (2011) LPELR-4665; UZOCHUKWU V. UZOCHUKWU (2014) LPELR-24139.**

In the instant case, on the state of the pleadings, I observed that the Petitioner copiously pleaded sufficient facts of the Respondent's acts of adultery with different men at different locations. Furthermore at the trial, in proof of the allegations of adultery, the Petitioner gave the names of the three men with whom the Respondent had committed adultery as well as vivid details about the dates, places and circumstances of each adultery. Although the Respondent denied committing adultery with the first man, one Nnamdi Igwe, she admitted committing adultery with the other two men. She tried to excuse her adulterous acts by alleging that the Petitioner was an impotent man. But I wonder how an alleged impotent man was able to impregnate her to give birth to their daughter.

The Courts have found that Adultery is a very private act done by two consenting adults. Thus it is almost impossible to have direct proof of adultery. As a result the Courts have to rely on indirect or circumstantial evidence. Part of the evidence to prove adultery in matrimonial proceedings is that of confession and admission of adultery by a party. See the cases of **ALABI V. ALABI (2007) 9 NWLR PT.1039 PAGE 297, ERHAHON V. ERHAHON (1997) 6 NWLR PT.510 PAGE 667; AND OKORO V. OKAOME & ANOR (2016) LPELR-41424(CA) (PP. 11-14 PARAS. C).**

Sequel to the foregoing, I am of the view that the Respondent's admission of even a single act of adultery is sufficient proof of adultery to satisfy the provision of **section 15 (2) (b) of the Matrimonial Causes Act.**

Next on the ground of intolerable behaviour under **Section 15(2) (c) of the Matrimonial Causes Act.** From the wordings of Section 15 (2) (C) , it is crystal clear

that the Petitioner who relies on the ground that the Respondent since the marriage has behaved in a way that he cannot reasonably be expected to live with her must establish by cogent evidence that it would be unreasonable to require him to live with the Respondent.

It must be noted that the test of whether the conduct would qualify as intolerable behaviour as contemplated by the Matrimonial Causes Act is objective and not subjective. The legal draftsmen of the Act, for the avoidance of doubt and ambiguity went further to exhaustively list the conduct that qualify as intolerable behaviours in *section 16 (1) (a)-(g) of the Act* . The section stipulates as follows:

***16. (1) Without prejudice to the generality of section 15(2)(c) of this Act, the court hearing a petition for a decree of dissolution of marriage shall hold that the petitioner has satisfied the court of the fact mentioned in the said section 15(2)(c) of this Act if the petitioner satisfies the court that-***

***(a) since the marriage, the respondent has committed rape, sodomy, or bestiality; or***

***(b) since the marriage, the respondent has, for a period of not less than two years-***

***(i) been a habitual drunkard, or***

***(ii) habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation,***

***or has, for a part or parts of such a period, been a habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated; or***

***(c) since the marriage, the respondent has within a period not exceeding five years-*** (i) ***suffered frequent convictions for crime in respect of which the respondent has been sentenced in the aggregate to imprisonment for not less than three years; and (ii) habitually left the petitioner without reasonable means of support; or***

***(d) since the marriage, the respondent has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more, and is still in prison at the date of the petition; or***

***(e) since the marriage and within a period of one year immediately preceding the date of the petition, the respondent has been convicted of- (i) having attempted to murder or unlawfully to kill the petitioner, or (ii) having committed an offence involving the intentional infliction of grievous harm or grievous hurt***

*on the petitioner or the intent to inflict grievous harm or grievous hurt on the petitioner; or*

*(f) the respondent has habitually and wilfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the petitioner- (i) ordered to be paid under an order of, or an order registered in, a court in the Federation, or (ii) agreed to be paid under an agreement between the parties to the marriage providing for their separation; or*

*(g) the respondent-*

*(i) is, at the date of the petition, of unsound mind and unlikely to recover, and*

*(ii) since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution.”*

It is pertinent to note that the active word in *Section 16(1) of the Matrimonial Causes Act* is "*shall*" and "*shall*" implies compulsion and hence robs the Court of its discretionary powers. Therefore, unless and until any of the conditions outlined in *Section 16 (1) (a)-(g)* exist with credible evidence, the Court shall refuse to make an order of dissolution of marriage on the ground of intolerable behaviour.

