

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 30 GUDU - ABUJA
DELIVERED ON THURSDAY THE 14TH DAY OF MAY, 2020.
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE .R. OSHO-ADEBIYI

SUIT NO.FCT/HC/PET/191/2019

BETWEEN:

MRS. PERPETUA NGOZIKA OHAJA-----PETITIONER

AND

MR. OHAJA OKEZIE CASIMIR-----RESPONDENT

JUDGMENT

The Petitioner filed this action against the Respondent on the 23rd day of March 2019, seeking the Court for:

1. A declaration of dissolution of Marriage contracted between the Petitioner and the Respondent on the 28th June, 2016 with certificate number; 1085 at the AMAC Registry, Abuja.
2. N400,000.00 being the cost of this petition.

The grounds upon which the dissolution is sought are:

1. Misrepresentation of facts and deceit
2. Desertion
3. That the marriage has broken down irretrievably in that the Respondent has since deserted and abandoned the Petitioner for

so long and has behaved in manners that the petitioner cannot reasonably be expected to live with the Respondent.

In proof of her case, the Petitioner filed a written statement on oath, which was adopted as her evidence. From the facts deposed therein, it is the case of the Petitioner that she and the Respondent contracted a marriage on the 28th day of June 2016 at the AMAC Registry, Abuja and tendered a copy of her Marriage Certificate, which was admitted and marked as Exhibit A.

Petitioner testified further that the Respondent deceived her into the marriage as she had vowed not to get married to any man who had previously married or had a child from any other woman, however, the Respondent lied, vowed and swore and maintained that he had never been married nor had a child from any woman elsewhere. That based on this stance, she married him and few months after the marriage, Petitioner discovered that the Respondent had 3 children from different women and deceived her into the marriage. That Respondent was confronted and initially denied but subsequently admitted same and apologized, which petitioner did not accept.

That Respondent deserted and abandoned the Petitioner since August 2016 and all efforts made by the Petitioner and members of her family to get in touch with the Respondent failed hence this application.

The Respondent was served with the Petition by substituted means on the Orders of this Court upon the application of Petitioner's Counsel and Respondent failed to file any Reply to the Petition neither did Respondent appear throughout the trial to cross-examine the Petitioner nor to defend the suit.

The Respondent was therefore foreclosed from cross-examining the petitioner and from putting forward any defence and the matter was adjourned for Petitioner's Counsel to adopt his written address.

The Petitioner's Counsel, Kelvin Nnamdi Okoro Esq., filed a written address and raised two issues for determination, thus:

1. Whether or not the suit was properly commenced and the Respondent, duly served with Petitioner's notice of petition and other processes in this suit
2. Whether or not the Petitioner is entitled to the reliefs sought in the Notice of Petition.

On issue number one, which is, "Whether or not the suit was properly commenced and the Respondent duly served with Petitioner's notice of petition and other processes in this suit.

Counsel submitted that this petition and all processes was validly filed and properly served on the Respondent who for personal reasons(s) failed or refused to file process or enter appearance from the commencement of this action. Submitted that from the petitioner's testimony before the Court, she stated the circumstances involved in the service of the Notice of Petition which prompted this Honourable Court, on the application of the petitioner's Counsel to grant an Order for Substituted service which was duly served in accordance with the Rules of this Honourable Court. Submitted that the law is clear that where personal service of process or other court document cannot be effectually served, it is a sufficient evidence of service to inform him of the nature of the document and leave same with him. Counsel relied on per LESTANG C.J in MARTINS vs. KOMOLAFE (1961) LLR 14. Counsel submitted

further that this Court should affirm the service and not to do technical justice to the detriment of substantial, substantive justice. Relied on AKPAN .Vs. BOB (2010) 17 NWLR PT. 1223 Pg. 421 at Pp. 478-479 paras. H-C and H.D.P Vs. I.N.E.C (2009) PT 1143 PG. 297 at P. 327, paras. B-D.

Counsel urged the Court to hold that this action was properly filed and all process duly served on the Respondent.

On issue number two, which is "Whether or not the Petitioner is entitled to the reliefs sought in the Notice of Petition.

