

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI-YUSUF
DELIVERED THE 29TH MARCH, 2021
FCT/HC/PET/481/2020**

BETWEEN

STANLEY TOCHUKWU OKEKE.....PETITIONER

AND

LINDA AMAKA UYANNARESPONDENT

JUDGMENT

The Petitioner took out this petition on the 5th of October, 2020 against the Respondent seeking for the following reliefs:

- a) The Decree of dissolution of the marriage between the Petitioner and the Respondent.
- b) And for such further Order or Orders as the Honourable Court may deem fit to make in the circumstances.

The grounds for seeking the dissolution of the marriage are:-

The marriage between the Petitioner and Respondent has broken down irretrievably because;

- a) The Respondent has lived apart from the Petitioner for the continuous period of two (2) years preceding the presentation of this Petition and the Respondent does not object to a decree being granted.
- b) The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

The Notice of Petition was served on the Respondent on the 10/11/2020 and the matter was set down for trial. The Petitioner as Pw1 testified for himself on the 20th January, 2021. He adopted his witness statement on oath filed on the 3/12/2020 as his oral testimony before the court. It is contained in the witness statement on oath thus:

The marriage certificate issued to the parties on the 11th March, 2017 was admitted in evidence and marked Exhibit A. At the close of evidence, the Respondent counsel opted not to cross examine the Pw1 and also waived his right to defend the matter. Learned counsel to the Petitioner prayed the court to adjourn for

adoption of final written address. Hence, matter was adjourned to the 16th February 2021.

On the adjourned date, the Respondent counsel and the parties were absent. Rowland Udemezue Esq. appeared for the Petitioner. The Petitioner's counsel settled a final written address dated and filed the 29th January, 2021 wherein he formulated [2] two issue for determination, that is;

- a. Whether the petitioner successfully proved his case to show that their marriage has irretrievably broken down hence entitling the dissolution of the marriage between the Petitioner and the Respondent
- b. Whether the Petitioner has made out a case entitling him to the reliefs sought.

Learned Counsel to the Petitioner in arguing the two issues submits that the evidence of the Petitioner being unchallenged and uncontroverted shows that both parties have found it intolerable to live with each other; that the marriage has broken down irretrievably. He relied on the case of **NANNA V NANNA (2006) 3 NWLR [PT. 966]** he submits that the court has the jurisdiction to grant

a decree of dissolution of the marriage. He states that the onus is on the petitioner to satisfy the court that he is entitled to divorce on the ground that the conditions of the marriage makes it intolerable for the parties to continue to live together. He referred to the case of **INSURANCE BROKERS V A.T.M CO. LTD (1996) 8 NWLR [PT. 466]** and some other authorities. Counsel to the Petitioner reiterates the fact that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her.

He submit further that the Respondent having failed to file defence, lead evidence or contradict the evidence of the Petitioner, that the Petitioner has made out a case and therefore entitled to Judgment. He made reference to **ETENE V NYONG & ORS (2012) LPELR 8031 [CA]** and some other authorities. Counsel to the Petitioner urged the court to enter Judgment in favour of the Petitioner.

I have carefully gone through the evidence before the court as well as the submission of counsel to the Petitioner; I shall adopt the issue [A] raised by the Petitioner's counsel as same is

sufficient to resolve the reliefs sought. In determining a petition for dissolution of marriage under s.15(1) Matrimonial Causes Act, once the court is satisfied that the marriage has broken down irretrievably, then the court can go ahead to dissolve same.

Section 15(1) A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts:

(a) that the respondent has willfully and persistently refused to consummate the marriage;

b. that since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

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;

d. that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;

e. that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;

f. 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;

g. that the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;

h. that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

In **IBRAHIM VS IBRAHIM (2007) 1 NWLR Pt. 1015 Pg. 383**, the Court of Appeal held thus:

“Dissolution of marriage contracted pursuant to our marriage law is guided by Matrimonial Causes Act, Cap. 220.

Under the said law, a petition by a party to a marriage for a decree of dissolution of marriage may be presented by the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably. See Section 15(1) of the Matrimonial Causes Act.”

In the instant case, the facts relied upon by the Petitioner as constituting the ground for the dissolution of the marriage as thusly stated in the Notice of petition are that:

- i. The Petitioner and Respondent got married on the 11th of March, 2017 in Abuja, within the jurisdiction of this Court
- ii. The Petitioner and the Respondent met sometimes in 2015 in Abuja
- iii. The Respondent moved into the Petitioner apartment at Flat 2, Block 6, A3, Block 6, Kabusa Garden Estate, Lokogoma, Abuja and lived with him since they got married sometimes in 2017.
- iv. The Petitioner found out immediately after their marriage that they are incompatible on the premise that little things flay the uncontrollable anger of both Petitioner and the Respondent.
- v. That the Petitioner and the Respondent are usually in unrelenting argument on daily basis.
- vi. The Petitioner at some point found out that their marriage has irretrievably broken as all efforts made by them and their respective family members to restore peace to the family proved abortive

- vii. The Respondent sometime around February, 2018 moved out of their matrimonial home without the knowledge and or consent of the Petitioner.
- viii. That all further efforts made by their families again to restore cohabitation and peace yielded no fruits
- ix. The Parties have lived apart from February, 2018 till date
- x. The Petitioner has found it intolerable to continue living with the Respondent as husband and wife in view of their incompatible personalities.

The question now is whether the facts and also from the evidence placed before the court, the petitioner has been able to establish that the marriage has broken down irretrievably and that parties have lived apart for two years for a continuous period of two years before the presentation of this petition.

It is the evidence of the Petitioner that:

1. That I am the Petitioner in this suit.
2. The Petitioner has found it intolerable to continue living with the Respondent as husband and wife.

3. The Petitioner and respondent got married on the 11th of March, 2017 at Abuja, within the jurisdiction of this Court.
4. The Petitioner and the Respondent met sometime in 2015 in Abuja.
5. The Respondent moved into the Petitioner's apartment at Flat 2, Block 6, A 3, Block 6, Kabusa Garden Estate, Lokogoma, Abuja and lived with him since they got married sometime in 2017.
6. The Petitioner found out immediately after their marriage that they are incompatible on the premise that little thing flays the uncontrollable anger of both Petitioner and the Respondent.
7. That the Petitioner and the Respondent are usually in unrelenting argument on daily basis.
8. The Petitioner at some point found out that their marriage has irretrievably broken down as all efforts made by them and their respective family members to restore peace to the family proved abortive.
9. The Respondent sometime around February, 2018 moved out of their matrimonial home without the knowledge and or consent of the Petitioner.

10. That all further efforts made by their families again to restore co-habitation and peace yielded no fruits.
11. The parties have lived apart from February, 2018 till date.
12. The Petitioner has found it intolerable to continue living with the Respondent as husband and wife in view of their incompatible personalities.
13. The Respondent is not challenging the dissolution of the marriage and both the Petitioner and the respondent shall be urging the Honourable Court during the hearing of this petition to dissolve the marriage between the parties.
14. I make this oath in good faith believing same to be true and correct and in accordance with the relevant laws.

In the instant case the Respondent had the opportunity to cross examine the Pw1, but she chose not to cross examine or lead evidence. The law is that evidence neither challenged nor contradicted shall be deemed admitted, true and correct by the Court. Also the standard of proof required in matrimonial actions by virtue of section 82 (1) of Matrimonial Cause Acts states that a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court. Sub (2) provides that; where

a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact or as to that other matter.

From the evidence before the Court, it can be deduced that, the Respondent moved out of the matrimonial home since February 2018, and this fact was not controverted by the Respondent. Also the witness in his evidence stated that parties are usually in unrelenting argument on a daily basis; that little things flay the uncontrollable anger of the parties. It is obvious from the evidence before the court that parties are not willing to continue with the marriage; couples are expected to live together in harmony and share their lives in a way that is recognized legally, socially and religiously; however in situations where couples cannot maintain peace and harmony, the Court will be left with no other choice than to grant the prayers of the Petitioner. The Respondent herein has also not shown any desire to continue with the marriage. The parties' having lived apart for a continuous period of two years preceding the presentation of this petition, I hold that the marriage between the parties has broken down irretrievably.

Consequently, I hold that the marriage celebrated between the Petitioner Stanley Tochukwu Okeke and the Respondent Linda Amaka Uyanna at the Federal Marriage Registry Abuja, Nigeria on the 11th March, 2017 has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the Petitioner and the Respondent, on the ground that the marriage has broken down irretrievably in that parties have lived apart for a period of two years preceding the filing of this petition. The Order Nisi shall become absolute after a period of three months from today.

ASMAU AKANBI – YUSUF

HON. JUDGE

APPEARANCES;

Rowland Udemezue Esq, for the Petitioner.