

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIRO,
ON FRIDAY THE
16TH DAY OF JANUARY, 2026.

BETWEEN: **SUIT NO. B/376D/2020**

MR. SAMUEL OKHUELEIGBE -----PETITIONER

AND

MRS. ESTHER OKHUELEIGBE -----RESPONDENT/CROSS PETITIONER

JUDGMENT

This Judgment is in respect of a Petition for the dissolution of marriage filed on the 28th day of July 2020. In his Petition, the Petitioner is seeking the following orders:

- a. A decree of dissolution of marriage between the Petitioner and Respondent celebrated on 16th December, 2006 on the ground that the marriage has broken down irretrievably in that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and the parties to the marriage that lived apart for a period of at least two years immediately preceding the presentation of this petition.*
- b. Custody of the children of the marriage, namely;*
 - i. Johnpaul Okhueleigbe (Male) 12 years*
 - ii. Rita Okhueleigbe (female) 10 years*
 - iii. Francis Aizenosa Okhueleigbe (Male) 3 years*

c. any order or further orders that this Honourable Court may deem fit to make in the circumstances of this petition

The Petition was served on the Respondent and in response, the Respondent filed an Answer and Cross Petition. In her Cross-Petition, the Respondent seeks the following Orders:

- a) An order dismissing the petition.***
- b) A decree of dissolution between the petitioner and the respondent on the ground that the marriage has broken down irretrievably.***
- c) An order directing the petitioner to pay to the respondent the sum of two hundred and fifty thousand naira (₦350,000.00) being the money the petitioner borrowed from her***
- d) An order allowing the respondent/cross petitioner to take custody of their last child Frances Okhueigbe because of his age and allow undeniable access to the respondent/cross petitioner to see the other two children Johnpaul and Rita Okhueigbe anytime she wants to see them and also to allow them during their holidays to spend some time with the respondent/cross petitioner.***

At the hearing of the Petition, the Petitioner testified that he got married to the Respondent in St. Augustine Catholic Church on the 16th of December 2006. The marriage certificate was tendered in evidence and admitted as Exhibit “A”.

He said that the marriage is blessed with three children, namely: John Paul Okhueigbe, who is currently 18 years; Rita Okhueigbe who is 16 years; and Francis Okhueigbe who is 9 years. He testified that there are no previous proceedings between the Respondent and himself.

The Petitioner stated that after their wedding the Respondent left the Catholic Church where they got married, first to the Redeemed Christian Church of God, thereafter to Assemblies of God, and later to Omega Fire Ministry. He said that the Catholic Church and his family told the Respondent to come back to the Catholic Church, but she refused.

According to the Petitioner, the Marriage Tribunal in the Catholic Church heard the matter and rendered the marriage a nullity.

The Petitioner further testified that in 2010, he had a dispute with the Respondent because she served him food with a plastic plate which he objected to. The Petitioner testified that because of this, the Respondent began to abuse him. He further stated

that the next day the Respondent took a cutlass and chased him inside their compound. He said that it took the courage of his landlord's cousin to take the cutlass from her.

The Petitioner testified that on New Year's Eve in 2011, the Petitioner slept outside their matrimonial home and came back the next day to prepare food after which she left again without any explanation.

Furthermore, he said that in 2013, the Respondent beat up his niece who was staying with him, destroyed his niece's personal belongings and sent her out of their matrimonial home. The Petitioner testified that the said niece came to stay with them for only six months during her industrial training.

The Petitioner further testified that in 2014, he returned from work and met the house empty. He said that the Respondent absconded with their two children. He said that he tried calling the Respondent, but her phone was switched off, so he reported the case at the Aideyan Police Station. He said that he went to the Respondent's village at Uokha in Owan West L.G.A but he could not find her.

The Petitioner testified that their children's school threatened to expel the children from school since they did not resume. He said that he reported the matter to the Ministry of Women Affairs who invited the Respondent, but she did not honour the invitation.

