

IN THE HIGH COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT JUDICIAL DIVISION
HOLDEN AT PORT HARCOURT

BEFORE HONOURABLE JUSTICE I. WODI – (JUDGE)
ON TUESDAY THE 17th DAY OF DECEMBER, 2024.

SUIT NO. PHC/3163^{MC}/2019

BETWEEN

MR. EMMANUEL WILCOX

== PETITIONER

AND

MRS. IBIYE WILCOX

== RESPONDENT

MADAM ONYIYECHI

== PARTY CITED

JUDGMENT

PARTIES:

The parties are present.

The petitioner commenced this petition vide the notice of petition filed on 18th September, 2019. As per the petition, the petitioner prayed the court for the following:

1. A Decree of dissolution of marriage on the ground that since the marriage the respondent has behaved in such a way that the petitioner could not reasonably be expected to live with the respondent.

Upon being served with the petition, the Respondent on 12th January, 2021 filed her answer/cross petition. It is observed that in the said answer/cross petition, the respondent cited one Madam Onyiyechi as a party who allegedly committed adultery with the petitioner. Suffices to say that by paragraph 28 of her answer, the respondent has indicated that she is not opposed to the dissolution of the marriage, albeit the respondent wants the marriage dissolved based on the allegations of adultery and cruelty made in her cross petition. In the accompanying Cross Petition incorporated in the Respondent's Answer, the Respondent/Cross Petitioner endorsed the reliefs she is seeking against the petitioner and the party cited as follows:



1. That the marriage between the Respondent/Cross Petitioner and the petitioner be dissolved based on adultery and cruelty.
2. That the Respondent/Cross Petitioner be granted the custody of the children of the marriage and that the petitioner should be involved in the payment of the children's school fees and providing the necessities needed in the advancement of the children's education.
3. The sum of N200,000,00 (Two Hundred Thousand Naira) monthly for the maintenance and upkeep of the children of the marriage.
4. That the Respondent/Cross Petitioner be granted equal share from the proceeds of the building they were jointly building at Bonny Island and another one located at East West Road, in Port Harcourt, Rivers State and the car they jointly purchased before the petitioner filed this petition or in the alternative, the sum of N50,000,000.00 (Fifty Million Naira) as damages/compensation for the above properties.
5. The Respondent/Cross Petitioner claims the sum of N10,000,000.00 (Ten Million Naira) as damages against Madam Onyiyechi for inducing the filing of this petition and committing of adultery with the petitioner.
6. That the Honourable Court may grant the Respondent/Cross Petitioner any other order and such other reliefs that may be just.

Upon being served with the Respondent's answer/cross petition, the petitioner on 28th May, 2021 filed a reply and answer to the cross petition. The reply/answer to cross petition was filed together with an additional written deposition. In his said reply and answer to the cross petition, the petitioner denied knowing Madam Onyiyechi who was cited in the cross petition or committing adultery with the said Madam Onyiyechi or any other person. It is pertinent to note that the party cited did not file any process in this case and was never represented by any counsel.

In proof of his petition, the petitioner testified for himself as the PW1 and was thoroughly cross examined. In the course of his evidence-in-chief, the petitioner tendered several documents. The documents tendered by petitioner were admitted and marked as follows:

- a. *Marriage certificate between the petitioner and the respondent dated 2/10/2008 was admitted as Exhibit A.*



- b. Sixteen (16) copies of receipts issued by Brilliant International Group of schools were admitted as Exhibits B, B1-B15.
- c. Four (4) copies of receipts issued by Federal Science and Technical College were admitted as Exhibits C, C1 – C3.
- d. Birth Certificates of Wilcox Gift Ibiwari and Wilcox Wisdom were admitted as exhibit D and D1 respectively.
- e. Receipt issued by PTA of Federal Science and Technical College was admitted as Exhibit E
- f. Medical Examination slip issued by FSTC, Ahoada was admitted as Exhibit E1.
- g. Three (3) copies of receipts issued by PTA of Federal Science and Technical College were admitted as Exhibit F, F1 and F2.
- h. Four (4) copies of clearance forms issued by Federal Science and Technical College were admitted as exhibit G, G1 – G3.
- i. A copy of receipt issued by Brilliant International Group of Schools was admitted as Exhibit G4.
- j. A First Bank local currency transfer form was admitted as exhibit G5.

