

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

UCCK/CV/28/2024

11TH SEPTEMBER, 2025

BEFORE:

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

**- JUDGE
- MEMBER**

BETWEEN

DANLADI SULE

- PETITIONER

AND

PHILOMENA YAKUBU

- RESPONDENT

JUDGMENT

The Petitioner sued the Respondent seeking the dissolution of their marriage which was contracted in accordance with Atyap custom in 2018. He also seeks the custody of their 6 year old child, Awesome. The Respondent, via her Counsel, C.E. Balanso, Esq. and P.K. Koni, Esq., denied the Petitioner's claims and counterclaimed the custody of the child. They also claimed damages in the sum of N1million for impregnating the Respondent out of wedlock, the sum of N200,000 for emotional and psychological traumas and the sum of N50,000 as costs of action. The Petitioner denied all their counterclaims.

In proof of his case, the Petitioner testified as Pw1 and called Emmanuel Bako, Sunday David and Jehoida Ezra as Pw2 - Pw4 respectively. The Petitioner tendered their marriage pictures which were admitted in evidence as Exhibits PP1 - PP17. The Respondent invited John Zamani, Ladi Yakubu, Damaris Jonathan, Lois Albert, Augustine Luka and Grace Yohanna Abin as Rw1 - Rw6 respectively. She testified as Rw7.

The crux of the Petitioner's case is that he is lawfully married to the Respondent with whom he has one child whose custody he seeks. Conversely, the nub of the Respondent's evidence is that there is no marriage between them and she also

seeks the custody of their child whom she had with the Petitioner who maltreated, molested and abandoned her.

In her final address, the Respondent's Counsel, C.E. Balanso, Esq. distilled two issues for determination as follows:

1. Whether there is a valid marriage between the Petitioner and the Respondent.
2. Whether custody should be given to the Petitioner.

However, we prefer to reconstruct, with slight modifications, the issues for determination as questions to be answered as follows:

1. Does a valid marriage in accordance with Atyap custom exist between the parties?
2. In whose custody will the best interest of the child be assured between the parties?
3. Is there sufficient and credible evidence in the Respondent's case to ground the award of damages for pregnancy outside wedlock?
4. Has the Respondent established a cogent case for the award of damages for emotional and psychological traumas?

Under Section 24 of the Customary Courts Law 2001, Customary Courts in Kaduna State are to apply customary laws, the principles of natural justice, equity and good conscience in civil adjudication. Disputes under customary law in the Customary Courts are to be determined based on common sense, simplicity, in accordance with substantial justice and devoid of technicalities. See Section 59 of the Customary Courts Law 2001 and *Agbasi v. Obi* (1998) 2 NWLR (Pt. 536) 1 at 14, paras. A-B. It is also permissible for Customary Courts to consider the totality of the evidence of the parties, irrespective of their claims, to deduce and justly resolve the actual issues in dispute. See *Ibrahim v. Abashe & Ors* (2014) KCCLR-24 (CCA). These authorities shall be operational in the mind of the Court as the framed questions are serially answered.

Question 1

Does a valid marriage in accordance with Atyap custom exist between the parties?

Pw1 testified that he and the Respondent got married and her family ceremoniously escorted her to his house. He asserted that he performed her marriage rites as Exhibits PP1 - PP17 depict. Among his witnesses, only Pw4 corroborated this piece of evidence. Pw2 admitted under cross examination that it was damages that they paid as the Respondent was pregnant. Under cross examination, Pw3 admitted to not knowing whether the Petitioner paid the Respondent's bride price or not.

On the other hand, Rw1 stated that the Petitioner performed the introductory rites only as their custom does not allow the payment of a pregnant woman's bride price until after she delivers. The witness added that up till date, the Respondent has not performed the deferred rites despite the fact that the Respondent had given birth. His evidence was materially corroborated by the testimonies of the Respondent's other witnesses.

At this point, we pause to ask: What is the status of the parties' relationship after the performance of the introductory rites with the consent of the Respondent's parents, an act which included the payment of the sum of N2,000? What is the legal effect of the demand for and the provision of subsequent items including grains for local beer, soft drinks, boxes, clothes, the blessing of the Respondent and her ceremonial escort to the Petitioner's house? Can it be said that these acts established a valid marriage between despite the non-performance of the Respondent's deferred marriage rites, particularly the payment of her bride price? We shall draw insights for our answers from the evidence of the parties.

