

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
DELIVERED ON THURSDAY THE 14TH DAY OF MAY, 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. PET/169/2019

MR. SOLOMON NDUJEKWU -----PETITIONER

AND

MRS. IJEOMA NDUJEKWU -----RESPONDENT

JUDGMENT

The Petitioner filed this petition dated the 5th day of March, 2019 seeking for a decree of the dissolution of the marriage he celebrated with the Respondent on 14/02/2017 at the Federal Marriage Registry, Ministry of Interior, FCT, Abuja on the ground that the marriage has broken down irretrievably, in that, since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

At the hearing Counsel to the Petitioner S. I. Igwe, informed the court that the Petitioner is finding it hard to serve the Respondent via courier as the Respondent has refused to acknowledge service, hence he therefore applied by motion Exparte No. M/9204/19 for substituted service by pasting at the last known address of the Respondent. While moving the motion the Court noticed that the last known address of the Respondent for service by courier in their motion exparte was different from the last known address of the Respondent in motion exparte No. M/9204/19 hence the Court called for explanation to that effect. The court not being satisfied with both the explanation of the Petitioner and his counsel, the Court granted the 2nd leg of the prayer to wit by pasting on the FCT High Court Notice Board with evidence of pictures of the said pasting and Respondent was duly served.

Petitioner adopted his witness statement on oath filed 08/01/2020 as his evidence in this case. From the facts deposed, it is the case of the Petitioner that he and the Respondent got married on 14/02/2017 at the Federal Marriage Registry, Ministry of Interior, FCT, Abuja. That since the marriage, the Respondent has been very disrespectful and had on several occasions travelled out of their matrimonial home without his knowledge and permission. That the Respondent deserted their matrimonial home for over a year. That the Respondent had behaved in such a way that he cannot reasonably be expected to live with her. That the Respondent has failed, neglected and utterly refused to render her matrimonial duties, conjugal responsibilities and obligation to the marriage. That the conduct of the Respondent shows that no love exists between her and the Petitioner anymore. That the conduct of the Respondent is cruel and has inflicted hardship on him.

In proof of Petitioner's case, Petitioner as PW1 tendered two (2) exhibits as follows;

- a. Marriage certificate dated 9/02/2017 issued by the Catholic Archdiocese of Abuja, Christ the King Parish Kurudu marked Exhibit A.
- b. Marriage certificate issued by Ministry of Interior No. 0000581 dated 14/02/2017 between the Petitioner and the Respondent marked Exhibit B.

The Respondent was served with the Petition and consequently hearing notices for adjourned dates. Respondent was never in court neither was she represented by a counsel nor did she file an answer to the Petition despite evidence of hearing notices served on her. Consequently, there was no cross-examination and defence by the Respondent.

The Respondent was foreclosed from cross examination on the 15th of January, 2020 and foreclosed from defence on the 4th of February, 2020 on the application of the counsel to the Petitioner due to the fact that the

Respondent did not honour the Court summons and defend himself. The matter was then adjourned for adoption of final written address. There was no child of the marriage.

The Petitioner adopted his written Address filed on the 24/2/2020 and raised three (3) issues for determination;

- i. Whether the Respondent has deserted the Petitioner for a continuous period of one year immediately preceding the presentation of the petition.
- ii. Whether the Respondent has been cruel to the Petitioner that the Petitioner cannot reasonably be expected to live with the Respondent.
- iii. Whether from the evidence adduced by the Petitioner the marriage between the parties could be held to have broken down irretrievably.

Learned counsel submitted that by the Respondent deserting their matrimonial home for more than one year without his consent is enough proof to establish desertion as provided by Section 15 (2) (d) of the Matrimonial Causes Act. Counsel further submitted that the Respondent did not object to the grant of a decree of dissolution of marriage as can be inferred from the fact that after all necessary court processes were served, the Respondent never filed an answer nor indicate any objection to the granting of the relief sought by the Petitioner under this ground and other grounds. He urged the Honourable Court to find that the conduct of the Respondent herein indeed amounts to the matrimonial offence of cruelty making it unreasonable to expect him to continue to live with the Respondent and thereby find that the marriage has broken down irretrievably. Counsel also submitted that it is clear from the evidence of the Petitioner that the Respondent indeed behaved

in a manner that is intolerable, unreasonable and such that the Petitioner cannot reasonably be expected to bear same and continue to live with the Respondent. Counsel further submitted that the evidence is unchallenged and that it is settled law that unchallenged evidence should be given full weight and value by the Court. He urged the court to grant the petition and dissolve the Petitioner's marriage with the Respondent. Some of the authorities he relied on are;