In defence of the petition, and in proof of her own cross petition, the respondent testified for herself as DW1 and also called one Mr. Ifeanyi Chukwusa Augustine who testified as DW2. The respondent/cross petitioner did not tender any document. Suffices to say that the DW1 and her witness were fully cross examined by the petitioner's counsel.

Testifying as PW1, the petitioner gave his name as Mr. Emmanuel Wilcox; he told the court that he lives at No. 2 Peace Lane, Monkey Village, NTA Road, Port Harcourt; he confirmed making two written depositions on oath. He thereafter identified and adopted the two written depositions on oath made on 18/9/2019 and 28/5/2021 as his evidence-in-chief in this case. As per his adopted written depositions on oath, PW1 told the court that he and the respondent got married at the Port Harcourt Marriage Registry on 2nd October, 2008. The petitioner in his adopted written deposition accused the respondent of leaving the matrimonial home at will against his instruction; he said the respondent instigates the children against him. He also told the court that since the respondent left the matrimonial



home in July, 2018 and up till the date this petition was filed, the respondent has not returned to the matrimonial home. In his additional written deposition, the petitioner denied been in any relationship with any lady known as Onyiyechi or even knowing the person. The petitioner also denied the allegation of cruelty made in the cross petition. He rather accused the respondent of being unfaithful; he maintained that he has always provided for the needs of the family including paying the children school fees. The petitioner was thoroughly cross examined by the respondent's counsel. The petitioner closed his case on 25/7/2022.

As noted earlier on, the respondent testified for herself as DW1 and called Mr. Ifeanyi Chukwusa Augustine who testified as DW2. While being led in evidence-in-chief on 15th February, 2023 the respondent who gave her name as Ibiye Wilcox confirmed that she made a written deposition on oath in this case 12/1/2021; she then adopted the said written deposition on oath as her evidence in this case. As per her written deposition, the respondent accused the petitioner of committing adultery with different women; she stated that whenever she questioned the petitioner about his adulterous relationships, the petitioner beats her up. She said that it was while being assaulted by the petitioner that she lost her front tooth. The respondent also told the court that it was the petitioner that chased her away from their matrimonial home on the 14th April, 2018 and that after this incident, the petitioner relocated to an unknown place with his lady friend by name Onyiyechi.

Mr. Ifeanyi Chukwusa Augustine who testified as DW2 told the court that the respondent is his aunt; he said that he lived with the parties in this suit between December 2007 to February, 2019. DW2 said that within the period he lived with the parties, the petitioner constantly fights and beat up the respondent and sometimes locked her out of the matrimonial home. He also stated that after giving birth to their 3rd child, the petitioner had always ordered the respondent to abort all subsequent pregnancies which order the respondent has to comply with out of fear of what the petitioner will do to her if she refused to abort the pregnancy. The DW2 also told the court that after the respondent had left the matrimonial home, the petitioner brought in another lady who stayed in the house with them for three days.



The respondent closed her case on 10/01/2024 after the cross examination of the DW2

At the conclusion of hearing, parties were directed to file and exchange final written addresses. The respondent's final address was filed on 17th April, 2024. It is observed that upon the receipt of the petitioner's final address, the respondent on 25/6/2024 filed a reply on points of law. The final written address of the petitioner was filed on 2nd May, 2024.

