

**“REPUBLIC OF CAMEROON”
“IN THE NAME OF THE PEOPLE OF CAMEROON”**

**IN THE HIGH COURT OF MEZAM DIVISION
HOLDEN AT BAMENDA**

**BEFORE HER LORDSHIP JUSTICE MBUAGBAW JOSCELYN
WITH MRS. NANA BEDWIN REGISTRAR IN ATTENDANCE
THIS WEDNESDAY THE 09th DAY OF JULY 2014**

HCMB/06MC/2013

BETWEEN

ADVENCE FUH.....PETITIONER

AND

MIRANDA NGIEKEM AZISE.....RESPONDENT

PARTIES: Both absent

APPEARANCES: Barrister Tasi George for petitioner absent

Barrister Mbanga Martin holds brief for Barrister Eyembe Emmanuel for the Respondent

COURT NOTE: Judgment delivered

JUDGMENT

The petitioner filed a petition for divorce praying the court to dissolve his marriage to the respondent. To buttress marriage, he tendered into evident exhibit “A” their marriage certificate. Per exhibit “A” the marriage was monogamous celebrated on the 04/08/09 at the Bamenda II Civil Status Registration Centre.

Both parties were present during the hearing. Through their counsels, each party adopted and relied on the field petition and reply as their case.

In his pleadings, the petitioner deposed that their marriage is blessed with a child. That the respondent has since the celebration of their marriage behaved in such a way that he cannot reasonably be expected to live with her. That since the 20/05/2012, they have been living apart.

To buttress behavior, petitioner deposed that the respondent behaved in a cruel and unacceptable manner by refusing to render conjugal rights to him. He said sometime in May 2012, the respondent’s parents visited them and when they were leaving, they took away the respondent and their lone child. That since then, the respondent has been living with her lover in Mankon Bamenda and has never cared about him. That the whereabouts of his son is unknown as the respondent took him away without his consent. The petitioner said because of the cruel and inhuman behavior of the respondent, their marriage has broken down irretrievably. He prayed the court to dissolve same and grant him custody of their child.

In reaction to the petition, the respondent denied petitioner’s allegation. She submitted that it is the petitioner who has behaved in such a way that she cannot

continue living with him. She said when their marriage was a going concern; the petitioner brought his girl friend to their matrimonial home and kissed her therein. That the petitioner kept late nights and at one moment, he attempted to rape her junior sister.

The Respondent stated that contrary to his allegations, the petitioner is the one who has been cruel to her. She said at a certain time she had itches in her vagina. That she consulted the medical doctor and he advised them to abstain from love making until the itches stop. To substantiate this fact, respondent tendered her medical report which is in evidence as exhibit "B".

In furtherance of her submissions, respondent stated that in spite of the doctor's advice, the petitioner forcefully made love to her and each time they would repeat the treatment from start. She said she left their matrimonial home with their child because the petitioner could not allow her to effectively follow up her treatment. That she left for the sake of her treatment and her life and that since she left the petitioner has not bothered to look for her and their child. She said she is living alone and attending school. That the petitioner knows very well that the child is with her and he has never bothered to provide any financial assistance for the upkeep of the child.

The respondent prayed the court not to grant petitioner's prayers but that if the court were minded to do so, the court should grant her custody over the child, order the petitioner to provide monthly financial relief for the upkeep of the child and to pay her general damages of 10,000,000 francs to enable her educate herself.

I have read through the petition for divorce and the reply thereto. I have equally perused the exhibits tendered.

Section 18(1)(b) of Law NO. 2006/015 of the 29/12/2006 on Judicial Organization as amended, empowers the High Court to entertain petitions for divorce. For the court to dissolve a marriage, it has to be satisfied that the marriage has broken down irretrievably. To prove irretrievable break down of marriages, section 1(2) of the Matrimonial Causes Act of 1973 provides facts to be considered namely, Adultery, Behaviour, Desertion and Separation.

The instant petition is based on behavior under section 1(2)(b) of the Act. To establish behavior, the petitioner has to prove that the respondent's behavior is wanting and also that he finds it intolerable to put up with such behavior.

The test as to unreasonable behaviour of the respondent is an objective one and it is the court that has to decide whether the petitioner cannot reasonably be expected to put up with such behavior.

In the case of *Livingstone Stallard Vs Livingstone Stallard*, Dunn's formulated the test of the unreasonable behavior of the respondent thus: "would any right thinking person come to the conclusion that this husband has behaved in such a way that this wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and characters and personalities of the parties?"

All what the petitioner put forward as respondent's behavior that is unreasonable is that the respondent has behaved in a cruel and unacceptable manner by refusing to render conjugal rights to him. The petitioner did not substantiate what he meant by cruel, unacceptable manner. Talking about conjugal right, the respondent averred that

she was suffering from vaginal itches and the doctor advised them to abstain from love making until the itches stop, but the petitioner refused to adhere to the doctor's advice. That because of petitioner's attitude they had to take the treatment over and over. She said she had to move out of their matrimonial home for the treatment to be effective. Though her reasons for moving out of their matrimonial home is plausible, the respondent is not justified for continuing living out of their matrimonial home for two years running. She should have regained their home after her treatment. Though she prayed the court not to grant divorce, she said in her reply that their marriage has broken down irretrievably. Since both parties have declare that their marriage has broken down irretrievably then the court is left with no option that to put a legal end to the already ended marriage.

With regards to custody of the child, though the age is not stated the court can discern from the evident before it that the child is less than six years old. In determining any question with respect to the upbringing of a child, the welfare of the child shall be the court's paramount consideration. This consideration has been enshrined in African charter on the Rights of the child. In the case of JVC (1970) AC 688, Lord Mac Dermott stated that the principle of paramount consideration of the child's welfare is a "process whereby all the relevant fact, relationships, claim and wishes of parents, risks, choices and other circumstances are taken into consideration and weighed, the course to be followed will be that which is most in the interest of the child's welfare".

The child being of a very tender age, maternal attachment conditioned by early childhood warrants that the child be placed under his mothers custody. By the working of nature, mothers spend more time with children at home. They prepare food for them and wash their dresses. They are also there to attend to them and ensure their moral upbringing. It is therefore reasonable to place such a young child who cannot differentiate his left from his right to be under his mother's custody.

In the light of the foregoing, this court holds that the marriage between the parties have broken down irretrievably. The court makes the following orders,

- 1) That the marriage between Advence Fuh and Miranda Ngiekem Azise is hereby dissolve.
- 2) A decree Nisi is granted. It shall become absolute 6 weeks after the date of delivery of this judgment.
- 3) Custody of the lone child of the marriage is granted to the respondent Miranda Ngiekem Azise.
- 4) The petitioner is accorded right of visit of the child at reasonable hours of the day with notice given to the respondent.
- 5) The petitioner shall make good to the respondent a monthly allowance of 30.000frs for the upkeep of the child
- 6) He shall ensure the education and health of the child.

REGISTRAR-IN-ATTENDANCE
MRS.NANA BEDWIN

PRESIDING JUDGE
JUSTICE MBUAGBAW JOSCELYN