- i. **Oghenevbede v. Oghenevbede (1993) 3 U.I.L.R. 104, Sodipo v. Sodipo (1990) 5 W.B.R.N 98 AT 110.**
- ii. **Emecheta v. Ogueri (1997) 8 NWLR (pt. 516) 323 ratio 11**
- iii. **Iga v. Amakiri (1976) 11 SC 1**
- iv. **Obayemi v. Obayemi (1967) NMLR 212**
- v. **Basse v. Basse (1978) 10-12 C CHCJ 242**
- vi. **Ekerebe v. Ekebe (1993) 3 NWLR (Pt. 596) 514 CA.**
- vii. **Megwalu v. Megwalu (1994) 7 NWLR (Pt. 359) 718 etc.**

Having considered the evidence before this Court, I find a sole issue for determination;

“Whether the Petitioner has made up a ground to be entitled to the relief sought”.

The law is now settled that, there is only one ground upon which the Court could be called upon to decree for dissolution of marriage, i.e., that the marriage has broken down irretrievably; and the Court on hearing the petition can hold that the marriage has broken down irretrievably if the Petitioner can satisfy the Court of one or more of certain facts contained in Section 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act, 2004. Although evidence of Petitioner is unchallenged and uncontroverted the burden of proof imposed on the Petitioner under Section 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act must be fully discharged by the Petitioner.

The Petitioner has placed heavy reliance on Section 15 (d) Matrimonial Causes Act which states that;

“The Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the Presentation of the Petition”.

Hence in order to succeed the Petitioner must establish and prove the following facts;

- (a) Lack of just cause for the withdrawal from cohabitation
- (b) Intention of the deserting spouse to withdraw from co-habitation permanently.
- (c) Abuse of the consent of the deserted.

Desertion was defined in PERRY VS. PERRY (1952) 1 ALL ER 1076 @ 1082 as a total repudiation of the obligations of marriage. Hence where a Respondent as in this case deliberately separates or lives apart from the Petitioner, it will be termed and is so held as wilful desertion.

In this petition, the Petitioner has adduced evidence to the fact that shortly after the marriage, the Respondent became cruel to the Petitioner and has lived apart from the Petitioner for over a period of one year and has failed, neglected and utterly refuse to render her matrimonial duties, conjugal responsibilities and obligation to the marriage.

From the totality of the evidence of the Petitioner, he has found it intolerable to live with the Respondent. The Respondent not opposing this application in my view is not challenging the dissolution of marriage between him and the Petitioner. It would not be in the interest of the parties for them to remain married.

In my considered view, the evidence of the petitioner has satisfied the requirement of the Matrimonial Causes Act, 2004, in Section 15 (1) and 2 (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 and (2) (d) that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;

On the whole, it is my considered view that, the Petitioner having satisfied Section 15 (1) and (2) (C) & (D) of the Matrimonial Causes Act, 2004, and as things stand now, given that the Respondent has neither filed a defence nor controverted the petitioner's averments in cross-examination, the law is that the Court is bound to accept the Petitioner's narrative as true and act upon it. In **EN C. EMODI & ORS V. MRS. PATRICIA C. EMODI & ORS (2013) LPELR-21221(CA)** it was held that:

“Where therefore a plaintiff files his statement of claim raising an allegation of fact against the defendants or one of them, such defendant(s) who do/does not admit the truth of the allegation must file a defence to contradict, controvert, challenge or deny the allegation. Where no defence is filed, the defendant is deemed to have admitted the assertion and the court may peremptorily enter judgment against the defendant. See **AJIBADE V. MAYOWA (1978) 9-10 SC 1; OKE V. AIYEDUN (1986) 4 SC 61; MOSHOOD V. BAYERO (2001) 52 WRN 42**”.

Also in *Olale vs. Ekwelendu (1989) 7 SCNJ (Pt.2) 62 at 102* it was held that no one sets out to prove at the hearing what has not been challenged. Having regard to the evidence before me, I am satisfied that the marriage between the Petitioner and the Respondent has broken down irretrievably and it ought to be dissolved. Feeling fortified by these case law authorities, I find this petition as having been proved. It has merit and it succeeds.

I hereby dissolve the marriage and make the following orders:-

I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **MR. SOLOMON NDUJEKWU**, and the Respondent, **MRS. IJEOMA NDUJEKWU** at the Federal Marriage

Registry, Ministry of Interior, FCT, Abuja on the 14th of February, 2017.
Such 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: Absent

Appearances: S. I. Igwe for the Petitioner. No appearance for the Respondent.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
14TH MAY, 2020