

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT HIGH COURT 27 GUDU - ABUJA**  
**DELIVERED ON THURSDAY THE 15<sup>TH</sup> DAY OF JULY, 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE.R. OSHO-ADEBIYI**

**SUIT NO.FCT/HC/PET/174/2020**

**BETWEEN:**

**MRS. RUTH AGUELE -----PETITIONER**

**AND**

**MR. BENEDICT AGUELE -----RESPONDENT**

**JUDGMENT**

The Petitioner on the 10<sup>th</sup> of February 2020 filed a petition against the Respondent claiming for the following:

- a. A decree of dissolution of marriage on the grounds that the marriage has broken down irretrievably. That the Petitioner and the Respondent have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition.
- b. An order that the custody of the only child of the marriage Master Jesse Aguele, remains with the Petitioner.
- c. An order directing the Respondent to continue paying the school fees of the only child of the marriage, such amount as required by his school.
- d. An order directing the Respondent to make a monthly payment of the sum of Twenty Thousand Naira only (N20,000.00) to the

Petitioner for the upkeep of the only child of the marriage which includes his feeding, clothing and medications.

Also filed along with the petition is a verifying affidavit, Petitioner's witness statement on oath, witness statement on oath of Mrs Margret Amegbe and a certificate of reconciliation. Annexed to the application is a marriage certificate. However, before the commencement of hearing, counsel to both parties informed the Court that parties have reached an agreement in respect of their parental responsibility towards the only child of the marriage, custody and maintenance of the child and also to dissolve the marriage and has filed terms of settlement which they will want the Honourable Court to adopt as judgment of the Court. The Court ruled that it is alien to our laws under Matrimonial Causes Act and directed that the Petitioner has to give evidence.

Petitioner opened her case on the 23<sup>rd</sup> day of February, 2021 and adopted her witness statement on oath and testified to the following facts summarily, that Petitioner and the Respondent got married on the 24<sup>th</sup> day of August, 2012, at AMAC Marriage Registry, FCT under the Marriage Act. That the marriage is blessed with a child, who is Jesse Aguele (male) born on the 31<sup>st</sup> of July, 2013. That after the marriage the Respondent, his elder brother Mr. Anthony and the younger brother Donald moved into the main house occupying one bedroom each. That during the courtship and after marriage whenever there is a disagreement between the Respondent and her, the Respondent will beat her up even when she was pregnant with their son. That on the 24<sup>th</sup> of December 2016, she was beaten by the Respondent's elder brother Mr. Anthony in front of the Respondent

and their son. That due to the several beating, she developed chest pain and had to go to the hospital. That while receiving treatment she called the Respondent several times but he did not pick. That when she got home, she met her niece who told her that the Respondent left the house with their son and all their son's belonging. That she was left with no option but to lay a complaint at the police station. That the police tracked the Respondent's phone and discovered he was in Lagos. That the Petitioner went to the National Human Rights Commission who invited the Respondent and asked him to come with their child which he did. That the National Human Rights Commission handed the child over to her, asked the Respondent to pay school fees and provide welfare for the child. That the Respondent has never paid the child's school fees, he only sends the Petitioner Five Thousand Naira only (N5,000.00) monthly. That her brother in law Mr. Anthony beat up her sister and her child who were in the house and drove them out of the house. That rather than Respondent to talk to his brother to desist from beating Petitioner, he ordered Petitioner out of his house. That the Petitioner left her matrimonial home in fear for her life in April 2017.

In proof, the Petitioner tendered two Exhibits, which are:

1. Certificate of Marriage No. 1587 dated 24<sup>th</sup> August, 2012 between parties marked Exhibit A.
2. Report of Settlement signed by both parties marked Exhibit B.

The Respondent was served but did not file a response to the Petition neither did the Respondent's Counsel cross examine the Petitioner but chose to rest the Respondent's case on that of the Petitioner. The

Court thereafter adjourned the case for adoption of written address. The Petitioner's Counsel filed a written address dated 10<sup>th</sup> March, 2021 and urged the Honourable Court to grant the decree of dissolution based on the Petitioner's claim that the marriage has broken down irretrievably, as the couple have lived apart for more than three years. The Respondent filed a final written address dated 8<sup>th</sup> March, 2021 titled "RESPONDENT/CROSS-PETITIONER'S FINAL WRITTEN ADDRESS", in which he urged the Honourable Court to grant the decree of dissolution based on Petitioner's claim that the marriage has broken down irretrievably, as couple have lived apart for more than three years. He further urged the court to grant the Respondent reasonable visitation rights to the child of the marriage, Master Jesse Aguele. It is worthy of note that there is no Answer to Petition/Cross-Petition of the Respondent before this Honourable Court.

