

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU'AZU
SUIT NO. FCT/HC/PET/581/2020
ON THE 23RD OF SEPTEMBER, 2021**

BETWEEN:

FATUNSIN LOLADE MODUPE - PETITIONER

AND

JOSEPH OLATUNBOSUN SUNDAY - RESPONDENT

Appearance:

Chinedu Akubue for the Petitioner.

JUDGMENT

By a Petition for a Decree of Dissolution of marriage filed on the 25/11/2020, The Petitioner seeks for the following relief against the Respondent:

(a) A decree of dissolution of the said marriage on the grounds that the Respondent has lived apart from the Petitioner (for) above 3 years and the marriage has broken down irretrievably.

The Petition has a verifying Affidavit of 3 paragraphs deposed to by the Petitioner endorsed on it. It was also filed with a certificate relating to reconciliation.

On the 20th of January, 2021, an Order of Court was granted to the Petitioner, upon hearing an application served by Y.I.Nnaji Esq Counsel for the Petitioner, to serve the Respondent by substituted means.

Even though, when the matter came up on 1st of March 2021, the Respondent was absent, the Court encouraged parties to reconcile and give them time for report of settlement.

The Petitioner reports that the Respondent continued to avoid him and settlement could not be achieved. The Respondent did not file an answer to the Petitioner either.

On the 8/07/2021 trial commenced in the absence of the Respondent who was duly served with the Petition testifying in support of his petition.

The Petitioner as PW1 testified that she got married to the Respondent Joseph Olatubosun Sunday on the 17th of March 2016 at the Ministry of interior, Ikoyi, Lagos. A Certified True Copy of the marriage certificate issued to them was tendered and admitted as Exhibit P 1.

She stated that after the marriage she and the Respondent move to Abuja. She testified further that after some time they wanted to consult a Doctor and after much

reluctances from the Respondent he was examined and diagnosed with Azoospermia (zero sperm count in his semen). The Respondent was asked to receive treatment in Abuja but insisted on being treated in Gusau where he worked. That she give him some time to see what pan out. That when he returned for Easter on 2017, they saw a Doctor and a 4th test was conducted with the same result. The Petitioner then informed her parents and her brothers and sisters. The brother in Ile-ife offered to help connect the Respondent with professors working in their area of worry, but the Respondent declined the offer and still insisted on having his treatment in Gusau. Later during the Easter after a quarrel the Respondent admitted to her that he know his condition even before the marriage. She encouraged him to solve the problem since they were already married and after much defiance and quarrel he agreed to go to Ile-ife but he insisted on going to his in-laws' Hospital rather than where her brother offered to take them. At ife the result was the same. The Respondent went back to Gusau and the Petitioner returned to Abuja from Ife. Since then he refused to pay his 2/3 share for the house rent. When she became ill in Ilorin she informed him but he failed to visit her and started staying in his parent house at area 1 Garki. When the house rent expired she moved to her uncle house at

Kubwa. The Respondent remained adamant refusing help offered by her family. They last collaborated in September of 2017. He does not pick her calls. The Petitioner finally asked the Court to grant her prayer so that she can move on with her life.

At the resumed sitting on the 16/07/2021 though duly served the Respondent did not cross-examine the PW1 as scheduled. The right to cross-examine was foreclosed and matter was set down for defence after the Petitioner closed her case.

When the matter resumed on the 17/09/2021, The Respondent was not in Court neither was he represented by Counsel and upon application his defence was foreclosed and matter was adjourned to Friday for Judgment.

At this point, the Cardinal issue that calls for determination is whether not the Petitioner has made out a case to justify the granting of the Order sought.

The matrimonial causes Act has in section 15 (1) and (2) made provisions guiding dissolution of a marriage contracted under the Act.

Under section 15(1) either party to a marriage can approach the Court for a Decree of dissolution of marriage

on the general ground that the marriage has broken down irretrievably. Section 15 (2) of the same Act, provides that a Court having such a Petitioner shall hold that the marriage has broken down irretrievably if the Petitioner is able to by evidence adduced prove the existence of one or more of the grounds/facts set out in paragraphs a – L of section 15 (2) of the Act.

The Ground provided for under section 15 (2) (e) is that the Respondent has cheated the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petitioner. Where any of this situation is proved vide evidence it may suffices for the Court to hold that the marriage has broken down irretrievably and pursuant thereto grant a decree in dissolution of the marriage. See BAKAU VS BAKAU (2013) LPELR – 22687 (CA).

Also the ground provided under section 15 (2) (f) is that the parties to the Marriage have lived apart for continuous period of above at least three years immediately preceding the presentation of the petition.

I must say that the attitude of the Respondent does not suggest any desire to object or contest the relief sought in this petition.

With regret to standard of proof required of the Petitioner to succeed, section 82 (1) and (2) of the M C. Act provisions for evidence in reasonable satisfaction of the Court.

In OMOTUNDE VS OMOTUNDE I SMC P 255, the C A explained that evidence in reasonable satisfaction of the Court entails the party adorning all available evidences in support of the assertion before the Court.

In this case, a look at the Petition shows that this Petitioner seeks for a decree of dissolution of marriage she contracted with the Respondent on the prove that the marriage has broken down irretrievably for reason that:

- a. The Respondent has issues apart from the Petitioner above three (3) years.
- b. The Respondent while he lived with Petitioner lived in a way the Petitioner can't be reasonably expected to live with the Respondent; and
- c. The Respondent was within the period of marriage incompetent to consummate the marriage and refused to present himself for treatment.

The Petitioner's case, which has not be controverted, is that, the Respondent is incapable of impregnating her due to his condition (Azoospermia) and has refused, neglected and

failed to seek or receive medical assistance to remedy same. This has led to quarrels because his defiance has become unbearable. Further, the Respondent has not cohabited or lived with her since September of 2017 more than 3 years immediately preceding the presentation of this petition on the 25/11/2020.

In the light of the Respondents failure to have an Answer to the petition or appear to defend same, the Petitioners' evidence stand uncontroverted and undefended. In the circumstances the facts are deemed accepted by the Respondent and the Court is under a duty to accept act on it. Accordingly, the burden on the Petitioner to prove her petition shall be deemed discharge on minimal evidence. See CONSOLIDATED RETOURELS NIG. LTD VS ABOFAR VENTURES LTD (2007) 6 NWLR (PT 1030) P 221.

The Court therefore accept that the Petitioner and the Respondent have lived apart for a continuous period of 3 years immediately preceding the presentation of this petition and the Respondent while living with the Petitioner lived in away the Petitioner cannot be reasonably expected to live with Respondent by acting in a recalcitrant manner on the issue of his condition which inhibits pregnancy.

In the circumstance, the Court finds that two grounds under section 15 (2) (c) & (f) of the Matrimonial Causes Act have been satisfied by the Petitioner entitling her to the relief Sought. *The Court finds that under the marriage between the Petitioner and the Respondent has broken down irretrievably.*

In line with the above finding, the issue raised is resolved in favour of the Petitioner. In consequence, the Petition succeeds. It is hereby accordingly declared that the marriage the Petitioner entered into with Respondent at the Marriage Registry in the Ministry of Interior Ikoyi, Lagos on the 19th of March, 2016 has broken down irretrievably and a Decree Nisi is granted on dissolution of the marriage. The Decree Nisi shall become absolute after 3 months from Friday.

Signed
Hon. Judge
23/09/2021.

Judgment is rendered the Decree Nisi is granted.

Signed
Hon. Judge
23/09/2021.

Counsels: - Must grateful.

Signed
Hon. Judge
23/09/2021.