

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GWAGWALADA**

**THIS WEDNESDAY, THE 7<sup>TH</sup> DAY OF JULY, 2021.**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**PETITION NO: GWD/PET/11/2021**

**BETWEEN:**

**MRS VERA EMEKA ..... PETITIONER**

**AND**

**MR CHUKWUEMEKA E.M. MADU ..... RESPONDENT**

**JUDGMENT**

By a notice of petition dated 19<sup>th</sup> March, 2020, the petitioner claims the following Reliefs against the Respondent:

- a. A Decree for the Dissolution of the marriage contracted between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably in that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.**
- b. That the parties shall bear their respective costs.**

The petition was duly served on Respondent and he appeared in court on 30<sup>th</sup> June, 2021 together with his counsel. On the said date, counsel informed court that he has the instructions of the Respondent not to oppose or contest the petition. I

enquired from the Respondent as to the facts stated by his counsel and he stated that he was not interested in the marriage and urged the court to grant the petition.

The matter was then adjourned till today for the petitioner to lead evidence in proof of her case.

The petitioner testified in person as PW1 and the only witness. Her case is simply that she got married to the Respondent on 20<sup>th</sup> April, 2002. A copy of the marriage certificate dated 20<sup>th</sup> April, 2002 was admitted in evidence as Exhibit P1.

PW1 stated that they have been married for nearly twenty (20) years but that parties have lived apart now since 2015 and all efforts at resolving whatever differences that existed in the marriage failed. That the Respondent has in effect completely abandoned his responsibilities towards her in terms of her emotional and physical well being and the marriage is devoid of love and care.

The Petitioner accordingly wants the marriage dissolved since parties have lived apart now for an extended period of nearly six years.

Learned counsel to the Respondent indicated that he was not going to cross-examine PW1 since they are not contesting the petition. With her evidence, the petitioner closed her case. Again learned counsel to the defendant stated that they have nothing to urge in defence.

The matter then proceeded to address. Learned counsel to the petitioner sought leave to address orally which the court granted. His address was simply to the effect that the petition is unchallenged and the fact that parties have lived apart for nearly five (5) years proceeding the presentation of the petition is sufficient on its own to ground a petitioner for dissolution of marriage.

On the part of counsel to the Respondent, he simply urged the court to grant the petition.

Having carefully considered the petition, the unchallenged evidence led and the address of counsel, the narrow issue is whether the petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of this petition. It is on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

## ISSUE 1

**Whether the petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of the petition.**

I had at the beginning of this judgment stated the claims of the petitioner. Similarly I had also stated that the Respondent despite the service of the originating court process did not file anything or adduce evidence in challenge of the evidence adduced by petitioner. Indeed the Respondent indicated in Court that he was not challenging the petition. In law, it is now an accepted principle of general application that in such circumstances, the Respondent is assumed to have accepted the evidence adduced by Petitioner and the trial court is entitled or is at liberty to act on the Petitioner's unchallenged evidence. See **Tanarewa (Nig.) Ltd. V. Arzai (2005) 5 NWLR (Pt 919) 593 at 636 C-F; Omoregbe v. Lawani (1980) 3-7 SC 108; Agagu v. Dawodu (1990) NWLR (Pt.160) 169 at 170.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case of **Nnamdi Azikiwe University v. Nwafor (1999) 1 NWLR (Pt.585) 116 at 140-141** where the Court of Appeal per Salami J.C.A. expounded the point thus:

**“The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence... the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant...”**

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. **The Supreme Court in Duru v. Nwosu (1989) 4 NWLR (Pt.113) 24** stated thus:

**“...a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a**

**prima-facie case, in which case the trial judge does not have to consider the case of the defendant at all.”**

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff or petitioner in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the presence and/or absence of the defendant or respondent. See **Agu v. Nnadi (1999) 2 NWLR (Pt 589) 131 at 142.**

This burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings. Indeed **Section 82 (1) and (2) of the Matrimonial Causes Act** (The Act) provide thus:

- 1) For the purposes of this Act, a matter of fact shall be taken to be proved, if it is established to the reasonable satisfaction of the court.**
- 2) 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.**

Now in the extant case, the petitioner from her petition seeks for the dissolution of the marriage with respondent on the ground that the marriage has broken down irretrievably and essentially predicated the ground for the petition on the fact that the respondent has abandoned the matrimonial home since 2015 and in the process abdicating his marital responsibilities of care, love and attention. That all efforts at resolving whatever differences they may have failed and the Respondent has moved on with his life.

It is doubtless therefore that the petition was brought within the purview of **Section 15 (1) (c), (e) and (f) of the Act.** It is correct that **Section 15(1) of the Act** provides for the irretrievable breakdown of a marriage as the only ground upon which a party may apply for a dissolution of a marriage. The facts that may however lead to this breakdown are clearly categorised under **Section 15(2) (a) to (h) of the Act.** In law any one of these facts if proved by credible evidence is sufficient to ground or found a petition for divorce.

Now, from the uncontroverted evidence of the petitioner before the court, I find the following essential facts as established to wit:

- 1. That parties got married on the 20<sup>th</sup> April, 2017 vide Exhibit P1.**

2. **That the Respondent left the matrimonial home in 2015 and completely abandoned his marital responsibilities towards Petitioner.**
3. **That since 2018, a period of over five years now, cohabitation has ceased between the parties.**
4. **That all attempts made at resolving differences between parties has failed.**
5. **That both parties have agreed that the marriage be dissolved.**

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the Respondent who was given all the opportunity of doing so. The law has always been that where evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it. See **Agagu v. Dawodu (supra) 169 at 170, Odunsi v. Bamgbala (1995) 1 NWLR (Pt.374) 641 at 664 D-E, Insurance Brokers of Nig. V. A.T.M Co. Ltd. (1996) 8 NWLR (Pt.466) 316 at 327 G-H.**

This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts. Consequently where a defendant chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G Oyo State v. Fair Lakes Hotels Ltd. (No 2) (1989)5 NWLR (Pt .121) 255, A.B.U. v Molokwu (2003)9 NWLR (Pt.825) 265.**

Indeed the failure of the Respondent to respond to this petition confirms in all material particulars the fact that the marriage has broken down irretrievably and that they have lived apart now for over five (5) years.

By a confluence of these facts, it is clear that this marriage exists only in name. As stated earlier, any of the facts under **Section 15 (2) a-h of the Matrimonial Causes Act**, if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for more than five years show clearly that this marriage has broken irretrievably and parties have no desire to continue with the relationship; this fact alone without more can ground a decree of dissolution of marriage. If parties to a consensual marriage relationship cannot live any longer in peace and with mutual respect for each other, then it is better they

part in peace. This clearly is the earnest desire of parties as expressed in uncertain terms by the parties themselves in court. The unchallenged petition in the circumstances has considerable merit.

In the final analysis and in summation, having carefully evaluated the petition, the unchallenged evidence of the Petitioner and the Response of Respondent and her counsel, I accordingly make the following order:

**An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on 20<sup>th</sup> April, 2002.**

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**Hon. Justice A.I. Kutigi**

**Appearances:**

- 1. A.A. Zirra Teru, Esq., for the Petitioner.**
- 2. A.A. Nwoye, Esq., for the Respondent.**