

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/PET/87/16

BETWEEN:

SONIA OLUWASEUN OYEFESO.....PETITIONER

VS

OLUWASEUN OYEFESO.....RESPONDENT

JUDGMENT

By a Notice of Petition dated 21/4/2016 but filed on 22/4/2016, the Petitioner – Sonia Oluwaseun Oyefeso prays the court the following reliefs as contained in Paragraph 12 of the Petition as follows:-

- (a) A Decree of Dissolution of Marriage with the Respondent that the marriage has broken down irretrievably and also on the ground that since the marriage the Petitioner and the Respondent have lived apart for a period of more than three years and that the Respondent has deserted the Petitioner or a period of more than one year.

The facts relied on by the Petitioner as constituting ground for the court to dissolve the marriage are those facts contained in Section 15 (2) (a) (b) (c)

(d) (e) and (f) of the Matrimonial Causes Act as gleaned from the pleadings and evidence before this court.

The Petition was served on the Respondent with leave of court by substituted means to wit by pasting at No. 27, Block B, Limpopo Crescent Maitama, Abuja, Respondent did not file an Answer to the Petition, was not represented by counsel and was absent throughout trial. The matter thus proceeded as undefended.

The Petitioner testified as PW1 and stated that she was lawfully married to the Respondent and they both lived at Plot 1151 Danube Street Maitama Abuja, before living for USA in 2005 where they lived until 2013, before relocating to Nigeria.

PW1 stated further that co-habitation between the parties ceased in March 2013 a period of 3 (Three Years) before filing the Petition. The marriage did not produce a child but Petitioner had 2 children from her previous relationship.

She stated that

“Respondent lost interest in the relationship, the Respondent was having marital affairs with my friend, hiding information from me, also with my house help and also having affairs with some of my business partners. I believe that because of lack of children made him lose interest. On abuse, the Respondent was mentally abusing me in the manner he talks to me in front of people. He was very strong headed and difficult person.

I tried to win back by first resigning from my job to be a full-time house wife to give him more time. I tried to take in and did a lot of medical test to see if getting a child would help the situation”

PW1 also told the court that the parties had no sexual relationship three years before filing the Petition, and that both of them were incompatible, because the Respondent was deceitful and Petitioner was open. Petitioner found that the Respondent exaggerated all the things he told her and they were all untrue. Respondent lied to her to come back from America in 2013 to repair the marriage but when Petitioner came back to Nigeria, she found out that it was a lie as they had nowhere to stay.

Testifying further PW1 – Petitioner stated while exposing the financial dealing of the Respondent that;

“Yes, the first was in USA using my Company Sonia VOU Book LCC incorporated in USA for Real Estate business and payment made into the account, all monies collected did not bring houses for those who paid and they made complaints to the EFCC against my Company name. The company went into bankruptcy and banned for 7 years from doing business and had to do other jobs to keep myself and children, secondly when I got back to Nigeria, he convinced me to raise funds for him to do business but turned out to be a lie. He was unable to pay back those monies raised and the people came after me, currently there is a case in court in Federal High Court where I went to sue for Fundamental Rights”

PW1 - Petitioner now wants the court to dissolve the marriage.

In the course of the Evidence-In-Chief of PW1 the following documents were tendered and admitted as evidence.

- (1) Certified True Copy of Marriage Certificate No. 1998/2002 and an affidavit of application for Certificate evidencing marriage celebrated at the Jos North Marriage Registry in Jos Plateau State on 10/8/2002 collectively admitted as Exhibit "A1 – A2".
- (2) The Originating Summons in respect of Mrs. Sonia Wash Pam Oyefeso Vs Nigerian Police & Ors in Suit No: FHC/ABJ/CS/251/2018 admitted as Exhibit "B".

At the close of the evidence of PW1- Petitioner on 20/6/2019 the case was adjourned for the Respondent to Cross-examine PW1, but the Respondent failed to present himself in court and was not represented by counsel, when the matter came up, upon the application of the Petitioners counsel the Respondent was foreclose by the Order of Court and case was adjourned doer Adoption of Final Address.

