**ABEL KPROGIDI UBEKU**

**V.**

**AGNES OWUGHORUA UBEKU**

HIGH COURT OF LAGOS

17TH JUNE 1968

SUIT NO. HD/52/67

**LEX (1968) - HD/52/67**

OTHER CITATIONS

2PLR/1968/76 (HC)

**BEFORE:** SOWEMIMO, J.,

**BETWEEN**

ABEL KPROGIDI UBEKU – Appellant

AND

AGNES OWUGHORUA UBEKU – Respondent

**REPRESENTATION**

ONAFOWOKAN (for JIBOWU) - for the Petitioner

AJIBOLA - for the Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

FAMILY LAW – MATRIMONIAL PROCEEDINGS:- Divorce of cruelty and adultery – How proved – Need to distinguish cultural context between England and Nigeria in finding whether cruelty is proved or not – Custody of children – When court will grant same to wife against whom an order for divorce was made for cruelty – When order for maintenance of child and wife would not be granted

CUSTOMARY LAW: Arranged marriage - Bride price payment – Expensive marriage celebration expenses placed on men – Whether promotes or perpetuates treatment of married women as chattel – whether customary law practices conflict with the meaningful application of the Marriage Act – Need for change in customary law marriage practices across Nigeria

EDUCATION AND LAW:- Education of women – Implication for customary law practices relating to marriage which promotes loveless marriages, treatment of women as chattels bought with heavy bride-price and divorce – Relevant considerations

CHILDREN AND WOMEN LAW:- *Women and Customary Law/Education/Divorce* – Education of women and effect on arranged Marriages where love never developed – Bride price and other expensive marriage celebrations under customary law – Whether it promotes/perpetuates the treatment of married women as chattels - Effect on marital relations – Implications for stability of family life and divorce rates – Whether “there is a crying need for a change in customary law of marriage across Nigeria – Whether the applicability of the Marriage Act for all intents and purposes is foreign to any of the sectional customary laws in Nigeria

**MAIN JUDGEMENT**

**SOWEMIMO, J.:**

This is a petition for divorce by the husband against his wife on the ground of cruelty. The wife in her answer cross-petitioned for divorce as well on the ground of cruelty and adultery.

The parties were married on the 15th of June, 1963. There is one child of the marriage who was born on the 26th November, 1965.

The first act of the alleged cruelty took place barely a month after the marriage when the Respondent accused the husband of having adulterous relations with a neighbour’s daughter. This particular girl was one of the bride’s maids at the marriage ceremony between the parties in June, 1963. The wife denied that she made such an accusation but admitted that the husband called the parents of the girl in question and apologised to them for the allegations said to have been made by the wife. Later the Petitioner and the Respondent were transferred to Zaria between August, 1963 and April, 1964. The Petitioner alleged again that the wife accused him of having adulterous relations with one Elizabeth. The Respondent admitted that the husband called this woman named Elizabeth and made the accusation in her presence but she, the wife denied that she ever suspected her husband of having adulterous relations with Elizabeth. She said that as a result of what her husband said her friendly relationship with Elizabeth ceased. Later on they were transferred to Ibadan and again, according to the husband the wife did not take kindly to the relations of the husband visiting the matrimonial home.

The wife denied this and stated that her only annoyance in Ibadan was that a brother of her husband who was then a law student was in the habit of advising her husband on the ground for judicial separation and that he used to bring in law books for the husband to read for such purpose.

However, in spite of this strained relationship between the parties, the Petitioner was sent to England by his employers for some training and he took the wife along with him. There was no doubt that he was responsible for getting the wife qualified as a Stenographer. It was whilst they were in England that they had the only child of the marriage. The husband left the wife in England and came back to Nigeria.

According to the wife, the husband objected to her return to Nigeria after she had her baby in May, 1966 but that she nevertheless arranged her passage back to Nigeria after she had completed her course. She admitted, however, that it was the husband’s employers who paid her return fare. When she returned to Lagos, a relation of the husband, one Mrs. Queen Uriri visited the husband on the 16th of October, 1966. She did not meet the Petitioner in the house and the Respondent suspecting her association with her husband picked up a quarrel with her. On the husband’s return from work she narrated the incident but as the husband did not seem to appreciate her grievance, she threw a pot of hot tea on the husband and he received treatment from a Doctor. The Doctor gave evidence and tendered a medical report setting out the series of treatment he had given to the Petitioner on various occasions. With regards to this incident of the 16th of October, 1966, the wife alleged that it was the husband who attempted to throw the hot tea at her and it was in order to avoid this that she pushed the tea cup back as a result of which the whole tea set got broken.

The husband also alleged that since December, 1966 the Respondent refused to have any marital relationship with him. The wife denied this and said that on the contrary the husband was fond of coming home very late at night and that at a certain stage he went and brought a woman into the matrimonial home. The husband admitted that the woman named Mrs. J. M. Ubeku was the wife of his junior brother who was in the Air Force and had only come to stay with them whilst the husband was stationed outside Lagos. The wife however denied that the woman was the wife of the alleged brother of the husband. The woman did not give evidence neither was her husband called to give evidence but some letters were tendered purporting to have been written by either the said Mrs. J. M. Ubeku or her husband.