The Petitioner testified that both families met on the issue, but the Respondent did not return home, and she told him that she was done with the marriage. He alleged that the Respondent informed him that if he wanted his children, he should give her the sum of ₦120,000.00 (One Hundred and Twenty Thousand Naira)

He said that he refused to give the Respondent the money and she later came home with the children after eight weeks. He said that he reported back to the Ministry of Women Affairs, but he was told to forgive her.

The Petitioner testified that when the Respondent returned, she stopped taking care of him and the children. He said that he was doing the school run for the children. He said that there was a day that he gave the Respondent ₦3,000 to pick the children from school and she refused but instead poured water on his body in the presence of their children.

The Petitioner testified that things became so bad that he invited his eldest uncle to come and talk to them. He alleged that the Respondent told his uncle that she will

kill him and pour acid on him. He said that when his uncle challenged her for making that threat, she used a stick to hit his uncle. The Petitioner said that he pleaded with his uncle and took him back home.

The Petitioner testified that before he returned from his uncle's house, the Respondent had left the house. He said that he reported the case to the Respondent's family and to the church.

The Petitioner stated that when they separated, they had three children in 2017. He said that the first two children were with him while the last child was with the Respondent.

However, he alleged that the Respondent later brought the last child to him and abandoned the child with him from 2017 till date.

He implored the Court to dissolve the marriage and grant him custody of their three children.

Under cross examination, the Petitioner informed the Court that for the past four years, the Respondent has not come to see their children. He said that he did not prevent the Respondent from seeing the children.

In response to this Petition, the Respondent testified that before the marriage, she was receiving the sum of ₦12,000 as a teacher and she also had a shop along Akenzua Street with seven girls working with her.

She testified that when they were preparing for their wedding, the Petitioner told her that they will wed in the Catholic Church because he did not have much money. She said that she agreed with the Petitioner because he did not have much money.

The Respondent testified that after the marriage the Petitioner told her that they should have a joint account. She said that she agreed to this, and the Petitioner decided that they would use the Respondent's account.

She alleged that after the wedding, she had the sum of ₦150,000.00 in her account before she joined the contribution. She testified that she has three children for the Petitioner.

The Respondent testified that her landlord gave her quit notice for her to leave her shop because the Petitioner refused to pay the rent after she gave the Petitioner the money to pay the rent. She testified that she left her shop and started sewing from home.

She testified that the Petitioner beat her up one day because her baby entered the kitchen while she was frying something. She said that the Petitioner told her that frying oil can cause asthma.

The Respondent testified that in 2008, she struggled to rent another shop, and her children asked for money to pay for their lessons. She said that she told the petitioner about this and the Petitioner beat her up.

The Respondent also testified that in 2012, she was feeling stomach pain, and she went to the hospital and was informed that she was suffering from appendicitis. The Respondent said that she looked for money and could not find money. She testified that she told the Petitioner about this, but he did not respond, so she told him that she would go to the village to die there.

The Respondent further testified that her pastor gave her the money for the operation and the operation was performed. She said that she was on admission for nine days, but the Petitioner did not ask of her.

The Respondent said that when she came back from the hospital, she took her children to Warri to take care of herself. She said that the police from the state CID and Aideyan police station called her and told her that there was a report against her that she kidnapped her children. She said that the police arrested her sister from her village on the allegation that her sister's daughter assisted her to kidnap her children.

The Respondent testified that her family advised her to return to the Petitioner and she returned. The Respondent testified that when she returned, the Petitioner accused her of using a rubber bowl to make eba, and the Petitioner beat her and used her head to hit the wall. She said that she called one Reverend Okogele and reported what her husband was doing to her so that she would not die.

The Respondent testified that in 2015, herself and the Petitioner moved to a new house and she became pregnant for their last child. She said that during the pregnancy, she was unable to do anything. She said that she begged the petitioner for money, but he refused to give her any money so she started to cook rice to sell in the community.

The Respondent testified that she came home one day to see that the Petitioner had brought a woman home whom he introduced as his sister.