The Petitioner's counsel filed their Final Written Address dated on 5/3/2020 and adopts same as oral argument in support of the Petition on 30/11/2020. In the said Written Address Ngozi Ufelle Esq formulated a sole issue for determination that is;

"Whether this Honourable Court ought to grant the relief praying for the dissolution of the marriage in this Petition on the ground that same has broken down irretrievably"

Submits that a Petitioner in filing a Petition must plead and prove that the marriage between them has broken down irretrievably and in so doing must rely on one or more of the facts stated in Sections 15 (2) (a – h) of the Matrimonial Causes Act. Refer to *Ekrebe Vs Baghwarhe Ekerbe & Anors* (1999) 3 NWLR (PT. 596) 514 @ 523 *Akinbuwa Vs Akinbuwa* (1998) 7 NWLR (PT. 559) 661 @ 669 Para D – E.

Submits further that the Petitioner relies on the grounds and facts contained in Section 15 (2) (a) (b) (c) (d) and (f) of the Matrimonial Causes Act and has led evidence in proof of these grounds. Refers to *Bibilari Vs Bibilari* (2011) 13 NWLR (PT. 1264) 2017 @ 224 Paras G – H; *Omotunde Vs Omotunde* (2002) 1 SMC @ 255 @ 29 lines B – C and *Ezeaku Vs Okonkwo* (2012) 4 NWLR (PT. 1291) 529 @ 555 Paras D – F.

Submits finally the Respondent did not challenge the evidence of the Petitioner in proof of the Petition therefore court should accept the unchallenged and uncontroverted evidence of the Petitioner and give Judgment in favour of the Petitioner. Refer to Order 21 Rule 9; Order 32 Rule 3 of the High Court of the FCT (Civil Procedure) Rules 2018, *BUA Vs Dauda* (1999) 12 NWLR (PT.629) 59 @ 73 – 74 Paras H – A. *Ogbiri Vs N.A.O.C Ltd* (2010) 14 NWLR (PT. 1213) 208 @ 24 Paras D – E *Olateju Vs Comm L & H Kwara State* (2010) 14 NWLR (PT.1213) 297 @ 321 Para A, *Olowu Vs Building Stocks Ltd* (2018) 1 NWLR (PT.1501) 343 @ 398 Para A and *Ajidahun Vs Ajidahun* (2000) 4 NWLR (PT. 654) 612 Paras C – D. Urge court to dissolve the marriage.

Having carefully considered the submission of counsel to the Petitioner, the Statutory and Judicial authorities cited as well as the unchallenged evidence of PW1 – the Petitioner, the court find that only one (1) issue can be distilled from all of these for determination;

“Whether the Petitioner has successfully made out a ground for the grant of the relief sought”.

Firstly, the Respondent who was served with the processes and Hearing Notices did not file an Answer to the Petition and did not challenge the evidence of the Petition. The implication of this is that, the court will deem the unchallenged and uncontroverted evidence of PW1 – Petitioner as true and correct and act on it. See the case of CBN Vs Igwilo (2007) 14 NWLR (PT. 453) 217 @ 1222. In the case of Afribank Ltd Vs Moslad Enterprises Ltd (2008) ALL FWLR (PT. 421) 879 @ 894 paragraph E – F.

Akaahs JCA (as he then was) had this to say;

“Where a Defendant does not produce evidence or testify or call witness in support of defence slight or minimum evidence which can discharge the onus of proof would be required to ground the Plaintiff’s claim”

However, such unchallenged and uncontroverted evidence must be credible enough for the court to act on it. See Zeneca Ltd Vs Jagal Pharm Ltd (2007) ALL FWLR (PT.387) 938 @ 950 paragraphs F – G.

Now, in the determination of a Petition for dissolution of marriage under Section 15 (1) of the Matrimonial Causes Act, it is competent for a

marriage to be dissolved once a court is satisfied that the marriage has broken down irretrievably and to come to that conclusion, the Petitioner must prove to the reasonable satisfaction of the court any of the facts as prescribed by Section 15 (2) of the Matrimonial Causes Act categorized under sub-section A – H.