From the evidence adduced before this Court, the conducts of the Respondent which the Petitioner adjudged intolerable include adultery, destruction of pictures and desertion. There is no doubt that these conducts are not commendable but they cannot qualify as intolerable behaviour as circumscribed by *Section 16 (1) (a)-(g) of the Matrimonial Causes Act*.

Going by the above, I am of the view that the Petitioner has not established the ground of intolerable behaviour as required under the Act.

The third ground is that the Respondent has deserted the marriage for at least one year immediately preceding the presentation of this petition. Here, both parties are *ad idem* that the Respondent has deserted the marriage for more than one year immediately preceding the presentation of this petition. So this ground automatically succeeds.

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

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

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

1. *A decree of dissolution of the marriage between the Petitioner and the Respondent;*
2. *A formal order of custody of the only child of the marriage, Huldah Ime Akpan, in favour of the Respondent with access to the Petitioner whenever he needs to see his daughter and to allow her spend the holidays with the Petitioner as presently been done; and*
3. *A monthly maintenance sum of N10, 000.00 to be paid by the Petitioner in favour of the only child of the marriage, Huldah Ime Akpan, besides her school fees and medical bills.*

From the foregoing, it is apparent that the first relief for the dissolution of the marriage has succeeded. Furthermore, from the available evidence, the Respondent is not opposed to the order granting her custody of their daughter, she is already having custody of the child and there is no adverse report against her. Moreover, it is only fair and just to grant the Petitioner access to his daughter.

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

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

## **ISSUE 2:**

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

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

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

- i. A dissolution of the marriage on the ground that the marriage has broken down irretrievably;
- ii. An order of Court of a monthly maintenance sum of N30,000.00 in addition to the already proposed medical bills and school fees to be paid by the Petitioner; and

- iii. An order of Court stopping the Petitioner from any form of domestic assault against the Respondent and to be of good character whenever he has access to their daughter.

In respect of the first relief for the dissolution of the marriage, in the main Petition, I have already held that the marriage will be dissolved on the ground that the parties have been living apart for a period of over one year before the filing of the Petition in line with the provisions of section 15(2) (d) of the Act. Consequently, the first relief of the Cross-Petition will be granted.

Next is on the relief of an order of Court of a monthly maintenance sum of N30, 000.00 in addition to the already proposed medical bills and school fees to be paid by the Petitioner.

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

In the instant case, the Petitioner has agreed to pay the sum of N10, 000.00 monthly as maintenance. However, in her Cross-Petition, the Respondent is claiming the sum of N30, 000.00 monthly. It must be noted that in our present world, the rights and duties of spouses to make financial provisions are gradually moving towards equal footing base. Many wives are today, more financially empowered than their husbands, so the Courts are fast moving away from the old rule whereby, they virtually ordered financial provisions in favour of the wife. Law, to be useful, must always reflect the norms and developmental stages reached in a society, where it will apply. See the case of *HAYES v HAYES [2000] 3 NWLR (Pt. 648) 276*.

In the instant case, the Petitioner gave evidence to the effect that his monthly salary is just N25, 000.00. The Respondent did not lead any evidence to rebut this fact. A husband must not be impoverished by an order of maintenance which he cannot afford. See the case of *MUELLER V. MUELLER (2005) LPELR-12687(CA) (PP. 18-20 PARAS. D)*. Furthermore, the upkeep of the child should be the joint responsibility of both parties.

Consequently, I think the sum of N10, 000.00 which the Petitioner has agreed to pay can be awarded since he is also paying the school fees and medical expenses.

Finally on the order of Court preventing the Petitioner from any form of domestic assault against the Respondent and to be of good character whenever he has access to their daughter, I think this order is reasonable in view of the Respondent's allegations of domestic violence against the Petitioner.

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

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

- a) An Order for 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 of custody of the only child of the marriage, Huldah Ime Akpan, in favour of the Respondent with access to the Petitioner whenever he needs to see his daughter and to allow her spend the holidays with the Petitioner as presently been done;*
- c) A monthly maintenance sum of N10, 000.00 to be paid by the Petitioner in favour of the only child of the marriage, Huldah Ime Akpan, besides her school fees and medical bills; and*
- d) An order of Court restraining the Petitioner from any form of domestic assault against the Respondent and to be of good behaviour whenever he is granted access to see their daughter.*

*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.AKHIHIRO**  
**JUDGE**  
**17/02/2023**

**COUNSEL:**

- 1. Godspower Onomrerhinor Esq.....Petitioner**
- 2. Solomon Omoregie Esq.....Respondent**