She alleged that when she was washing clothes outside one day, the Petitioner locked her out of the house, and she slept in an uncompleted building for two weeks with her baby.

The Respondent testified that the day she left the uncompleted building, her baby had convulsion and it was God that saved her baby. She said that when she left the hospital with her baby, she went to live with one woman until she rented a house.

The Respondent testified that whenever she came to the house to visit her children, the Petitioner would prevent her from entering the house. She said that after three years the Petitioner collected her baby from her. She said that the day she went to visit the petitioner and her children, the Petitioner beat her and tore her clothes.

She said that from 2020 till date she hasn't seen her children. She said that she tried to visit her children in their school, but she was told that it is only her husband's sister that is permitted to visit the children.

She urged the Court to dissolve the marriage, grant custody of the children to the Petitioner, grant her access to be seeing them and for her to return the dowry to the Petitioner.

Thereafter, the matter was adjourned for final addresses.

In his final written address, the learned counsel for the Respondent, ***Henry Amaechi Nwaozor Esq.***, submitted that the children of the marriage have been in the custody of the Petitioner since June 2017. He stated that the Petitioner has put in place adequate plans for the children's education, wellbeing and care in the best interest of the children.

Learned counsel posited that the Respondent was served with all the processes and she filed an Answer/Cross Petition asking for undeniable access to her children at any time she wants to see and visit them.

He submitted that from the Pleadings and evidence adduced before this court, it is apparent that both parties desire that the decree of dissolution be granted, as laid down in ***Section 15(2) of the Matrimonial Causes Act.***

He said that the parties have been living apart for over six years, due to the violent nature of the Petitioner which has caused the Respondent emotional, mental and psychological trauma over the years.

Learned counsel urged the Court to exercise its powers and grant the Respondent undeniable access to her children in the interest of justice.

In his final written address, the learned counsel for the Petitioner, ***Kerry E. Godwin Esq.***, formulated a sole issue for determination as follows:

“Whether the Petitioner has proved his case and is entitled to the grant of the reliefs sought as to the dissolution of Marriage between Petitioner and Respondent Solemnized on 16th December, 2006.”

Arguing this sole issue, the learned counsel submitted that a Petitioner who desires dissolution of marriage must discharge the standard of proof stipulated by the Matrimonial Causes Act and establish in the evidence one of the facts set out under ***Section 15 of the Matrimonial Causes Act.***

Learned counsel stated that ***Section 15(1)*** provides that a Petition for decree of dissolution of a Marriage shall succeed only if the Petitioner satisfied the Court of one or more of the following facts:

- a) That the Respondent has willingly 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 parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and Respondent does not object to a Decree being granted.
- f) That the parties to the marriage have lived apart for a continuous period of three years immediately preceding the presentation of the Petition.
- g) That the other party to the marriage has, for a period not less than one year failed to comply with a Decree or 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 to presuming that he is dead.

Learned counsel submitted that in this case, the Petitioner relies on ***Paragraphs 15(2) (C) (D) and (E)*** in bringing this Petition.

He posited that in this Petition, the Petitioner led evidence to show that the marriage has broken down irretrievably because the Respondent has been cruel to him and treated him unjustly during the marriage.

He maintained that the Petitioner led evidence that on several occasions, the Respondent threatened to pour acid on the Petitioner and kill him. Learned counsel reminded the Court that the Catholic Church has already nullified the marriage.

Counsel submitted that the Petitioner adduced evidence that the Respondent has the habit of abandoning her matrimonial home and she does not care about the wellbeing of the children. He cited the cases of ***Oke v. Oke (1974) 1 All NLR (Pt.1) 443***; and ***Williams v. Williams (1987) 2 NWLR (Pt. 54) 66***

Learned counsel submitted that this is a proper case in which the marriage should be dissolved as the marriage has broken down irretrievably and he urged the Court to grant a *decree nisi* in favour of the Petitioner.

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.

