

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

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 25
CASE NUMBER:	SUIT NO. FCT/HC/PET/247/2019
DATE:	26TH NOVEMBER, 2021

BETWEEN:

FATIMA S. MADUBUIKE.....PETITIONER

AND

SOLOMON J. MADUBUIKE.....RESPONDENT

APPEARANCES:

A. T. Owubokiri Esq for the Petitioner.

JUDGMENT

The Petitioner Fatima S. Madubuike filed this Petition on the 14th day of May 2019 seeking for the following Orders: -

- “(a). A Decree of dissolution of marriage contracted on 24th November, 2011 between the Petitioner and the Respondent.***

- “(b). Any Order as this Honourable Court may deem fit to make in the circumstances.”***

The application which was settled by Maiyaki, Ikpe & Associates, Counsel to the Petitioner, is supported by a Verifying Affidavit deposed to by the

Petitioner as well as the Petitioner's Statement on Oath, also deposed to by the Petitioner herself, comprised of 18 paragraphs.

The Respondent herein was duly served with the Notice of Petition as well as several hearing notices throughout the trial. But, has never appeared nor filed any Answer to the Petition and has remained unrepresented throughout. In effect, this Petition is unchallenged.

The Petitioner at trial, testified as Pw1 on the 13th October 2020. A Marriage Certificate issued at AMAC Registry Abuja in respect of the marriage between the Petitioner and Respondent was tendered, admitted in evidence and marked as Exhibit A.

In her evidence, Petitioner informed the Court that she got married to the Respondent in the year 2011 at AMAC Registry Abuja and that the first two or three years of the marriage was abusive and there was domestic violence.

That she was not provided for, was emotionally abused, and the situation became even life threatening.

According to the Petitioner the Respondent at any slight provocation will say words like ***"I will use this thing and hit you (i.e. mortar and pistle). And if you die, nothing will happen because I married you."***

Petitioner stated that eventually when she couldn't take it anymore she moved out of the matrimonial home and has been on her own ever since. She informed the Court that she and the Respondent have been separated at the time for the past four years and there's no child in the marriage.

However, in Petitioner's Statement on Oath particularly in paragraphs 8,9,10 and 11 thereof, it is deposed that Petitioner and Respondent have not cohabited since March 2017. That till the time of filing this Petition, there was a complete breakdown of communication and absence of compatibility in the marriage. That the married couple have lived apart from 2017 till the date of filing this petition, and that there has been absence of conjugal relations since March 2017 till the time of filing of this Petition.

The Petitioner further avers in paragraph 12 thereof that the marriage has broken down irretrievably.

The Petitioner's final Written Address is dated 6th day of July 2021 but filed on the 13th of July 2021.

In the said Written Address, Philip Yisa Esq, Petitioner's Counsel formulated two issues for determination to wit:-

- "1. Whether or not the marriage has broken down irretrievably.***
- 2. Whether or not the petitioner has proved her case."***

In arguing issue one, learned Counsel made reference to reasons grounding this Petition and also made references to Section 15(2) of the Matrimonial Causes Act to argue that a marriage is said to have broken down irretrievably if since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Petitioner.

On issue two, learned Counsel submitted that by Section 82(1) of the Matrimonial Causes Act, a matter shall be taken or deemed to be proved if it is established to the "reasonable satisfaction of the Court". But, it must depend on the circumstances of each case, the exercise of judicial powers and the discretion of the individual Judge.

It is Counsel's submission that this matter is uncontentions and Petitioner has proved her case to be entitled to the reliefs soguht.

Reliance was placed on the Petitioner's evidence as well as the case of ***WILLIAMS V WILLIAMS (1966) 1 ALL NLR 36, 1 (SC)***.

The Court is finally urged to dissolve the marriage.

Now, under and by virtue of Section 15(2) of the Matrimonial Causes Act Cap M7, LFN 2004, the Court hearing a Petition for dissolution of marriage shall hold that the marriage has broken down irretrievably if, and only if the Petitioner satisfies the Court of at least one of the grounds enumerated under Section 15(2)(a)-(h) of the Act.

On this premise, see the cases of **AKINBUWA V AKINBUWA (1998) 7 NWLR (Pt. 559) 661.**

In **IKE V IKE & ANOR (2018) LPELR – 44782 (CA)**, the Court held, per **EKPE, J. C.A held at pages 10 – 16, C – A** as follows:-

“For a Petition for the Dissolution of marriage to succeed, the Petitioner has to prove at least one of the ingredients contained in Section 15 (2) of the Matrimonial Causes Act, even if the divorce is desired by both parties”.

In the instant case I’ve carefully considered the evidence of the Petitioner who has informed the Court that her marriage to the Respondent was full of emotional abuse and domestic violence.

The Petitioner in addition, has averred in her Witness Statement on Oath that she and the Respondent have been separated since March 2017.

This Petition, as stated earlier was filed on 14th day of May 2019, therefore Petitioner and Respondent have lived apart for a continuous period of at least two years immediately preceding the presentation of this Petition.

Likewise, from the conduct of the Respondent who has not challenged this Petition in any manner despite being duly served with the Petition and hearing notices, it is obvious that Respondent does not object to a decree being granted.

I refer to Section 15(2)(e) of the Matrimonial Causes Act which provides thus: -

“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.”

In the circumstances therefore, since this Petition is unchallenged, I am of the view that the Petitioner has satisfied the Court that the marriage between her and the Respondent has broken down irretrievably. The Petitioner therefore is entitled to the grant of the Orders sought in this petition.

Consequently therefore, I hereby grant a Decree Nisi dissolving the marriage between the Petitioner Fatima S. Madubuike and the Respondent Solomon J. Madubuike, celebrated at the AMAC Registry Abuja on the 24th day of November, 2011.

The decree shall become absolute if nothing intervenes within a period of three months from the date thereof.

Signed:

Hon. Justice Samirah Umar Bature
26/11 /2021