This Court had earlier in this judgment noted that Respondent did not file a response to the Petition neither did they cross examine the Petitioner's evidence, and the law is trite that where the evidence of the Petitioner is deemed unchallenged the Court is bound to act on it. The Supreme Court in the case of **CAMEROON AIRLINES V. OTUTUIZO (2011) LPELR 82-(SC)** Per Rhode- Vivour J.S.C held,

*"it is well settled that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the Court ought to act positively on the unchallenged evidence before it"*

The evidence of the Petitioner in this case is not challenged or contradicted by the Respondent. The effect therefore is that the evidence of the Petitioner will be taken as accepted or established.

In my view, the issue for determination in this case is: -

“whether Petitioner has successfully proved her case for dissolution of marriage”

The fact that a marriage has broken down irretrievably is the sole ground for the presentation of a divorce petition, and the Court cannot make such findings unless one or more facts specified under **Section 15(2) (a-h) of the Matrimonial Causes Act**, is or are proved.

**Section 15(2) (a-h) of the Matrimonial Causes Act** provides as follows;

*(a) that the respondent has wilfully 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.*

Therefore, upon proof of any of the factors stated in **Section 15(2) (a-h) of the Matrimonial Causes Act**, to persuade the Court that the marriage has broken down irretrievably, the Act provides that the Court shall grant a decree of dissolution of the marriage if it is satisfied on all the evidence adduced as held in **UZOCHUKWU V. UZOCHUKWU (2014) LPELR-24139 (CA)**.

Having examined the evidence of the Petitioner, it is my view that the main ground upon which the Petitioner's petition would fall under is stated in **Section 15(2) (e) of the Matrimonial Causes Act**, which provides 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. There must be physical separation and the

intention to remain separated for a party to rely on this provision. In the case of **ANIOKE V. ANIOKE (2011) LPELR-3774 (CA)** Per **Oredola JCA** held,

*“Thus to establish the allegation of desertion, a petitioner must establish: (a) Physical separation. (b) avowed or manifest intention to remain separated on a permanent basis.....”*

In the instant case, the facts in support of the evidence adduced, which is unchallenged and as such deemed admitted, is that the Petitioner left the matrimonial home since April 2017, this culminates into physical separation and the Respondent does not object to a decree being granted. The marriage in my view has irretrievably broken down by virtue of the provisions of **Section 15(2) (e) of the Matrimonial Causes Act 2004** and I so hold, therefore the marriage celebrated between the Petitioner and the Respondent is hereby dissolved.

The parties had earlier informed the Court that they have agreed to settle consequent upon which they filed report of settlement (Exhibit B) in respect of custody of the child of the marriage and his maintenance and urged on this Court to adopt same in its judgment. This Court will therefore incorporate the said terms in its judgment and consequently, hereby order as follows:

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **MRS. RUTH AGUELE** and the Respondent **MR. BENEDICT AGUELE**, at the AMAC

Marriage Registry, FCT Abuja Nigeria on the on the 24<sup>th</sup> day of August, 2012.

2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.
3. The parties shall share in the parental responsibilities for the child Master Jesse Aguele and shall make all major decisions affecting him jointly and amicably.
4. The Petitioner shall have primary custody of Master Jesse Aguele and the Respondent shall have reasonable liberal visitation within a reasonable time from 9.00am to 4.00pm on weekend and holidays and telephone rights.
5. The Respondent shall pay child support to the Petitioner in the amount of Twenty Thousand Naira only (N20,000.00) per month.
6. The Respondent agrees to take responsibility of any sum as determined by the school to cover tuition of Master Jesse Aguele. Both parties agreed that Master Jesse Aguele attend Peculiar Treasures School, Federal Housing Authority, Lugbe Abuja.

**PARTIES:** Absent

**APPEARANCE:** No legal representation for either party.



**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**

**JUDGE**

**15<sup>TH</sup> JULY, 2021**