Counsel submitted that the Petitioner's claim for a decree of dissolution of the said marriage on grounds of deceit, misrepresentation, intolerable behaviour, desertion, abandonment and the sum of N400,000.00 (Four Hundred Thousand naira) only, being cost of this suit have been admitted by the Respondent as Respondent neither denied them nor successfully discredited same by any evidence before this court. Counsel relied on N.S.I.T.F.M.B v KLIFCO NIG. LTD (2010)13 NWLR pt. 1211 pg. 307 at p. 332, paras. A-C Counsel urged the Court to hold that the Petitioner is entitled to the reliefs or claims as contained in the Notice of Petition before the Court and as corroborated by the oral testimonies of the petitioner.

The issue for determination in this case is **"whether Petitioner has successfully proved his case for dissolution of marriage"**

The law is settled that, the Respondent, having been served with all the processes and a date for hearing properly communicated to him, the Respondent can not be heard to complain that he was not granted fair hearing. In this case, the Petitioner's depositions are without an answer from

the Respondent. The Supreme Court in the case of Cameroon Airlines V. Otutuizo (2011) LPELR 82-(SC) Per Rhode- Vivour J.S.C held

" it is well settled that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the Court ought to act positively on the unchallenged evidence before it"

The evidence of the Petitioner in this case is not challenged or contradicted by the Respondent. The effect is that, the evidence of the Petitioner will be taken as accepted or established. See Agbasi V. Obi (1998) 1-2 SC 28 at 43; Adejumo V. Ayantegbe (1989) 6SC (Pt. 1) 76 and Ngene V. Igbo (1991) 7 NWLR (Pt. 203) 358 at 372. The fact that a marriage has broken down irretrievably is a sole ground for the presentation of a divorce petition, and the Court cannot make such findings unless one or more facts specified under Section 15(2) of the Matrimonial Causes Act, is or are proved.

Having examined the evidence of the Petitioner, it is my view that the ground upon which the Petitioner's petition would fall under is stated in Section 15(2)(d) of the Matrimonial Causes Act, which provides that a marriage may be dissolved if the Respondent has deserted the Petitioner for a continuous period of at least a year, immediately preceding the presentation of the petition. In the case of **Bede vs Bede** (1973) 3 U.I.L.R. p.104, the Court held that desertion is the separation of one spouse from the other with the intention on the part of the deserting spouse of bringing co-habitation permanently to an end without reasonable cause and without the consent of

the other spouse. Also, the Court in Anioke V. Anioke (2011) LPELR-3774 (CA) Per Oredola JCA held

“Thus to establish the allegation of desertion, a petitioner must establish: (a) Physical separation. (b) avowed or manifest intention to remain separated on a permanent basis. Absence of consent from the other spouse. Absence of any good, just cause or justification.....”

In the instant case, the facts in support of the evidence adduced, which is unchallenged and as such deemed admitted, is that the Respondent deserted the matrimonial home since August 2016, this culminates into physical separation; and all efforts made by the Petitioner and her family for the Respondent to return to the matrimonial home did not succeed. This also interprets that the Respondent has shown a manifest intention to remain separated.

I am therefore satisfied that, the Petitioner has adduced credible evidence in support of the fact that the Respondent deserted their matrimonial home with for a continuous period of more than one year immediately preceding the presentation of this petition. The marriage in my view has irretrievably broken down by virtue of the provisions of Section 15(2)(d) of the Matrimonial Causes Act as the intention of the Respondent deserting the Petitioner is to ultimately bring cohabitation to a permanent end without reasonable cause. The marriage has therefore broken down irretrievably solely on the fact of desertion and should be dissolved.

Consequently I hereby order as follows:

1. I hereby pronounce a *decree nisi* dissolving the marriage celebrated between the Petitioner, **PERPETUA NGOZIKA OHAJA** and the Respondent, **OHAJA OKEZIE CASIMIR**, contracted on the 28th June, 2016 with Marriage Certificate number; 1085 at the AMAC Registry, Abuja.
2. I hereby pronounce that the *decree nisi*, shall become absolute upon the expiration of three months from the date of this order.
3. Cost of N200,000.00 (two hundred thousand Naira) only, is hereby awarded against the Respondent.

PARTIES: Parties are absent.

APPEARANCE: V. C. Adorma for the Petitioner.

HON. JUSTICE M. R. OSHO-ADEBIYI

JUDGE

14TH MAY 2020