As Pw1, the Petitioner described their relationship as a "marriage" because he performed the required introductory rites after expressing his desire to marry the Respondent. He also anchored his belief that he and the Respondent are married on the fact that her family required additional items from him after it was revealed that she was pregnant and subsequently took her to his house with

fanfare. Pw3 sees the parties as been “married”. Pw4 described the parties’ relationship as a “marriage”.

On the side of the Respondent, Rw1 (her uncle) averred that the Petitioner performed the Respondent’s introductory rites only and they “gave her to him.” The witness also stated that they advised the parties on how to “live as a couple.” He further described the Petitioner’s act of taking another woman, after his separation from the Respondent, as a remarriage. The term “remarriage” implies that he views the parties’ relationship as a marriage, a right which he told the Respondent she is at liberty to also exercise, if she so wishes. Under cross examination, Rw1 admitted that it was with their consent that the Respondent went to the Petitioner’s house and he saw her as the Petitioner’s “wife”.

Rw2 (Respondent’s mother) described the parties’ relationship as a marriage which the Petitioner threatened will end if the Respondent attended a burial. Rw3 stated that the Petitioner “married” the Respondent. Rw4 referred to the parties as being “married”. Rw5 (Respondent’s brother) holds the same view as Rw1 that the parties are married even though he stated under cross examination that the reason he cannot say the parties are married is because the Petitioner has not paid the Respondent’s bride price. Rw6, the Centre Manager of the Sexual Assault Referral Centre (SARC), Kafanchan to whom a case of gender-based violence was reported, described the Petitioner as the Respondent’s “husband”, a description most likely used by the Respondent in reference to the Petitioner in her complaint. Finally, the description of the life the Respondent (Rw7) lived with the Petitioner is apparently that of a couple who can be said to be married.

In the light of the above, the irresistible conclusion to be drawn is that the parties, and all the persons involved in their affairs, see themselves as being married. Significantly, the Respondent’s family consented to her going to the Petitioner’s house after he performed her introductory rites and provided the items they demanded. It is a fact that none of the witnesses described the Respondent as a sexual worker or a woman of loose virtue who lived with a man without being married to him. There is also no report that the parties’ neighbours or any member of the parties’ community viewed the Respondent as a wayward and

unmarried woman who was merely living and procreating with a man who is not her husband. It is also noteworthy that even the clergy man, the Reverend, who intervened to reconcile the parties, did not rebuke either the parties or their families for allowing the Petitioner and the Respondent to live an immoral life together as an unmarried couple. None of the witnesses described the parties as mere friends or ordinary cohabiting couples.

We further ask: What is the effect of the Petitioner's incomplete performance of the Respondent's marriage rites on the parties' relationship, particularly the non-payment of the deferred bride price? It is not uncommon among peoples in this area to defer the payment of bride price until after an unmarried lady, who conceived outside wedlock, gives birth. It is also a common practice, as attested to by some of the parties' witnesses, that families release their daughters, who conceive outside wedlock, to go and live with the man who accepts responsibility for the pregnancy. It is also not uncommon that a deferred bride price becomes due as damages if it remains unpaid as at the time a marriage ends. Were these not to be so, the woman's family will be entitled to sue the man for not merely impregnating their daughter out of wedlock but also living with her as a wife when he did not marry her. But that is not the case in the instant suit as the Respondent's family did not only accept the Petitioner's expressed desire to marry the Respondent but also expressly and consensually allowed him to perform a part of her marriage rites and deferred the completion of the remaining rites until after the Respondent gives birth.

In view of the evidence of the parties vis-à-vis the applicable Atyap custom regarding a woman who conceives outside wedlock, we answer the Question 1 in the affirmative. We find that a valid marriage in accordance with Atyap custom exists between the parties. We so hold. This is the only reasonable conclusion that can be reached in order to give proper effect to the Atyap custom. Obviously, the custom, which is common in this area, is aimed at protecting the dignity of the men and women allowed to live together after the woman conceives outside wedlock. For all intents and purposes, the man and the woman are validly and lawfully married despite the non-payment of the woman's deferred bride price.

Consequently, the parties' marriage is hereby dissolved with effect from today, 11th September, 2025.

Question 2

In whose custody will the best interest of the child be assured between the parties?