Learned counsel for the respondent/cross petitioner, J. A. Fombo Esq. at paragraph 3.0 of the respondent's final written address crafted two (2) issues for determination. For ease of reference the two issues are:

- 1. Whether the petition filed by the petitioner for decree of dissolution of marriage is competent as to confer jurisdiction on the court to hear the petition filed by the petitioner, or
Whether the petition filed by the petitioner is competent to confer jurisdiction on the court?*
- 2. Whether the Cross Petitioner is entitled to judgment of the court, in view of the evidence given before the court by the cross-petitioner's witness?*

On his part, learned counsel to the petitioner, Victor U. Uzochukwu Esq. at page 4, paragraph 1.5 of the petitioner's final address crafted three issues for determination. The three (3) issues read thus:

- 1. Whether the petitioner has proved his case to be entitled to the dissolution of the marriage between the parties by the Honourable Court?*
- 2. Whether by the Supreme Court decision in Buhari vs. INEC (2008) 12 SCNJ 1 at 91 and section 112 & 117(4) of the Evidence Act 2011, the witness deposition of the respondent (DW1) filed on the 12/1/2021 and adopted before the Honourable Court can be relied upon by the Honourable Court?*
- 3. Whether the respondent has proved her cross petition to be entitled to all or any of her claims/reliefs?*

Advancing argument on issue one crafted in the respondent's final written address, the respondent's counsel submitted amongst others; that the fact relied



upon by the petitioner in seeking for dissolution of the marriage is not one of the grounds required in section 15(1) of the Matrimonial Causes Act. It is the view of the respondent's counsel that while the petitioner in his petition only stated the grounds forming his belief that the marriage has broken down irretrievably, the petitioner did not state in his pleading and evidence before the court that the marriage has broken down irretrievably. It was further submitted for the respondent/cross petitioner that the facts pleaded in paragraphs 1 to 16 of the petition and the order sought therein will not confer jurisdiction on this court. The court was therefore urged to dismiss the petitioner's petition for being incompetent. The court was also referred to the case of Ekerebe vs. Ekerebe (1993) 3 NWLR (Pt.596) 514.

On issue two in the respondent/cross petitioner's final address, it was posited that respondent/cross petitioner who based her cross petition on adultery and cruelty was able to prove acts of adultery and cruelty against the petitioner; that respondent led evidence showing how the petitioner had at several times asked respondent to abort her pregnancies and how that when the respondent refused to abort the pregnancies, the petitioner will chase her out of the matrimonial house. It was further posited for the respondent that even when the respondent gave birth to their second baby, the petitioner refused to pay the hospital bills until a member of the cross-petitioner's family came to the rescue. Continuing, counsel submitted that when the cross petitioner became pregnant in 2018 the petitioner insisted that cross petitioner must terminate the pregnancy; that even when the cross petitioner succumbed to petitioner's pressure and terminated the pregnancy, the petitioner locked her out of the house when she returned from the hospital where she has gone to carry out the abortion not minding that cross petitioner was bleeding.

On the issue of adultery, the respondent's counsel submitted that cross petitioner who in her cross petition cited the co-adulterer as Madam Onyiyechi, gave evidence showing that the said Madam Onyiyechi comes to the matrimonial home to cohabit with the petitioner. Counsel stated that this piece of evidence which was corroborated by the DW2 does not only prove adultery but also shows acts of



cruelty making it intolerable for the cross petitioner to continue to live with the petitioner. The court was again referred to the case of Williams vs. Williams (1987) 2 NWLR (Pt. 54) 66 and Akinbuwa vs. Akinbuwa (1998) 7 NWLR (Pt. 559) 661. In his conclusion, the respondent's counsel urged the court to hold from the evidence given by the cross petitioner that the marriage has broken down irretrievably as a result of cruelty and adultery.

