

**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 22<sup>ND</sup> SEPTEMBER, 2021  
FCT/HC/PET/164/2019**

**BETWEEN**

**MRS CHIKA FRANCES BOSAH ... .. PETITIONER**

**AND**

**MR. CHARLES CHUDI AWAZIE ... .. RESPONDENT**

**JUDGMENT**

By a Notice of Petition filed the 01/03/19, the Petitioner seeks for the following reliefs:

1. The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
2. The Respondent and the Petitioner have lived apart for a continuous period of Three (3) years preceding the presentation of this petition.

The Petitioner avers that the marriage between the spouses has broken down irretrievably on the grounds provided in SECTIONS 15(1) AND 15(2), (C) & (F) OF THE MATRIMONIAL CAUSES ACT (CAP. M7, LAWS OF THE FEDERATION OF NIGERIA, 2004).

The facts relied on by the Petitioner as constituting the ground is stated as follows:

- (a) That the parties indeed consummated the marriage a day after wedding which was on the 13<sup>th</sup> June, 2014.
- (b) The Respondent has from the day aforementioned failed, refused and or neglected to perform his conjugal obligations exercisable as husband by law.
- (c) That the Respondent has always complained of being tired and too stressed.
- (d) The circumstances above made the continuation of the marriage impossible in spite of spirited efforts by friends and family of the parties to settle the differences of the parties.

The Notice of Petition was served on the Respondent and the matter was set down for trial. The Respondent also filed an answer and cross petition on the 22/5/2021.

On the 25/6/2021, the petitioner and her counsel were present; the Respondent was absent but represented by A. C. J Azubuiké Esq.

The Petitioner testified as Pw1 and tendered the certified true copy of the Marriage certificate issued to them at the Marriage Registry, Abuja and same was marked exhibit A.

After the close of evidence of the Pw1, the matter was adjourned to the 15/10/2019 for cross examination. On the adjourned date, parties were absent but represented by their respective counsel. The Petitioner's counsel apologized for the absence of the Pw1 and asked for a further date to present her for cross examination. This application was granted. Again, the matter came up on the 6<sup>th</sup> February, 2020 and 20<sup>th</sup> February 2020 the parties and their counsel were absent.

On the 31/3/2021, the Respondent was present and also represented by L.C Chiemelu of counsel. However, the Petitioner was absent and not represented. The Respondent counsel applied to withdraw the answer and cross petition filed on behalf of the Respondent and further rested the Respondent's case on the evidence of the Petitioner. The court in the interest of justice gave the petitioner another opportunity to appear in court.

Again the matter came up on the 1/7/2021, parties were absent; the petitioner was not represented. L. C Chiemelu Esq. represented the Respondent; the matter was further adjourned to another date. The matter came up again on the 14<sup>th</sup> July, 2021 parties were absent, L. C Chiemelu Esq. appeared for the Respondent while the Petitioner was not represented. Counsel for the Respondent stated that they filed a notice of discontinuance on the 9/7/2021; that same has been served on the petitioner. He further applied that the case be closed and sought for an adjournment to enable them file and adopt their written addresses.

The Petitioner was served with the Respondent's final written address and the hearing notice on the 17/8/2021; she however failed to respond to the court processes.

On the 15<sup>th</sup> September, 2021, the Respondent and his counsel were present in court; while the petitioner and her counsel were absent. Golden C. Boham of counsel argued and adopted their final written address and the matter was adjourned for judgment.

Chiemelu Louis Chijioke of counsel in the final written address filed on behalf of the Respondent formulated a sole issue for determination, that is:

*Whether the petitioner has proved her case to be entitled to any of the reliefs contained in the Notice of Petition against the Respondent.*

Counsel for the Respondent urged the court to take judicial notice of the record of proceedings, the notice of petition and the exhibit. He submits that the petitioner testified in respect to the Respondent's lack of commitment to the marriage, nonchalant attitude towards the petitioner; the respondent's act of refusing to consummate the marriage amongst others. He submits that the testimony of the petitioner was not challenged by the Respondent; that the Respondent also withdrew all the processes filed by him in this suit. He submits that the desire of the Respondent to rest his case on that of the petitioner as well as the uncontroverted fact that both parties have live apart for a continuous period of not less than 3 years is a proof that the marriage has failed and urged the court to so hold.

