

**IN THE UPPER CUSTOMARY COURT OF KADUNA STATE
IN THE KAFANCHAN JUDICIAL DIVISION
HOLDEN AT GWANTU**

UCCG/CV/29/2021

THURSDAY, 6TH JANUARY, 2022

BEFORE:

HIS WORSHIP EMMANUEL J. SAMAILA, ESQ.	-	JUDGE
MR. PETER BAKO	-	MEMBER

BETWEEN

TINA JOHN	-	PETITIONER
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AND

JOHN ADAMU	-	RESPONDENT
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JUDGMENT

1 The claim of the petitioner against the respondent is for the dissolution of their marriage which was contracted in 1990 under Mada custom and has produced five children, three of whom are living now. The respondent opted not to contest the petitioner's prayer. However, he sought the following in his counterclaim:

1. Fifteen basins of groundnuts
2. The return of the document with which the sum of N5,000 was being paid to beneficiaries at the Local Government
3. The sum of N15,000 being the sum he paid as rental for two farms which the petitioner is cultivating
4. The refund of the total sum of N37,300 being the equivalent today of his expenses for the performance of the petitioner's marriage rites.

2 In proof of her claim and defence to the counterclaim, the petitioner testified as PW1 and called Ali Salihu as PW2. On the other hand, the respondent gave evidence as RW1. He invited Yusuf Aku Ishaya as RW2 in his defence and proof of counterclaim.

3 The gravamen of the petitioner's case is that she and the respondent are married but have been separated because of the respondent's lack of care for her. Conversely, the crux of the respondent's evidence is that there are some of his properties with the petitioner and she may be granted her prayer if she returns them to him.

4 Having heard the parties, this Court distilled the following questions for determination, to wit:

1. Is the respondent entitled to a refund of his expenses for the performance of the petitioner's marriage rites under Mada custom?
2. Has the petitioner proved that a valid marriage in accordance with Mada custom exists between her and the respondent?
3. Has the respondent satisfactorily established his claim to the sum of N15,000 for the rental of two farm lands being cultivated by the petitioner?
4. Has the respondent made a satisfactory case for the recovery from the petitioner of the document for the payment of the sum of N5,000 by the Local Government?
5. Has the respondent proved his claim for 15 basins of groundnuts against the petitioner?

These questions are answered seriatim hereunder.

QUESTION 1

5 We deemed it necessary to deal with the question of the refund of the respondent's expenses for the performance of the petitioner's marriage rites since the respondent contended that it is a pre-

condition for divorce under Mada marriage custom. As RW1, the respondent enumerated the expenses he incurred to satisfy the requirements for the performance of the petitioner's marriage rites.

They are as follows:

1. Dowry N4,500
 2. Two crates of soft drinks valued at N3,800 now
 3. Two crates of beer valued at N5,000 now
 4. Three goats valued at N24,000 now
- 6 The respondents total claim under this arm of his counterclaim stands at the sum of N37,300. Under cross-examination, the witness stated that under Mada marriage custom, a woman who leaves her husband's house is bound to refund all her husband's expenses for her marriage rites.
- 7 In her evidence in defence of this arm of the respondent's counterclaim, as narrated by PW2, the items presented by the respondents are listed as follows:
1. The sum of N160 for unspecified items
 2. Two cartons of beer
 3. Two cartons of soft drinks
 4. N400 as dowry
- 8 The witness added that although two goats were demanded from the respondent, he never brought them. Under cross-examination, the witness stated that it was not the sum of N4,000 that was received as the petitioner's dowry. He also denied that the parents of the petitioner had demanded a third goat. The testimony of PW2 is very significant because he was the respondent's family's representative to

the family of the petitioner in the process of contracting the marriage between the parties.

9 While the petitioner did not contend the existence or otherwise of a Mada marriage custom requiring a woman who leaves her husband's house to refund to her estranged husband the expenses he incurred to perform her marriage rites, she contended that the only ground upon which she will make such refund is if the respondent can restore her body to its pre-marital state as he has used her body to produce children and in other ways, too.

10 One of the tests that a custom has to pass before it can be enforced by the Court is that it is not "repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any written law for the time being in force". See section 24(a) of the Customary Courts Law 2001 (as amended). Considering this law vis-à-vis the Mada marriage custom requiring a departing wife to refund her husband's dowry and other incidental expenses for her marriage as a ground for granting her divorce, can this custom be said to have passed the repugnancy test?

11 Even though the petitioner did not state it as part of her reasons for contending the requirement to refund her dowry and other incidental expenses to the respondent as a pre-condition for the dissolution of their marriage, there are several express and implied facts in this case which this Court deems it necessary to take into consideration in order to justly determine this issue.