Proffering argument on issue A in the petitioner's final written address, counsel on behalf of the petitioner submitted that petitioner vide paragraphs 8 to 19 of his adopted written deposition gave evidence showing that the parties cohabited peacefully until the July, 2019 when the respondent abandoned the matrimonial home; that to prove that petitioner has been taking care of the family, he opened a shop for the respondent which the latter ran aground. It is the view of the petitioner's counsel that evidence of the petitioner was not challenged or discredited under cross examination. The court was urged to accept and act on the said unchallenged evidence of petitioner. Continuing, petitioner's counsel submitted that where, as in the present case, both parties are agreed that the marriage has broken down irretrievably and are both asking for the dissolution of the marriage, no further evidence is required to prove that the marriage between the parties have broken down irretrievably.

With respect to issue B in the petitioner's written address, petitioner's counsel posited that respondent/cross petitioner who testified as DW1 having admitted during her cross examination that she signed her adopted written deposition at her lawyer's office, that the said written deposition is incompetent and incapable of supporting any evidence in this court. The court was urged to declare the adopted written deposition of DW1 a nullity and to expunge same from its record. In aid, petitioner's counsel referred the court to the following cases:

- i. Buhari vs. INEC (2008) 12 SCNJ 1 at 91.
- ii. Onyechi Erokwu vs. Jackson N. Erokwu (2016) LPELR-41515.
- iii. Brossette Manufacturing Nig. Ltd. vs. M/S Ola Ilemobola Limited & Ors. (2007) LPELR-809 (SC).



Advancing argument on issue C in the petitioner's final address, counsel on behalf of the petitioner submitted that when adultery is alleged in matrimonial proceedings, a higher degree of proof is required. In aid, counsel referred the court to the case of Ojo vs. Ojo (1981) HCLR 236 at 254. It is the contention of the petitioner that although the respondent and her witness led evidence to the effect that petitioner has lots of female friends and takes pictures with them and also brings one Madam Onyiyechi to the matrimonial home, that respondent as well as DW2 led no evidence establishing adulterous relationship between the petitioner and the party cited or any other lady. It is the view of petitioner's counsel that petitioner having denied the allegation of adultery in his reply and answer to cross petition, the burden was on the cross petitioner to produce evidence to prove the allegation of adultery, which counsel says the cross petitioner failed to do.

On the acts of domestic violence alleged against the petitioner, the petitioner's counsel submitted that the allegation was not proved; that respondent failed to produce any medical report of the abortion which she claimed the petitioner forced her to procure. It was further argued for the petitioner that evidence of DW2 under cross examination contradicts that of DW1 who had claimed that the reason the petitioner refused to open the door for her when she returned from hospital on the date she had gone to abort her pregnancy was because the petitioner was with another woman in the house. It is view of counsel that DW1 having lied to the court on the alleged reason for the petitioner's refusal to open the door for her, the court should treat the entire evidence of the respondent with caution. In aid, petitioner's counsel referred the court to the case of Daggash vs. Bulama (2004) 14 NWLR (Pt. 892) 144 at 250.

On the reliefs in paragraph 29(b),(c),(d) and (e) in the cross petition, the petitioner's counsel urged the court to refuse the claims therein because in counsel view, the respondent failed to produce evidence showing that the parties own any building either in Bonny or along East/West Road, Port Harcourt or that the parties acquired any car. On the cross-petitioner's allegation that the petitioner does not provide for the family, the court was referred to exhibits B, B1-B4, C, C1-C3, F,



F1-F2, G, G1-G3 as well as Exhibit G5 which according to the petitioner's counsel show that petitioner having been taking care of the children of the marriage including paying for their education.

On the custody of the children of the marriage, the petitioner's counsel submitted that documentary evidence tendered by petitioner shows that petitioner have been taking good care of the children of the marriage and that there is no evidence before this court showing that petitioner will not be able to take care of the children of the marriage if granted custody. In his conclusion, the petitioner's counsel urged the court to grant the prayer in the petition and to refuse the prayers contained in the cross petition.

