

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON WEDNESDAY THE 20<sup>TH</sup> DAY OF MAY, 2020.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE .R.OSHO-ADEBIYI**

**SUIT NO. PET/125/2019**

**BETWEEN**

**BENJAMIN CHUKWUEMEKA AKACHUKWU -----PETITIONER**

**AND**

**PATIENCE CHIOMA AKACHUKWU -----RESPONDENT**

**JUDGMENT**

This petition is brought against the Respondent, Patience Chioma Akachukwu, by the petitioner Benjamin Chukwuemeka Akachukwu for a decree of dissolution of their marriage entered into on the 24<sup>th</sup> of February, 2006 on the ground that the marriage has broken down irretrievably. The grounds of the petition are as follows:

- a. That the parties to the marriage have lived apart for a continuous period of over three years immediately preceding the presentation of this petition.
- b. That the Respondent has caused the Petitioner to live in constructive desertion for a continuous period of at least six years immediately preceding the presentation of the petition.
- c. That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

d. That the Petitioner now finds it intolerable to live with and continue in marriage with the Respondent.

The record of this Court shows that judicial separation had been granted to parties and judgment given dated 12/11/2012 in Suit No. FCT/HC/PET/18/2010, which Petitioner instituted. The Counsel for the Petitioner on the 13<sup>th</sup> day of May, 2019 moved a Motion Exparte for leave to serve the Notice of Petition and all other processes of court in this suit on the Respondent by pasting same on the door of her shop and last known address being suite A6, Shakir plaza, Area 11, Garki, Abuja. The application was granted and the record of the Court shows that the Respondent was served accordingly. The Respondent did not appear in Court nor did a lawyer despite service of processes represent her and hearing notices on the Respondent. The petitioner at the hearing of the petition was the sole witness and adopted his witness statement on Oath dated the 7<sup>th</sup> day of February, 2018. The Petitioner tendered 6 exhibits as follows;

- i. A Certified True Copy of marriage certificate No: 23/2006 between the Petitioner and the Respondent dated 20<sup>th</sup> of March, 2019 admitted and marked Exhibit A.
- ii. Application for Judicial separation dated 17/11/2010 admitted in evidence and marked Exhibit B.
- iii. Judgment for judicial separation dated 12/11/2012 delivered and signed by Hon. Justice M. A. Nasir admitted in evidence and marked Exhibit C.
- iv. Two (2) photographs admitted in evidence and marked Exhibit D1 and Exhibit D2.
- v. Certificate of compliance with S. 84 of the Evidence Act admitted in evidence and marked Exhibit D3.

There was no cross-examination nor did Respondent defend her case because she did not attend Court proceedings.

The case of the Petitioner in summary is that he contracted a marriage with the Respondent at the Federal marriage Registry, Abuja Municipal Area Council on the 24<sup>th</sup> day of February 2006 and soon after the marriage their relationship turned sour and there was loss of love and compatibility. That the Respondent deserted him for a continuous period of at least one year and seven months immediately preceding the presentation of the first petition for judicial separation between the parties. That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and the Respondent has been persistently violent, abusive and disrespectful to the Petitioner. That the High Court of the Federal Capital Territory Abuja on the 12<sup>th</sup> day of November, 2012 granted an order of judicial separation of the marriage between the Petitioner and the Respondent and both parties have since been living separate and apart and all efforts to reconcile the marriage proved abortive. The Respondent has remarried and has a son from the marriage with another man and the Petitioner needs to move on with his life and have a family of his own. Petitioner also relied on same facts and evidence grounding the grant of judicial separation between the parties in 2012. There is evidence before this Court to show that originating processes and hearing notices were served on the Respondent. The Respondent is not in any way interested in defending this petition. The matter was adjourned to enable the Petitioner file his final written address, which he did through his Counsel on the 28<sup>th</sup> day of January, 2020 and raised a sole issue for determination as thus:

“Whether by the facts and circumstances of this case and on the preponderance of evidence before this Honourable Court, the Petitioner could be said to have proved his case as to be entitled to the reliefs sought”.