The wife in her answer, after denying all the allegations of cruelty which I have earlier on referred to alleged that since the celebration of the marriage the husband had constantly treated her with cruelty. She alleged that on the Christmas day in 1966 the husband returned home drunk and gave her a thorough beating. She said she suffered severe bruises on her face and knees. She went to the Surulere Health Centre where she was treated. She tendered her hospital card but as she did not know the Doctor who treated her she was unable to call him to give evidence. She further alleged that the husband continued to abuse her and ask her to leave the matrimonial home as there were many women outside wishing to come in. She also alleged that the husband incited the house boys against her and used to humiliate her in their presence. She gave the names of two of such house boys as Augustine and Moses who were later placed in employment by the husband.

Another incident of an act of cruelty was that on a date in February, 1967 at about 11.30 p.m. the Petitioner returned home and asked the Respondent for food and whilst she was busy dressing up he dragged her out and gave her a thorough beating for no just cause. The Respondent said she lodged a report to the Police.

On the 2nd of October the Respondent alleged that the Petitioner asked her not to allow the child of the marriage into the guest room as Mrs. J. M. Ubeku was coming to stay in the guest room. But this woman was brought into the house and instead of being put up in the guest room was housed in the room opposite that of the husband. She stated in her evidence that this woman continued to sleep with her husband in the matrimonial bedroom. It is strange, however, that if what the Respondent alleged is true, she remained in the matrimonial home from October till December, 1967 when she was served with the petition in this case and did not object to the presence of this woman at all. I do not think that any woman would allow such a situation to exist and would continue to live in the matrimonial home for 3 months. On the issue of the alleged adultery, I do not think that the Respondent has proved the allegation. Having heard the evidence of the husband, I am satisfied that he could not have committed the adultery as alleged.

The background to this case is that the two parties were never in love. As was revealed in evidence, whilst the Respondent was undergoing training as a teacher in Benin, a cousin of the Petitioner approached her on behalf of the Petitioner. She did not know the Petitioner at all and it was after her parents’ consent had been obtained that she came to Lagos and met the Petitioner for the first time. According to her, she thought that the Petitioner would make a good husband but there was no question of any love having developed between both of them. The circumstances suggest that the husband must have paid some money to the parents of the girl, in form of dowry, which sum must have been handsome for she is a pretty girl and the result of course, was that they gave this girl away in marriage to the Petitioner. The whole trouble about all the allegations and counter-allegations of cruelties made by both parties were based on the fact that they were unsuited to each other right from the start. The girl was a trained teacher and before the parents’ consent was in love with someone else. The Petitioner on the other hand, was in very good employment and was in search of a woman who would qualify as a wife for his post and the result was that he had to marry the Respondent in this case.

My attention has been drawn to some English authorities on what is known as cruelty. Whatever may be the connotation which that word carries the circumstances of its applicability in England must be distinguished from that obtaining in Nigeria. A background to a marriage in England is quite different to that in Nigeria and this particular case is an instance of the difference. Here is a marriage between two individuals, who had not been previously in love, but according to customary law could be married on the consent of bride’s parent on payment of dowry by the would-be husband. We have always got to look on this background in applying English law to our outmoded Marriage Act.

On the evidence before me, I am satisfied that all the alleged acts of cruelties made out by the Petitioner are true. On the other hand, I am satisfied that the Respondent herself looking for an ideal husband found to her consternation that the Petitioner was a different person. I am satisfied that by virtue of her education she expected, whoever would be her husband, to treat her in a particular way. Whilst I would not suggest that the husband had made a mistake in taking the wife for further training in England he must have made the allowance however, that the wife would have acquired certain English attributes about marriage which would demand that the husband is no longer master of the house. That was the reason why she demanded that the husband must introduce any person who came into the matrimonial home to her when she returned from England. The husband could not stand this and felt that she was very unappreciative of the money he spent in training her as a Stenographer.

In any case, the marriage has broken down completely. I asked the wife who is a young girl whether she is prepared to give the marriage a further trial but she replied that she had made up her mind about it and she was not prepared to go back to the matrimonial home. This is an unfortunate case but as long as the system of marriage by payment of dowry without any basis of love between the parties continues there would continue a breaking up of homes because the present day educated Nigerian woman would not stand up to a system that makes the husband the master in the home. It is however inequitable for a husband who has to pay a large amount of money as dowry, and in addition expend money on the merriments connected with the marriage ceremony, to agree to subject himself to a woman, who for all intents and purposes he had actually acquired for monetary consideration. There is a crying need for a change in both customary law of marriage and the applicability of a Marriage Act for all intents and purposes is foreign to any of the sectional customary laws in Nigeria.

In the circumstances of this case I would grant the Petition of the husband and dissolve the marriage on the ground of cruelty. I would also grant the cross-petition of the wife and dissolve the marriage on the ground of cruelty. I would, however, refuse the allegation of adultery made against the husband and dismiss the application on that ground.

With regards to the only issue of the marriage, I would order that the Respondent should retain her in the custody and that the husband should pay a sum of £10 per month for the maintenance of the child.

I hereby order a decree nisi be granted which should be made absolute within 3 months from date.

I award costs of £31.1 0s in favour of the Respondent.

I make no order as to alimony. The order for alimony pendent-lite is no longer operative.

Petition granted.