In his reply on point of law filed on 25th June, 2024, the respondent's counsel reiterated that a petition for dissolution of marriage must specifically state that the marriage has broken down irretrievably, failing which the court will have no jurisdiction to look at the evidence given by the petitioner. Reliance was placed on section 15(1) of the Matrimonial Causes Act. It was further submitted for the respondent that where the court does not have jurisdiction to entertain a petition in matrimonial proceedings, the evidence given by the cross petitioner automatically becomes unchallenged. In aid, counsel referred the court to the case of Nanna vs. Nanna (2006) 3 NWLR (Pt. 966) 1.

Responding to the issue of validity or otherwise of the adopted written deposition of DW1, respondent's counsel submitted that notwithstanding the evidence of DW1 under cross examination that she signed her written deposition in the office of her lawyers, that the endorsement on the said deposition shows that same was signed before one Anthony N. Chinwo who is a staff of Rivers State Judiciary and also the commissioner for oaths. It is therefore the view of the respondent's counsel that the evidence elicited from DW1 under cross examination that she signed her adopted written deposition in the office of her lawyers cannot be used to contradict the content of the witness deposition of DW1 which showed that it was signed before the commissioner for oaths. Obviously, the above submission is anchored on the settled position of the law that oral evidence cannot



be used to contradict, vary or alter the content of a written document. It is also the submission of the cross-petitioner's counsel that the case of Buhari vs. INEC (Supra) cited and relied upon by the petitioner's counsel is inapplicable to the instant case.

On whether the cross petitioner proved adultery, cross petitioner's counsel submitted that adultery in this case can be inferred from evidence of the cross petitioner and her witness which shows that while the cross petitioner was lockout of the matrimonial home, the party cited visited the petitioner, spend 3 days with the petitioner under the same roof and even cooked food for the petitioner.

Let me start my deliberation with issue No. 1 in the cross petitioner's final address where counsel for the petitioner spiritedly argued that the petition is incompetent by reason of the petitioner's failure to state in his petition that the marriage has broken down irretrievably. In making this submission, cross petitioner's counsel has placed reliance on section 15(1) of the Matrimonial Causes Act. The said Section 15(1) of the Matrimonial Causes Act provides as follows:

"A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably".

From the above provision, it is not in doubt that by section 15(1) of the Matrimonial Causes Act, the only ground upon which a petition for dissolution of a marriage can be presented is that the marriage has broken down irretrievably. While section 15(2) of selfsame Act provides for situations when the Court shall hold the marriage to have broken down irretrievably. It is also a requirement of the law that the ground that the marriage has broken down irretrievably must be pleaded in the petitioner's pleadings. See Ekrebe vs. Ekrebe & anor (1999) LPELR-13000(CA), Bakau vs. Bakau (2013) LPELR-22687(CA) and Anagbado vs. Anagbado (1991) LPELR-14943(CA). Returning to the instant case, it is observed that in his petition, the petitioner has sought for the following order:

"A Decree of dissolution of marriage on the ground that since the marriage the respondent has behaved in such a way that the petitioner could not reasonably be expected to live with the respondent"



Similarly, in paragraphs 1 to 16 of his petition, the petitioner stated the facts he will be relying. There is no where in his petition where the only ground upon which a petition for dissolution of marriage under the Act may be presented by either party to the marriage was pleaded. As rightly argued by the cross-petitioner's counsel, the petitioner failed in the order sought to aver that the marriage between the cross-petitioner and the petitioner has "broken down irretrievably" as enjoined by the provisions of Section 15(1) of the Act. Rather the petitioner predicated his petition on the ground that since the marriage the respondent has behaved in such a way that the petitioner could not reasonably be expected to live with the respondent, which is not known to those provisions of the Matrimonial Causes Act, Cap 202. The petitioner in his petition has not pleaded as required by law. To me, this is more than a case of proving the case or not his petition. The issue of establishing the petition only arises when the essential facts constituting the petition are properly pleaded. In the absence of averments that the marriage had broken down irretrievably as required by law, evidence on the ground or fact cannot be led and, if adduced, would be inadmissible and would consequently be expunged, if admitted. It follows that the ground could not be proved so also would the facts not be proved. The petitioner, in the circumstance, cannot show that the marriage had broken down irretrievably.