Learned Counsel submitted that it is trite law that a party claiming reliefs must adduce credible, convincing, positive and unequivocal evidence in support of his case and that the burden of proof in civil cases lies on he who asserts. Counsel submitted that in an action based on pleadings, the parties in their pleadings join issues and the existence and non-existence of a fact is said to be in issue if a party in his pleadings asserts the existence or non-existence of the facts and the other party denies it specifically, positively and unequivocally. Counsel submitted that the Respondent having not led any evidence to rebut the evidence of the Petitioner is deemed in law to have admitted the case of the Petitioner and such evidence admitted by the Respondent needs no further proof. Counsel further submitted that the entire evidence of the Petitioner was unchallenged and uncontroverted by the Respondent and the court is enjoined to give effect to such evidence. Counsel also submitted that given the unchallenged, uncontroverted and uncontradicted evidence of the Petitioner before the court, it is the duty of the Court to act on unchallenged and credible evidence. Counsel submitted that for a Petitioner to succeed in an action for dissolution of marriage, he must establish one or more grounds contained in Section 15 (1) (2) and Section 16 of the Matrimonial Causes Act, Laws of the Federation 2004. Finally counsel submitted that since the sole relief sought by the Petitioner is the dissolution of the marriage contracted by the parties so that the parties can have peace and security of their lives and lovely families, he urged the court to exercise its duty and grant same. Learned counsel relied on the following authorities;

1. **OLALEGE V. ADEJUMO (2005) 10 NWLR PT. 933 P. 436-477**

2. SECTIONS 131 AND 133 OF THE EVIDENCE ACT
3. DAGACI OF DERE V. DAGACI OF EBWA (2006) 7 NWLR PT. 979, P. 382 @ 499
4. ATOLEGBE V. AHORUN (1985) 1 NWLR PT. 2 P. 360
5. ATANDA V. ILIASU (2013) ALL FWLR PT. 681. P. 1469 @ 1482 PARAS. D
6. GENEVA V. AFRIBANK (NIG) PLC (2013) ALL FWLR PT. 702 P. 1652 @ 1679 PARAS A-B (SC)
7. SECTIONS 15 (1)(2)(C)(D), 16 (1)(B) AND 18 OF THE MATRIMONIAL CAUSES ACT
8. IGHRRERINOIVO V. S. C.C. NIGERIA LIMITED (2013) ALL FWLR, PT.700, P. 1240 @1250 PARAS. F-G
9. DE-JESE (NIG) LTD V. WEMA SECURITIES & FINANCE PLC (2014) ALL FWLR, PT. 710, P. 1408 @ 1420.

I have carefully studied this petition filed before this Court seeking to dissolve the lawful marriage conducted by the parties to this petition. The dissolution of marriage contracted pursuant to our marriage law is guided by **Matrimonial Causes Act, Cap 22, Laws of the Federation 2004** and under the said law, a petition by a party to a marriage for decree of dissolution of marriage (as in this case), one or more facts of which the petitioner must establish before this Court shall be that the marriage has broken down irretrievably. See **IBRAHIM VS IBRAHIM (2006) LPELR-7670(CA)**. In **EKREBE VS EKREBE (1999) 3 NWLR (PART 596) 514 AT 517**; Mohammed JCA held that for a divorce petition to succeed, the petitioner must plead one of the facts contained in **SECTION 15(2)(A) – (H) of the Matrimonial Causes Act**, and if the petitioner fails to prove any of the facts stated in law, the petition must be dismissed.

I have carefully examined all the papers filed in this Court, and properly scrutinized the unchallenged testimony of the PW1 and the position of the law is always that for any evidence that is neither attacked nor discredited, and is relevant to the issue, it ought to be relied upon by a judge. This is a Supreme Court holding in the case of **AMAYO VS ERINWIN ABOVO (2006) II NWLR (PART 992) AT PAGE 699**. It is trite law that where evidence given by another party to a proceeding has not been challenged by the other party who had the opportunity to do so, it is always open to the Court seised of the matter to act on such unchallenged evidence before it.

In view of all above, since there is ample proof that the parties have lived apart for 7 years after the judicial separation granted on the 12<sup>th</sup> of November, 2012. This marriage should therefore, in my opinion be dissolved in order to release the petitioner from the oath of marriage, having satisfied the requirement of the Matrimonial Causes Act, 2004 in **Section 15 (2) (c) and (f)**. In view of that, this Court hereby grants the prayer of the petitioner for decree of dissolution of his marriage to the Respondent accordingly. I so hold and I dissolve the marriage.

Consequently, it is hereby ordered as follows:-

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, BENJAMIN CHUKWUEMEKA AKACHUKWU, and the Respondent, PATIENCE CHIOMA AKACHUKWU at the Federal marriage Registry, Abuja Municipal Area Council on the 24<sup>th</sup> day of February 2006.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three months from the date of this order, unless sufficient

cause is shown to the court why the decree nisi should not be made absolute.

**Parties: Petitioner present. Respondent absent**

**Appearances: E. M. Asawalam, Esq., for the Petitioner. Respondent not represented.**

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE  
20<sup>TH</sup> MAY, 2020**