In this Petition, the grounds relied on by the Petitioner are those facts contained in Section 15 (2) (a) (b) (c) (d) and (f) of the Matrimonial Causes Act. On the ground of Section 15 (2) (a); "That the Respondent has willfully and persistently refused to consummate the marriage".

To succeed the Petitioner must prove the acts of the Respondent of willful and persistently refusing to consummate in her testimony, PW1 led evidence that sexual relationship between the parties ceased three years before filing the Petition. And Respondent claimed that he was having medical challenged and that the medication he was taking affects his sexual ability. This piece of evidence in my opinion does not sufficiently establish any act of willful or persistent refused on the part of the Respondent, thus this ground cannot avail the Petitioner.

On the ground of Section 15 (2) (b), "That the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent, although Petitioner led evidence of the Respondent having extra-marital affairs, Petitioner failed to join the co-adulterer which is a mandatory condition to succeed under this ground as required by Section 32 (1) of the Matrimonial Causes Act; failure to join the co-adulterer makes this ground

incompetent abinitio, the evidence led in support of this ground goes to no issue therefore this ground cannot also avail the Petitioner. I so hold.

Petitioner relies on Section 15 (2) (c) which reads; that since the marriage the Respondent has behaved in such a way that the Petitioner cannot be reasonably be expected to live with the Respondent.

To succeed under this ground, the Petitioner must lead evidence to the reasonable satisfaction of the court of such particular acts or conduct of the Respondent which would warrant the grant of the relief sought and such act must be weighty and grave in nature to make further co-habitation virtually impossible; see the case of Ibrahim Vs Ibrahim (2007) ALL FWLR (PT. 346) 474 @ 489 – 490 Para H – B.

In this instant case, PW1 – Petitioner gave evidence of catalogue of acts of the Respondent which she cannot reasonably be expected to live with such as the Respondent's acts of abusing her mentally his loss of interest in the marriage , Respondent extra-marital affairs with her friends, house helps and business partners and also hiding information from her, reckless financial dealings which led to her company being banned for 7 years and bankruptcy of the company, as well as evidence of the deceitful nature of the Respondent. The court finds all of these pieces of evidence as weighty and sufficient to make co-habitation between the parties impossible and thus hold that the marriage has broken down irretrievably.

On ground of Section 15 (2) (d) (f) of the Act relied on;

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

Section 15 (2) (f) reads;

“That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition”

In all of these the Petitioner’s evidence is that co-habitation between the parties ceased in March 2013 a period of three years before filing the Petition. The Petitioner also informed court that sexual relationship between them ceased three years before the Suit was filed. In the case of *Nnana Vs Nnana* (2006) 3 NWLR (PT.966) 1 at 10 Ratio 3 the court held that the desertion within the meaning of Section 15 (2) (d))e) (f) of the Matrimonial Causes Act must be one where any of the parties abandons and forsakes without any justification thus renouncing his or her responsibilities and evading its duties. The parties having ceased co-habitation for three years and the Respondent having failed in his responsibilities for same period of time as stated in the unchallenged and uncontroverted evidence of the Petition, this court holds that these grounds avail the Petitioner as grounds for court to hold that the marriage has broken down irretrievably.

From all of these and having proven to the reasonably satisfaction of the court facts relied upon for the dissolution of marriage this Petition succeed. Accordingly, Judgment is entered in favour of the Petitioner as follows’

- (1) The marriage celebrated at Jos North Marriage Registry, Jos Plateau State on 10/8/2002 under the Marriage Act; between Soina Oluwaseun Oyefeso – the Petitioner and Oluwaseun Oyefeso – the Respondent has broken down irretrievably and hereby pronounce a Decree Nisi dissolving the marriage between them.
- (2) This Order shall become absolute after three (3) months from the date of the Judgment.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

18/2/2021

NGOZI UFELLE ESQ FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT