

**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.

PETITION NO: FCT/HC/BW/PET/70/2020

BETWEEN:

EMENIKE GEORGE ASIDANYA --- PETITIONER

AND

NKIRU CHRISTIANA ASIDANYA ---

RESPONDENT

JUDGMENT

DELIVERED ON THE 5th March, 2021

By a Petition dated and also filed on the **27th of November, 2020** for a Decree of Dissolution of **Marriage entered into on the 27th day of April, 2013** as between himself and the Respondent, the Petitioner prayed the Court for these reliefs:

1. **A DECREE** for the dissolution of marriage between the petitioner and the respondent celebrated at ST. BATHOLOMEW CATHEDRAL Church Kubwa, Abuja on the 27th day of April, 2013, according to Christian rites, on the grounds that the marriage has broken down irretrievably by the reason of the respondent's Cruelty, Threat to life, Desertion, exceptional depravity, Public humiliation and embarrassment and Exceptional hardship against the petitioner.

I note that the Petition is accompanied by the Petitioner's witness verifying affidavit of seven (7) paragraphs, Certificate relating to Reconciliation and Certificate of Marriage. The Respondent, who was served by substituted means by Order of this Honourable Court, the

service of which has been satisfactorily evidenced before this Court, filed no Answer to the Petition.

FACTS OF THE CASE:

At paragraph Nine (9) of the Petition, the cascading facts around which this petition is woven are detailed as follows:

A. CRUELTY:

- i. The respondent has never paid any attention to the emotional needs of the petitioner
- ii. The respondent is never there for the family
- iii. The respondent has never been there for the petitioner any time he needs the support of the respondent

B. THREAT TO LIFE:

- i. The respondent has been threatening to kill the petitioner with food poison and dangerous weapons

C. DESERTIONS:

- i. The respondent has deserted the petitioner at least seven months immediately preceding the presentation of this petition

D. EXCEPTIONAL DEPRAVITY AND EXCEPTIONAL HARDSHIP:

- i. The respondent has failed to, and refused to live up to her responsibility as a wife and has persistently refused to allow the petitioner to have sexual intercourse with her, thereby depriving the petitioner of his conjugal right as his wife for the past four years. The respondent has related with petitioner in such a dishonest and cunning way characterized by lies, thereby causing so much distrust and insecurity to the petitioner, such that the petitioner cannot

be reasonably expected to continue to bear nor live with the respondent.

- ii. The respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with her again.
- iii. The respondent is always giving the petitioner public disgrace and embarrassment.
- iv. The marriage has broken down irretrievably.

I have reviewed the facts as reproduced above. I earlier noted that this Court, on the **7th day of December, 2020**, after hearing the application of the Petitioner as moved by **Remekalo Mudiakolo, Esq.**, entered an Ex-Parte Order granting leave to the Petitioner/Applicant to serve the Respondent with the originating court processes together with the hearing notice through substituted service by pasting same on the door of the Respondent's last known address being **plot 89, Bakori Road, Kubwa, FCT, Abuja**. By the said Hearing Notice, the 27th day of January, 2021 was fixed for the hearing of this petition. On the day of hearing, while the petitioner and his counsel were in court, neither the respondent nor her counsel was in court.

There is a plethora of cases to the effect that uncontroverted facts contained in an affidavit are taken as true in law and they therefore form the agreed facts of the case between the parties. In affirmation of this excellent legal postulation of venerable antiquity, the Supreme Court, speaking through the indomitable jurist Iguh, J.S.C, in the memorable case of **Long-John &Ors v. Blakk & Ors (1998) LPELR-1791(SC)** had this to teach us;

“It is trite law that where facts provable by affidavit evidence are duly deposed to in an affidavit by a party to a suit, his adversary has a duty to controvert those facts in a counter-affidavit if he disputes them otherwise such facts may be regarded as duly established.”

In the same tone and tenor, the Court in *Harding & Anor v. AG & PT Lagos State (2016) LPELR-40990(CA)*, Per Gorgewill, J.C.A., confirmed and applied this principle thus;

“All these facts were not even in dispute as the Respondents did not controvert these depositions in the affidavit and further affidavit evidence of the Appellants and thus in law the Court below ought to have acted on them as they are good evidence on which the Court should act having not been controverted by the Respondents. This is so because in law facts deposed to in an affidavit which are not controverted must be taken as true and duly established except they are palpably false. See *Alagbe v. Abimbola* (1978) 2, SC 39. *Egbuna v. Egbuna* (1989) 2 NWLR (Pt.106) 773; *Yahaya v. FRN* (2007) 29 WRN 127.

What is more, I am bound to accept the factual matrix of this petition as advocated by the Petitioner, who deposed to an affidavit in verification of same as true, correct, unchallenged and established, **Egbuna v. Egbuna (supra)**. I have seen no reason to consider them to be palpably false, **Yahaya v. FRN (supra)**, therefore they stand, **Alagbe v. Abimbola**.

On the above premise and being guided by the **Matrimonial Causes Act and the Rules** made there under which guide proceedings of the specie I am now dealing with, I believe that the petition as presented by

the petitioner deserves the success characterized by the grant of Decree Nisi for the dissolution of the acutely troubled marriage.

This award I now make. I pronounce a DECREE of Order Nisi granting the sole relief which this petition has tabled for the Court's consideration in the terms prayed by the petitioner.

I shall adjourn this matter to the next six calendar months in line with the demands of the law as a prelude to the entering of the Decree Absolute for the dissolution of the marriage.

This is so as the requirements of the law that within the intervening period, the petitioner or the respondent will be at liberty to make any applications which the prevailing circumstances may impel the determination of which may or may not make the Decree Absolute necessary.

It is my Order that the Petitioner in this Petition shall supply the telephone number and email address(es) of the respondent to the Registrar of this Honourable Court, **within Forty-Eight (48) hours of the delivery of this Order Nisi**, for IMMEDIATE electronic transmission of both the Records of Proceedings of this Court together with this Order Nisi just granted by the Bailiff of this Court. Upon effecting such electronic transmission of the Records of Proceedings and this Order Nisi just granted, the Bailiff shall endeavour to file an affidavit of service (with exhibits of email and or Whatsapp delivery of the specified processes) to that effect immediately.

In the same manner, the Petitioner, through his Counsel shall endeavor to effect electronic service of the Court's Record of proceedings and the Order Nisi just granted on the respondent and file an affidavit of

electronic service to the same effect and exhibit properly the Whatsapp and email delivery of same to the Respondent's email address(es) and telephone number **within Fourteen (14) days of the grant of this Order Nisi.**

Consequentially, this matter is **adjourned to the 4th day of October, 2021** for hearing on making the Order Nisi already granted absolute.

This shall be my Ruling which I reserved on the 28th day of January, 2021.

APPEARANCE

Remekalo M. Esq. for the Petitioner

Respondent not in court.

Sign

Hon. Judge

05/03/2021