

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

BEFORE HON. JUSTICE J.E. OBANOR
ON THURSDAY THE 30TH DAY OF SEPTEMBER, 2021.

SUIT NO: FCT/HC/PET/228/2021

BETWEEN:

OREVAOGHENE OGHAE EWHE

....PETITIONER

AND

FUNMILAYO JOKE EWHE

..... RESPONDENT

JUDGMENT

By a Petition for a decree of dissolution of marriage filed by Nwokolo Peter John Esq on 1st July 2021, the Petitioner seeks for:-

“A decree of dissolution of marriage on the ground that (i) the marriage has brokendown irretrievably in that (ii) The parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition and the Respondent does not object to a Decree being granted; (iii) Since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent”.

The Petition was filed with a 4-paragraph Verifying Affidavit deposed to by the Petitioner and a Certificate Relating to Reconciliation.

In response, the Respondent’s counsel Folarin Aluko Esq on 2nd of August 2021 filed a memorandum of Apperance on behalf of the Respondent.

On 14th September, 2021, the parties filed a Terms of Settlement urging the Court to accept it as agreed by the parties as it relates to custody of their children of the marriage, access, upkeep, maintenance, allowances and properties as means of settling their affairs peacefully. Since the marriage

can only be dissolved upon proof of the ground for dissolution of it vide the evidence of the Petitioner, the Petition was set down for trial on 21st September 2021.

Trial commenced as scheduled on 21st September, 2021 with the Petitioner testifying for himself as Pw1.

He testified inter alia that he, then a bachelor was lawfully married to the Respondent, then a spinster at Federal Marriage Registry FCT Abuja on 29th September 2007. They were issued a Marriage Certificate which was tendered and admitted in evidence as Exhibit A.

After the marriage, love and relationship between them deteriorated and they have lived apart for a period of more than three years since 2018. He wants the court to dissolve their marriage as the marriage between them has broken down irretrievably, having lived apart for a period of more than three years.

Under cross examination by the learned Respondent's Counsel, the learned counsel informed the court he has no question for the Petitioner. In the absence of question in re-examination, the witness was discharged and the Petitioner closed his case.

In her defence, the Respondent's counsel informed the court that the Respondent has no defence but rather rest her case on that of the Petitioner. With this, the Respondent closed her case.

Counsel for both parties next informed the Court of their decision to waive their respective rights to file Written Addresses. Judgment was then reserved for today 30th September, 2021.

I have given due consideration to the evidence of the parties. The crucial issue which calls for determination is whether or not the Petitioner has made out a case to justify a grant of the decree of dissolution of the marriage sought in the Petition.

The Matrimonial Causes Act has in Sections 15(1)(2) and (3) made provisions guiding dissolution of a marriage contracted under the Marriage Act. In Section 15(1), it provides that a party to the marriage may present a Petition for decree of dissolution of the marriage on the ground that the

marriage has broken down irretrievably. In Section 15(2), it is provided that the Court hearing the Petition will hold that the marriage has broken down irretrievably if but only if the Petitioner satisfies the Court of the existence of any of facts/grounds provided in Section 15(2)(a) to (h). Some of the grounds provide thus: -

“(a).

(b).

(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).

(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).

(h).”

The implication of these provisions of the Matrimonial Causes Act is that either party to the marriage may by a Petition to the Court seek for a decree of dissolution of the marriage on the omnibus ground that the marriage has broken down irretrievably. The Court seised of the matter will hold the marriage has broken down irretrievably and pursuant thereto grant a decree of dissolution of it if the Petitioner by evidence satisfies it of the existence of one of the facts/grounds set out in Section 15(2)(a) to (h) of the Matrimonial Causes Act. By this, proof vide evidence of one of the grounds/facts may suffice for the Court to find that the marriage has broken down irretrievably and on that basis grant a decree in dissolution of it. The corollary to this is that the Petitioner must by evidence satisfy the Court of

existence of one of these grounds/facts lest the Petition will fail. See: **EKEREBE V EKEREBE (1999) 3 NWLR (PT. 569) P. 514 and NANNA V NANNA (2006) 3 NWLR (PT. 966) P. 1.**

With respect to the evidential standard of proof, Sections 82(1) and (2) of the Act require that the evidence adduced by the Petitioner shall be in reasonable satisfaction of the Court for the Court to uphold the Petition. That standard was interpreted by Court of Appeal in **OMOTUNDE V OMOTUNDE (1) SMC P. 255** as adducing all available evidence in support of an assertion before the Court.

In this Petition, the Petitioner seeks for a decree of dissolution of the marriage he contracted with the Respondent on 29th September 2007 at the Federal Marriage Registry Abuja on the ground that it has broken down irretrievably for the reason that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and that the parties have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition and the Respondent does not object to a Decree being granted.

He testified in support of the ground, inter alia, that after their marriage and since the time their love and affection deteriorated, they have lived apart for over 3 years. The Respondent did not deny the evidence of the Petitioner but rather rested her case on that of the Petitioner. The settled position of the law in our adversarial legal jurisprudence is that where a party leads evidence in support of his pleading and the adversary who had opportunity fails to lead evidence in challenge or contradiction of it, the evidence is deemed admitted and the Court is under a duty to accept and act on it. **See: NANNA V NANNA supra.** In the present circumstances in which the Respondent did not lead evidence either in chief or under cross examination contradicting that of the Petitioner on the aforesaid act of living apart and having informed the court through her lawyer that she rest her case on that of the Petition, it simply means that she accepted them as admitted.

By the foregoing evidence of the Petitioner, the Court is not left in any doubt that the parties contracted the marriage on the 29th September 2007 as shown in Exhibit A and thereafter commenced living apart sometimes in 2018 and this petition was on 1st July 2021. From the foregoing, it is obvious that the parties at least have lived apart for a continuous period of

at least 2 years immediately preceding the presentation of this petition and the Respondent does not object to a Decree being granted.

By reasons of the foregoing, the Court holds the Petitioner has satisfied the ground provided for in Section 15(2)(e)&(f) of the Matrimonial Causes Act. In the circumstances, the sole issue raised above is resolved in favour of the Petitioner. In consequence of this, this Petition succeeds. The parties having filed terms of settlement on 14th September, 2021 and urged the Court to accept it as agreed by the parties as it relates to custody of the three children of their marriage, access, upkeep, maintenance, allowances and properties as means of settling their affairs peacefully and enter it as part of this judgment. This terms of settlement filed and signed by the parties on 14th September 2021 and adopted by them on the 21st September 2021 is hereby entered as part of judgment of this court in this petition. It is hereby declared that the marriage the Petitioner entered into with the Respondent at Federal Marriage Registry Abuja on 29th September 2007 has broken down irretrievably for the reason that the Petitioner and the Respondent have lived apart for a period of at least 2 years immediately preceding the presentation of this Petition and the Respondent does not object to a Decree being granted. By reason of this, a decree nisi is granted in dissolution of the marriage. The decree nisi shall become absolute after three months from today.

Given the circumstances of this case, I make no order as to cost.

Signed
Hon. Judge
30/9/2021

LEGAL REPRESENTATIONS:

- (1). Peter John Nwokolo Esq for the Petitioner.
- (2). Folarin Aluko Esq for the Respondent.