12 It is indisputable that the parties have been married for about 31 years prior to the institution of this petition. Even though there was no direct evidence of the year of their separation, it appears to be a not too distant incident. It is also not contended by the respondent that during the period the petitioner lived with him as a wife, she was not submissive to him or failed to perform all her marital duties or fulfill her marital obligations. It was not contended by the respondent that the petitioner did not take care of him and his household and his properties while they were living together. There is also no contention by the respondent that the petitioner never helped him with his farming activities. The respondent never told the Court that the petitioner failed to respect his conjugal rights while they lived together or that she is not the mother of his five (5) children, three of whom are still alive. In the absence of any evidence that the petitioner has ever failed to fulfill all her marital obligations as a spouse, mother, housekeeper and homemaker during the period of about 30 years the parties lived together prior to their separation and the institution of this matter, would it be equitable and in good conscience to require her to refund to the respondent the sum he expended to perform her marriage rites under Mada marriage custom as a pre-condition for the success of her petition for the dissolution of their marriage?

13 At this juncture, it is pertinent to ask a few questions in our quest for justice in this matter. If the respondent were to pay for all the services rendered by the petitioner and the performance of her conjugal duties for over 30 years, would the token he paid as her dowry and incidental expenses be sufficient? Our answer is an

unqualified and an unequivocal “No”. This Court will not imprint its hallowed seal on any custom the enforcement of which will denigrate the women married under customary law and effectively reduce them to the status of mere chattels acquired by men to be used and dumped at their pleasure and with effrontery, require a woman, such as the petitioner in the instant case, to refund to her estranged spouse the token he paid as her dowry and incidental expenses; a woman who deserves commendation for choosing and daring to walk away in peace, with dignity, without physical hurt and alive from a union to which she has sacrificially committed over 30 years of her youthful and productive life. Without further ado, the first question for determination is answered in the negative. The Mada marriage custom requiring a woman who leaves her matrimonial home, especially after over 30 years of marriage, to refund the expenses incurred by her husband for the performance of her marriage rites is hereby declared repugnant to natural justice, equity and good conscience. Consequently, we hold that the petitioner is not under any moral or legal obligation to refund to the respondent any money expended for the performance of her marriage rites as a pre-condition for the grant of an order dissolving her marriage with the respondent.

QUESTION 2

14 It is the petitioner’s evidence as PW1 that she and the respondent are married in accordance with Mada marriage custom and that the respondent has performed her marriage rites. These pieces of evidence were materially corroborated by the evidence of PW2 and substantially supported by the testimonies of RW1 and RW2.

15 Under Mada marriage custom, as depicted by the evidence of the parties, a suitor is required by the parents of the woman he desires to marry to perform her marriage rites which includes the payment of her dowry and other incidental expenses. In the instant case, the respondent has been shown to have performed the marriage rites to the satisfaction of the petitioner's family who released her to him as wife.

16 In view of the foregoing, we answer the second question for determination in the affirmative. We find that a valid marriage in accordance with Mada custom exists between the parties. Consequently, this marriage is hereby dissolved. The parties are admonished to relate peaceably with each other in the interest and for the benefit of their children who will invariably bear the consequential pains occasioned by the parties' separation.

QUESTION 3

17 The evidence of RW1 that he rented two farmlands for the petitioner to cultivate was materially supported by the testimony of RW2. Both witnesses' averments were neither impeached nor contradicted by the petitioner. The respondent testified that he spent a total sum of N15,000 for the rentals. The witness was magnanimous enough to ask for just the refund of the sum while allowing the petitioner to keep the crops she cultivated and harvested on the farms and added that she could continue cultivating the farms in the coming year if she refunds his rental fee to him.

18 In view of the foregoing, we answer Question 3 in the affirmative. We find that the respondent did spend the sum of N15,000 to rent

two farmlands which were cultivated by the petitioner. We so hold. Consequently, the petitioner is hereby ordered to pay to the respondent the sum of N15,000 being the sum he paid as rental fee for two farmlands. This sum shall be paid within 30 days from today being 6th January, 2022.

QUESTION 4

19 It was the respondent's testimony as RW1 that the document being used by the petitioner to receive money from the Local Government bears the name of his mother, the name of his children as next-of-kin and the petitioner's name in her capacity as his wife. He added that even though it is the petitioner's picture that is on the document, the name to which payment is made is that of his mother. These pieces of evidence were neither impeached nor controverted by the petitioner.

20 In view of the foregoing and without further ado, we answer Question 4 in the positive. Thus, we find that the respondent has established a right to recover the said document from the petitioner as the petitioner cannot eat her cake and have it. Having opted to leave her matrimonial home, the petitioner cannot still be benefitting from a privilege available to her as a spouse. Consequently, the petitioner is hereby ordered to produce and submit the said document to this Court's Registry within 30 days from today being 6th January, 2022.

QUESTION 5

21 In his testimony as RW1, the respondent averred that the petitioner had taken away 15 basins of groundnuts belonging to him. Under

cross-examination, the witness stated that the time the petitioner took away the groundnuts is immaterial as it is his personal property. The petitioner had by her questions during the cross-examination effectively admitted liability.

22 In view of the foregoing, Question 5 is answered in the affirmative. We find that the petitioner took away 15 basins of groundnuts and we so hold. Consequently, the petitioner is hereby ordered to return 15 basins of groundnuts to the respondent within 30 days from today, 6th January, 2022.

23 Any party that is dissatisfied with this judgment may appeal to the Customary Court of Appeal, Kaduna within 30 days from today, 6th January, 2022.

Signed:
1. Judge 06012022
2. Member