In the light of the foregoing, I resolve issue No. 1 in the cross-petitioner's final written address in favour of the respondent/cross petitioner and I hold that the petition is incompetent by reason of the petitioner's failure to plead the only ground upon which a petition for dissolution of marriage under the Act can be presented. The petitioner's petition is accordingly dismissed.

Another peripheral issue raised in the address of counsel which I consider apposite to address at this stage is the validity or otherwise of the adopted written deposition of the DW1. Recall that while being cross examined on the 5th day of October, 2023 the respondent who testified as DW1 in response to question put to her stated thus:



"I made my written deposition. I signed my written deposition in my lawyer's office"

The petitioner's counsel has argued, relying on section 112 of the Evidence Act, 2011 that the admission or rather, the confession of the DW1 under cross examination that she signed her adopted written deposition in her lawyer's office render the entire evidence contained in her adopted written deposition made on 12/1/2021 inadmissible. There is no doubt that as argued by the cross-petitioner's counsel, on the face of the adopted written deposition of DW1 made on 12/01/2021 show that same was made before one Anthony N. Chinwo, a staff of the Rivers State Judiciary authorized to administer oath. Now while it is plausible to argue that the signature of a person authorized to administer oath on a written deposition is prima facie evidence that the deposition was duly sworn to before the person authorized to administer oaths, that presumption is rebuttable hence it can be rebutted by the witness, and evidence that would rebut the presumption must be clear and unambiguous. Let me also observe that any evidence that is capable of several interpretations would not rebut the presumption. Where however as in the instant case, the DW1 gave evidence albeit, under cross examination that she signed her written deposition in her lawyer's chamber, she had by her own evidence rebutted the presumption in favour of her written deposition. In my view, this honest confession, however, dealt a devastating blow on the entire evidence of the Respondent, who is relying on that witness statement, purported to be on oath, as it became invalid by reason of non-compliance with the rules governing affidavit evidence (same not having been duly sworn to before a Commissioner for Oath, authorized to superintend over the oath taking). See the case of Nwakolobi Vs Ejemeli & Anor (2020) LPELR – 51357(CA) and Ya'u vs. Ministry of Land and Physical Planning Kano & Ors. (2022) LPELR-58781. With this clear position of the law, it means the evidence of DW1 before this court amounted to nothing, as same was invalidated by reason of non-compliance with the rules of affidavit evidence. See also the case of Amuko vs. Bida & Anor (2022) LPELR-59389(CA) and section 112 of the Evidence Act, 2011 (as amended).



With the above finding, it means that the only legal evidence left before me is the evidence of DW2. Essentially, the evidence of DW is that within the period he lived with the parties, the petitioner was in the habit of fighting and beating up the respondent. He also gave evidence that when the respondent left the matrimonial home, the petitioner brought a woman to the house who spent 3 days with the respondent. This piece of evidence is intended to support the allegation of adultery made against the petitioner. The question then is whether the above evidence of DW2 is enough to hold that the marriage between the parties have broken down irretrievably on the fact of adultery? Because the fact of adultery is rarely provable by direct evidence, it is usually inferred from surrounding circumstances. See the cases of Ambe vs. Ambe 1976 1 MNLR 28 and Okwueze & Anor v. Okwueze (2019) LPELR-48403(CA). Given that the fact of adultery is a matter of inference to be drawn from given circumstance, it is easy to suggest conditions which can leave no one in doubt that the adultery has been committed. I must however hasten to add that the mere fact that people are thrown together in an environment which lends itself to the commission of the adultery is not enough unless it can be shown by some overt acts or antecedent conduct that the association of the parties was so intimate and their mutual passion so clear that adultery might reasonably be assumed as the result of an opportunity for its occurrence. Other circumstances from which a court may infer commission of adultery include but not limited to the following:

- a. Venereal disease: if the petitioner can prove that the respondent had contacted a venereal disease from a third party during the marriage, this will give rise to a presumption of adultery.
- b. presence in a Brothel: if a spouse visits a brothel with a third party, it will be presumed that such a spouse has committed adultery.
- c. Confessions and admissions of adultery:
- d. The birth of a child, the period of gestation being a very important factor to take into consideration.



