

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

UCCK/CV/75/2024

9th January, 2025

BEFORE:

**HIS WORSHIP EMMANUEL J. SAMAILA, ESQ.
MR JAMES K. KAJANG**

– **JUDGE**
– **MEMBER**

BETWEEN

**THERESA YOHANNA
AND
YOHANNA BAKO**

– **PETITIONER**
– **RESPONDENT**

JUDGMENT

[1] The Petitioner sued the Respondent seeking the following reliefs under Kamantan custom:

1. The dissolution of their marriage.
2. The payment of the sum of N6million by the Respondent as damages for taking care of his four children for 17 years.

The Respondent denied the Petitioner's claims.

[2] In discharging the burden of proving her case, the Petitioner testified as PW1. She called Rifkatu Micah as PW2. The Respondent gave evidence as DW1 and invited Zamani Bako DW2. The Respondent's counsel and the Petitioner addressed the Court at the close of the Respondent's case.

[3] The Respondent's counsel distilled a lone issue for determination, as follows: Whether the Petitioner has proved her case to warrant judgment by this court. However, after a review of the parties' evidence, we frame two questions for determination, as follows:

1. What is the nature and implication of the relationship between the parties under Kamantan custom?
2. Has the Petitioner placed sufficient and credible evidence before the Court in proof of her claim for damages?

[4] In the exercise of its civil jurisdiction, the Customary Court is empowered to administer customary laws, the principles of natural justice, equity and good

conscience. See Section 24 of the Customary Court's Law 2001 (as amended). Moreover, disputes in the Customary Courts are to be resolved based on common sense and simplicity. See *Agbasi V. Obi* (1998) 2 NWLR (Pt. 536) 1 at 14. Even where the Court is presided over by a legal practitioner (and legal practitioners appear before it), the Court does not lose its nature as a Court of common sense and reason, devoid of legal technicalities. See *Chief Karimu Ajagunjeun v Sobo Osho of Yeku Village & Ors* (1977) LLJR-SC; *Kaduna & Ors. v. Waziri* (2016) KCCLR-166 (CCA). Also, Customary Courts are enjoined not to restrict themselves to the claim before it only but should consider the totality of the evidence laid before it to arrive at a just decision. See *Ibrahim v. Abashe & Ors* (2014) KCCLR-24 (CCA). The foregoing law and principles will be operational in the mind of the Court as it considers and answers the questions for determination.

QUESTION 1

[5] As PW1, the Petitioner told the court that she and the Respondent are married. Under cross-examination, she admitted that the Respondent did not pay her bride price but despite that, her father consented to their marriage. She further stated that living together, not the payment of bride price, is the determinant of a valid marriage under Kamantan custom. In response to an opinion question, the witness stated that the Respondent did not marry her in accordance with their custom. The testimony of PW1, about their marriage was materially corroborated by the evidence of PW2 under cross-examination.

[6] On the contrary, the Respondent, as DW1, contended that he and the Petitioner had a relationship which led to pregnancy, cohabitation and further procreation. He did not describe the nature or status of his relationship with the Petitioner. DW1's evidence about living and procreating with the Petitioner is materially corroborated by the testimony of DW2 who admitted under cross examination to not knowing the nature of the parties' relationship. The witness also supported PW1's testimony that the Respondent did not pay her bride price.

[7] The importance of determining the nature of the relationship between the parties cannot be overstated. This is because of the rights accruing to such parties which are dependent on the legal status of the parties' relationship. The conclusion that can be drawn from the evidence of the parties is that either a

valid marriage in accordance with Kamantan custom exists between them or they merely lived together and procreated in furtherance of a mere friendship. To this end, one sub-issue that needs to be addressed at this instance is the significance of the consent given by the Petitioner's father to what the Petitioner described as a marriage. Apparently, in order to avoid his daughter giving birth at home, the Petitioner's father opted to give her out to the Respondent in marriage, as perceived and described by her, despite the non-performance of her marriage rites, an act signified by the payment of the bride price. It can be deduced from the foregoing that under Kamantan custom, the consent of a lady's father is sufficient to create a valid marriage. It is also deducible that the payment of a lady's bride price is one of the requirements in the process of creating a valid marriage under Kamantan custom. It can also be deduced that the payment of the bride price can be postponed if the lady's father gives his consent and his daughter to the man who impregnated her but admits responsibility.

[8] Considering the foregoing, we are of the view that the non-payment of the bride price by the Respondent does not affect the validity of the parties' marriage under Kamantan custom and we so hold. Rather, the non-payment of the bride price by the Respondent speaks of his character seeing that he was comfortable living and procreating with another man's daughter without seeing the need to honour her parents who allowed him to take their daughter as wife. It is interesting that the Respondent's counsel submitted in his address that no marriage exists between the parties. If we are to countenance the Respondent's counsel's submission, wouldn't that be another firm foundation to ground the Petitioner's claim for damages?

[9] Having held that a valid marriage in accordance with Kamantan custom exists between the parties, this Court hereby dissolves it in accordance with the Petitioner's wish which was not objected to by the Respondent, not that such an objection would have mattered anyway as the express wish for a divorce by a spouse under customary law is sufficient to warrant the dissolution of the marriage. The parties cease to be husband and wife with effect from today, 9th January, 2025. They are admonished to relate peaceably with each other in the interest and benefit of their children who shall bear the consequential pains occasioned by their separation and this Order.