He cited Section 15 (1), (2) & (3) Matrimonial Causes Act, M6; LFN 2004 that the petitioner has to satisfy one of the conditions stated therein. He states that the Respondent has no objection to the petition; that the petitioner fulfilled two conditions stated in Section 15 of the MCA. He placed reliance on NEW NIGERIA BANK PLC VS DENCLAG LTD & ANOR (2004) ALL FWLR (PT.228) P. 606 AT 642 PARA E; NIGERIAN DYNAMIC LTD V AGUOCHA (2002) FWLR PT. 104, P.630 AT 659. PARA A to support the fact that the evidence of the petitioner is unchallenged and uncontroverted, thus the court is bound to accept the evidence placed before it

by the petitioner. Counsel for the Respondent urged the court to grant the prayers of the petitioner.

In a petition for dissolution of marriage, the petitioner must plead and prove that the marriage has broken down irretrievably. In doing this the petitioner must be able to bring himself within one or more of the facts enumerated in Section 15(1) &(2) (a-h) of the Matrimonial Causes Act, Cap 220 LFN 1990 before he can succeed in the petition.

Section 15(1) A petition under this Act by a party to 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 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 furtherance to the facts listed under Section 15 (2) of the Act, the petitioner must also prove that the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him or her and the facts that constitute such behaviour are enumerated under Section 16(1) of the Matrimonial Causes Act.

Also, Section 82 (1) and (2) of the Matrimonial Causes Act provides the standard of proof in matrimonial matters as follows:

(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.

Going by the above provisions, the Court will only pronounce a Decree of dissolution of marriage if it is satisfied that the petitioner has made out a case. Thus, the facts averred to by the petitioner must be strictly proved and once the Court is reasonably satisfied of the existence of a ground to grant the divorce, then the Court will then proceed to hold that the marriage has broken down irretrievably. Unlike the civil matters where the standard of prove is on a balance of probabilities or preponderance of evidence, it is not so in matrimonial proceedings. The standard of proof in matrimonial proceeding is on the petitioner but taken as discharged once it is established to the reasonable satisfaction of the Court.

The question I ask here, has the petitioner in this case established the facts pleaded in the notice of petition as well as the evidence presented by her to the reasonable satisfaction of the court. I do not hesitate to say no.

The petitioner in this case, on the 25/6/2019 gave evidence as per the facts pleaded in her petition filed on the 01/03/2019 and the matter was adjourned for cross examination. She however failed and neglected to appear before the court in order to have her cross examined by the other party.

It is elementary law that in the presentation of evidence, a person who alleges to some facts shall present his evidence in chief as per the evidence he intends to put forward; the witness is then cross examined so as to test the veracity of the evidence presented by the witness. See **SECTION 214 (1),(2),(3) & SECTION 215 (1)&(2) EVIDENCE ACT.**

Going by the evidence in the court's record, it is not in dispute that the petitioner failed to discharge the standard of proof placed on her, all she successfully did was to dump her evidence on the court either expecting the court to conduct the case for her or rubber stamp her reliefs; it is not the duty of this court to conduct the case of the petitioner.

The Respondent also chose to rest his case on the petitioner's case. He opted to file a written address to argue his case. Let me remind the Respondent's counsel that no matter how brilliant and convincing the written address is, it cannot take the place of evidence. It is trite and elementary law that address of counsel is not evidence which can be relied upon by a court for purpose of proof in a claim before it. See **HARKA AIR SERVICES (NIGERIA) LIMITED v. EMEKA KEAZOR ESQ (2005) LPELR-5693(CA)** The Respondent, who had the opportunity of presenting his case, chose to discontinue his case by filing a notice of discontinuance on the 9/7/2021.

Therefore, it is crystal clear that the petitioner failed to discharge the evidential burden placed on her, despite all the opportunities given to her to appear before the court for cross examination. I find as a fact that no weight can be ascribed to the evidence presented by the petitioner. I so hold.

The law is that a Petitioner who desires dissolution of a marriage must discharge the standard of proof stipulated by the Matrimonial Causes Act; see SECTION 82 (1) & (2) MATRIMONIAL CAUSES ACT; and must also establish in evidence one of the facts set out under S 15 and S 16 of the same Act; the petitioner failed to establish her case to the reasonable satisfaction of this as required by law.



Consequently, the Notice of Petition with Petition No: Pet/164/19 filed on the 01-03-2019 fails and same is hereby struck out.

ASMAU AKANBI – YUSUF

[HON. JUDGE]

APPEARANCES:

Golden C. Boham Esq. for the Respondent.

Petitioner absent and not represented.