

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.**

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.

SUIT NO.FCT/HC/PET/056/2018

BETWEEN:

BENJAMIN ANOZIE UKWUOMA --- PETITIONER

AND

CORDELIA IFY UKWUOMA --- RESPONDENT

JUDGMENT

DELIVERED ON THE 5TH FEBRUARY, 2021

The petitioner filed a petition for the dissolve of her marriage to the Respondent on the ground that the marriage between the petitioner and the Respondent has broken down irretrievably. the petition was filed on the 19th December, 2017. The Respondent was served with the petition but did not file any answer to the petitioner's petition. This petition therefore is heard as an undefended petition. 8th May, 2019 the petitioner gave evidence as PW1. In the cause of this evidence the petitioner tendered two exhibits PP1 and Pt1 and close his case.

There after counsel for the petitioner filed and moved his written address which he adopted as his oral argument on 7th July, 2020. I have carefully read the processes filed by the petitioner. I have also

carefully read the evidence adduce by the petitioner and the exhibits tendered by the PW1. In equal manner,

I have critically study the address of counsel to the petitioner. This petition was filed by the petitioner against the Respondent on the grounds that the marriage between the petitioner and Respondent has broken down irretrievably.

The facts relied upon by the petitioner in urging this Honourable court to hold that the said marriage has broken down irretrievably, is that the parties have lived apart for a continuous period of 14 years preceding the presentation of the petitioner's petition. The law is settled that the only ground upon which the court can grant a decree of dissolution of marriage is if and only if the marriage has broken down irretrievably. This is as provided in S. 15(1) of the M.C.A see **Innocent Ugwumba Eluwan V Florence Ogadinma Eluwa (2013) LPELR 22120 C.A** a court will hold that a marriage has broken down irretrievable if the petitioner proves the existence of only one of the several conditions spelt out in S. 15(2) of the M.C.A.

By virtue of the combined effect of the provisions of S. 15(1), and (2)(a)(c)(d) and (F) of the M.C.A. cap M7 LFN 2004 (MCA), a court hearing a petition for decree of dissolution of marriage shall hold that the marriage has broken down irretrievably if the petitioner satisfies the court of one or more of the listed facts relating to inability to

consummate the marriage, intolerance behavior, desertion, or having lived apart for 3 years.

The facts upon which the petitioner is relying to seek for the decree of dissolution of the marriage between the petitioner and the Respondent is that the parties have live apart for a continuous period of at least 3 years immediately preceding the presentation of the petition. In his testimony as PW1, the petitioner gave evidence as follows:

“I was living peacefully with the respondent until year 2000 when she asked me to moved out of the house. In 1999 while we were still living in lagos she sought transfer from NTA to Abuja and it was granted. We got an apartment at Asokoro for reason best known to her as at October 2000, while we were at Asokoro house, she told me to moved out. All effort made by my family and even the church to make her to change her mind so that we continue to live as husband and wife failed till date. We have been leaving apart separated since that time i.e. this is the 19th years now she had never come to live with me nor allow me to access her abode.”

I have gone into several pains in the marriage and it’s obvious that we can no longer live together as husband and wife anymore. That’s why I come to court to dissolve the marriage.”

The above piece of evidence is uncontradicted I take it as the true, facts in this case. Proof in civil matters are on the preponderant of evidence. By the provision of S. 15(2)(F) M.C.A a marriage will be

deemed as having broken down irretrievably where the parties to the marriages have lived apart for a continuous period of at least three (3) years immediately preceding the presentation of this petition.

The provision is mandatory and allows the court no discretion to exercise. The provision has the factor of absence of fault element characteristic of other matrimonial offences. Jurisprudentially as far as S. 15(2)(F) is concerned, the law is not interested in right or wrong, or the guilt or innocence of the parties. Once the parties have lived apart for the stipulated time i.e. a continuous period of at least three years immediately preceding the presentation of the petition, the court is bound to grant a decree. On the forgoing, see the case of **Omotunde V Omotunde (2001) 9 NWLR (Pt 718) 250 at 284**. Thus for provision to avail, the three or more years period of separation as decided in **Agunwa V Agunwa (1972) 2 ECSR 41** must have been continuous, and it must have occurred immediately before the presentation of the petition.

From the evidence adduce by the PW1, the parties have live apart from each other for a continuous of 17years prior to the presentation of this petition on 9th December, 2017. This condition of living apart from each other commence in October, 2000 and has not abated. This is more than 3years. I hold that the petitioner has satisfied the provision of S. 15 (2)(F) M.C.A in the light of this, I have no difficulty in holding that the marriage between the petitioner and respondent

has broken down irretrievably and I think the appropriate Order to make is that of a decree that the marriage between the petitioner and respondent contracted under the Act at our savior church Lagos, a licensed marriage registrar on the 15th day of October, 1994; with certificate of marriage No. 35/94, be and is hereby dissolved.

This is the judgment of the court.

APPEARANCE

Chijoke Dike Esq. for the petitioner

The respondent is absent in court.

Sign
Hon. Judge
05/02/2021