Rw1 averred that he collected the parties' child from the Respondent when she refused to follow him to the village after he decided that they should relocate. The child was recovered from him the next day. From then up till now, the child had been with the Respondent who enrolled him in a school and was doing her best to take care of him despite deliberately preventing the Respondent from taking up that and other responsibilities. The Respondent's evidence supported the testimony of Pw1 that she enrolled their child in school and have been providing for him from her income as a teacher and businesses. She did not rebut the Petitioner's evidence that she has been denying him access to their child and the opportunity to contribute to their child's welfare.

The law is settled that the welfare of a child is not limited to the child's education. In *Odogwu v. Odogwu* (1992) 3 NWLR (Pt. 215) 2, the Court held that:

“The welfare of child is not the material provision in the house – good clothes, food, air conditioners, television, all gadgets normally associated with the middle class, - it is more of the happiness of the child and his psychological development. While it is good a child is brought up by complementary care of the two parents living happily together, it is psychologically detrimental to his welfare and ultimate happiness and psychological development if maternal care, available, is denied him.”

It is a fact that maternal care is not a virtue that is the exclusive preserve of a child's biological mother. The evidence of the Petitioner that has remarried while the Respondent lives alone was supported by the evidence of Rw1. The Petitioner's testimony that he is a teacher and a farmer and now lives with his parents in their family house was also uncontroverted. The Respondent did not

also counter the evidence that she works and runs her business alone unlike the Petitioner now lives with his parents.

Considering the foregoing, Question 2 is answered in the affirmative. We reason that the parties' child will have a better family experience if he grows up in a complete family unit comprising a father and a mother under the shadow of his grandparents who will provide additional support in his upbringing. Therefore, the custody of the party's child is hereby granted to the Petitioner. The Respondent is hereby granted visitation rights to spend time with their child so that he will not grow up to forget her. The order for custody and visitation right is subject to review at the instance of the either of the parties or the Court pursuant to Section 27(2) of the Customary Courts Law, 2001.

Question 3

Is there sufficient and credible evidence in the Respondent's case to ground the award of damages for pregnancy outside wedlock?

As earlier established in this judgment, the Petitioner was required by the Respondent's family to return and complete the performance of the Respondent's deferred marriage rites, particularly the payment of her bride price, in accordance with Atyap custom. Seven years afterwards, the Petitioner is yet to do so. Without further ado, we answer Question 2 in the affirmative. We find that the Petitioner did not pay the Respondent's bride price. Therefore, the counterclaim for damages against the Petitioner for impregnating the Respondent outside wedlock succeeds. Consequently, damages in the sum of N1million is hereby awarded against the Petitioner in favour of the Respondent's family through the Respondent. As required by the Respondent's family, the damages must be paid by the Petitioner before he can take custody of the parties' child.

Question 4

Has the Respondent established a cogent case for the award of damages for emotional and psychological traumas?

Pw1 testified that he collected their child from the Respondent when she refused to follow him to the village. The narration of Rw4 and Rw7 that the Petitioner

assaulted the Respondent and she fainted in the process of doing so was not controverted by the Petitioner. The fact that the Petitioner had seized the Respondent's phone and smashed it was also uncontradicted. The evidence that the Petitioner has been beating the Respondent was also unchallenged. While the Petitioner has a right of access to their child at all times, he has no right to inflict harm on the Respondent in the course of exercising that right. It is unlawful to use self-help in the exercise of one's right.

In view of the foregoing, we answer Question 4 affirmatively. We find that the Petitioner had willfully subjected the Respondent to emotional and psychological traumas and we so hold. Therefore, the Respondent's counterclaim for damages for emotional and psychological traumas succeeds. Consequently, damages in the sum of N200,000 is awarded in favour of the Respondent against the Petitioner.

In the circumstance of this case, particularly the fact that the Respondent has been taking care of the parties' child, the award of general damages is justifiable in accordance with the principle in *Pius Abur v. Alphosus Igbudu & Anor* (2007) KCCLR-180 (CCA) where the Customary Court of Appeal held that general damages needs not to be claimed or proved but may be awarded if the facts of the case justifies it. Therefore, the sum of N200,000 is hereby awarded as general damages to the Respondent against the Petitioner.

Costs in the sum of N100,000 is awarded in favour of the Respondent against the Petitioner.

The total judgment sum, N1.5million, shall be paid within 30 days from today or as agreed between the parties. Interests at the rate of 10% shall accrue annually on the judgment sum until it is fully and finally paid.

Any party that is dissatisfied with this decision may appeal to the Customary Court of Appeal, Kaduna within 30 days from today, 11th September 2025.

Signed 11.09.2025

Signed 11/09/2025