The evidence of DW2 which came close to any of the conditions above is the evidence that petitioner brought a woman who spent 3 days in the matrimonial home after the respondent has left. It is observed that apart from the evidence that the alleged woman spent 3 days in the matrimonial home, there is no evidence of opportunity or circumstances from which this court can safely infer that petitioner committed adultery with the said woman, and as the evidence of DW2 under cross examination will reveal, the DW2 is not even sure that the said woman is the same person cited in the cross petition. Thus, making unsafe for the court to hold that allegation of adultery has been proved.

Coming to the issue of cruelty, the DW2 evidence gave that the petitioner is in the habit of fighting and beating up the respondent. DW2 said that within the period he lived with the parties, the petitioner constantly fights and beats up the respondent and sometimes locked her out of the matrimonial home. He also stated that after giving birth to their 3rd child, the petitioner had always ordered the respondent to abort all subsequent pregnancies, which order the respondent has to comply with out of fear of what the petitioner will do to her if she refused to abort the pregnancy. Cruelty is in its nature a cumulative charge, and so an accumulation of minor acts of ill treatment causing or likely to cause the suffering spouse to break down under strain constitutes the offence. Cruelty may consist in the aggregate of the acts alleged in a petition and each paragraph need not allege an independent act of cruelty sufficient in itself to warrant the relief sought. Given the evidence of the DW2 which was not discredited under cross examination, I am of the firm view that the cross petitioner proved the allegation of cruelty vide the evidence of DW2. Without a doubt, a marriage could be said to have broken down irretrievably if it can be established that one spouse had been guilty of cruelty towards the other. This is because no reasonable spouse will be expected to share a state of affairs with other spouse who has been very cruel to him/her.

With respect to the other reliefs in the cross petition, it is my view that evidence of DW1 having been discountenanced by reason of non-compliance with rules of affidavit evidence, there is no evidence to support reliefs 2 – 5 in the cross petition.

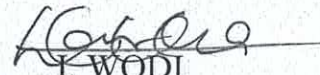
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The implication is that reliefs 2 – 5 in the cross petition fail and are hereby dismissed.

In all, the Cross petition succeeds in part, I find and hold that the marriage between the parties has broken down irretrievably by reason of the behaviour of the petitioner which the cross petitioner cannot reasonably be expected to live with. The said behaviour of the petitioner in this case being the established cruel conduct of the petitioner which in my view is of such a character as is likely to cause or produce reasonable apprehension of danger to life, limb or health (bodily or mental) on the part of the cross petitioner. Having found that the respondent/cross petitioner has proved vide the evidence of DW2 that the marriage between the parties have broken down irretrievably, it is hereby ordered as follow:

1. That the cross petition for dissolution of marriage succeed; accordingly, I hereby pronounce a decree nisi which shall become absolute at the expiration of three (3) months from the date of this judgment.
2. That there being no legally admissible evidence in proof of reliefs 2 – 5 in the said cross petition, the said reliefs are hereby dismissed.
3. That the petitioner's petition be and is hereby dismissed.


I. WODI
(JUDGE)
17/12/2024

APPEARANCE:

V. U. Uzochukwu Esq. appears for the Petitioner.

No legal representation for the Respondent/Cross Petitioner.



Confirmed by me
Giovanna V. Benyenam
27/01/2025.

15 files at HHC