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

- 1. Whether the Petitioner is entitled to the reliefs which he seeks in this Petition; and***
- 2. Whether the Respondent/Cross Petitioner is entitled to the reliefs which she seeks in her Cross/Petition.***

I will now resolve the two issues for determination seriatim.

ISSUE 1:

Whether the Petitioner is entitled to the reliefs which he seeks in this Petition?

It is trite law that 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*.

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 a

divorce Petition, a decree shall be pronounced if the Court is satisfied on the evidence that a case for the Petition has been proved.

In the instant case the Petitioner is seeking the dissolution of the marriage on the grounds as contained in ***Section 15(2) (c), (d), & (e) of the Matrimonial Causes Act***; to wit on the grounds of intolerable behavior; desertion; and living 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.

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

In this Petition, both the Petitioner and the Respondent gave evidence testifying that they have been living apart for more than the two years required by the Matrimonial Causes Act. The Respondent also testified that she does not object to the decree of dissolution being granted.

I am therefore of the opinion that the Petitioner has successfully established one of the conditions for the grant of a decree of dissolution of marriage, namely that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted. This is in line with ***section 15(2) (e) of the Act***.

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. I am therefore of the opinion that the Petitioner is entitled to a decree of dissolution of the marriage. See ***Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383***.

In his Petition, the Petitioner is also seeking custody of all three children of the marriage.

The Respondent filed a Cross/Petition but in her evidence, she conceded that custody of the children should be granted to the Petitioner. She only asked for access to see the children.

Regarding custody of the children of the marriage, ***Section 71(1) (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.”

In the instant case, I believe it is in the best interest of the children that custody should be granted to the Petitioner. In this Petition, the Petitioner stated that the children have been in his custody since June 2017. The Petitioner also stated that he has put in place adequate plans for the children’s education, wellbeing and care in the best interest of the children. This was corroborated by the Respondent’s counsel in his final written address.

I am also of the view that the Respondent should be granted access to the children.

On this note, I hold that custody be granted to the Petitioner with the Respondent having unhindered access to the children of the marriage.

ISSUE 2:

Whether the Respondent/Cross Petitioner is entitled to the reliefs which she seeks in her Cross/Petition?

In her Cross-Petition, the Respondent is seeking *inter alia* a decree of dissolution of the marriage; an order directing the Petitioner to pay to the Respondent the sum of three hundred and fifty thousand naira (₦350,000.00) being the money the Petitioner borrowed from her; and an order allowing the Respondent/Cross Petitioner access to the children.

In the main Petition, the issue of the dissolution of the marriage and custody of the children have been determined.

The only outstanding issue is that of the claim for the sum of three hundred and fifty thousand naira (₦350,000.00) which the Petitioner allegedly borrowed from the Respondent/Cross Petitioner.

Incidentally, in proof of her Cross Petition, the Respondent/Cross Petitioner did not lead any evidence to prove the alleged debt. Consequently, the claim for the alleged debt is bound to fail.

From the foregoing, the Respondent/Cross Petitioner is only entitled to some of the reliefs which she is claiming. Therefore, Issue 2 is partially resolved in favour of the Respondent/Cross Petitioner.

Having resolved the two issues as stated above, I hereby make the following orders:

- a) A decree of dissolution of the marriage between the Petitioner and Respondent/Cross Petitioner celebrated on 16th December 2006 on the ground that the marriage has broken down irretrievably in that both parties to the marriage have lived apart for a period of at least two years immediately preceding the presentation of this petition.*
- b) The Petitioner is granted custody of the children of the marriage, namely:
 - i. Johnpaul Okhueleigbe (Male) 12 years*
 - ii. Rita Okhueleigbe (female) 10 years*
 - iii. Francis Aizenosa Okhueleigbe (Male) 3 years**
- c) The Respondent/Cross Petitioner is to have unhindered access to all three 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. I make no order as to costs.

P.A. AKHIHIERO
JUDGE
16/01/2026

COUNSEL:

- 1. Kerry E. Godwin, EsqPetitioner*
- 2. Henry Amaechi Nwaozor EsqRespondent*