Question Two

[10] In proof of her claim for damages, the Petitioner, as PW1 testified that she has been the one solely taking care of the parties' children for the past 17 years after her separation with the Respondent. Her evidence that the children remained under her care after the Respondent married another woman and moved to Port Harcourt was not challenged under cross-examination. Even though the Petitioner was away from their matrimonial home after being sent away by the Respondent, it is indisputable that she has been there for her children. This much was attested to by DW2 who also averred that it was together that the parties built their matrimonial home. This sharply contrasts with DW1's testimony under cross-examination that he was the only one who built it. It is not in dispute that the parties lived together in the Respondent's family house where she gave birth to four children who were so used to their grandparents' house that they refused to move with the couple to their matrimonial home.

[11] In view of the Respondent's counsel's submission that the Petitioner has not established any cogent reason to be entitled to any amount of money as compensation or damages, we deemed it necessary to ask the following question:

[12] Firstly, must a wife make monetary contribution to the building of a matrimonial home before she owns a stake in it? We answer this question in the negative. A woman who was impregnated by a man and taken home to live with him and bear more children for him cannot be said to have made no contribution to the building of their matrimonial home. A woman, especially one married under customary law, is not a man's slave or a piece of property a man acquires for domestic chores and procreation that can be dumped at will without consequences. The dignity of women married under customary law is not an iota less than that of their sisters in statutory marriage. The reason is simple: they are all equal beneficiaries of the constitutional right to the dignity of person. See Section 34 Constitution of the Federal Republic of Nigeria 1999.

[13] It is disheartening and disturbing that a man sees nothing wrong in taking a woman away from her parents and dishonourably neglects to go and perform her marriage rites despite having four children by her. We are perplexed: how will such a man even have the moral standing to say that the woman has made

no contribution to the building of their matrimonial home? A woman who gave her all and was committed to her marriage to the extent of birthing four children with the Respondent cannot be said to have contributed nothing to the building of their matrimonial home just because she probably did not make any direct financial contribution that she can prove.

[14] Secondly, should the labours of the Petitioner as a homemaker and nurturer of the parties' children, who also met the Respondent's conjugal needs, be treated as the works of a mere maid or a mistress? Even sex workers, who neither bear children for the men they relate with nor perform chores in a matrimonial home amidst discharging parental duties to such men's children, get paid by their patrons. How much more deserving is a wife to be treated with dignity rather than ignominy such as having her personal effects thrown out of her matrimonial home in the full glare of her children and passersby and left to fend for herself for 17 years while the Respondent remarries and moves on with his life? How is such a woman expected to start life after giving her all to bearing and nurturing their children and also building their matrimonial home? A woman is not a baby-making machine or an inanimate home-keeping device to be used and dumped at will without consequences merely because she is married under customary law. No matter the degree of animosities or irreconcilable differences which may exist between spouses, care should be taken to treat each other as persons with dignity. Being married, especially married under customary law, does not and cannot reduce or take away the dignity of a woman.

[15] Thirdly, is it equitable to treat a woman, such as the present Petitioner, who gave her youthful and fruitful part of her life to a marriage with the Respondent, as undeserving of a compensation in the form of damages when the man she had hope to live together with forever no longer desires her as a wife and throws her out of their matrimonial home?

[16] Finally, can it, in good conscience, be held that a woman such as the Petitioner is undeserving of a compensation having lost the love of her life, the comfort of her matrimonial home and the opportunity to nurture her children as every mother would desire?

[17] As a way of treating women with the dignity they deserve and are constitutionally entitled to, a woman who is no longer desired by a man ought

to be compensated when the man sends her out of their matrimonial home empty-handed, especially the Petitioner in the instant case who was left to fend for herself and nurture their children for 17 years while being married to the Respondent. It is noteworthy that the provisions the Respondent said he made for his children is not the major constituent of what the welfare of a child entails as the “happiness of the child and his psychological development” are more important. See *Odogwu v. Odogwu* (1990) 2 NWLR (Pt.225) 539 at 559-560, paras. H-A. That was what the Respondent could not give as he was far away in Port Harcourt with another wife.

[18] Considering the evidence of the parties vis-à-vis the applicable laws, we answer the second question for determination in the affirmative. We find that there are express and deducible facts in the parties’ evidence to ground an award of damages to the Petitioner. We so hold. In order to affirm and protect the Petitioner’s dignity, despite being married under customary law, damages will be awarded to her. It is settled law that such damages, being general in nature, does not require to be claimed or proved before it can be awarded as the circumstance of a case can provide sufficient grounds for the making of the order. See *Pius Abur v. Alphosus Igbudu & Anor.* (2007) KCCLR-180 (CCA). Therefore, damages in the sum of N3million is hereby awarded in favour of the Petitioner against the Respondent. The whole sum she claimed could have been awarded to her but for the fact that she has children with the Respondent who will still be catered for. Moreover, she is also expected to make contributions, monetary or otherwise, towards the upkeep of their children as part of her motherly care.

[19] The sum of N100,000 is awarded as the cost of this action in favour of the Petitioner against the Respondent. The total judgment sum, N3.1million shall be paid within 30 days from today, 9th January, 2025. Interest at the rate of 10% shall accrue on the judgment sum until the whole sum is fully and finally paid.

[20] Any party that is dissatisfied with this decision may appeal to the Customary Court of Appeal, Kaduna within 30 days from today, 9th January, 2025.

Signed 09.01.2025

Signed 9/1/25