

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

BEFORE HON. JUSTICE J.ENOBIE OBANOR
ON FRIDAY THE 12TH DAY OF NOVEMBER , 2021.

SUIT NO: FCT/HC/PET/626/2020

BETWEEN:

HADIJAH LADI ABIDOYE PETITIONER

AND

ABDULRASHEED ABIODUN ABIDOYE RESPONDENT

JUDGMENT

By a Petition for a decree of dissolution of marriage filed by A.T. Ibrahim Esq on 21st day of December 2020, the Petitioner seeks for:-

“A decree of dissolution of marriage on the ground that the marriage has broken down irretrievably in that (a) the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with Respondent (b) that the parties to the marriage have lived apart for a continuous period of 6 years immediately preceding the presentation of the petition.”

The Petition was filed with a 6-paragraph Verifying Affidavit deposed to by the Petitioner as well as a Certificate Relating to Reconciliation.

The Petition and hearing notices were served on the Respondent by substituted means. The Respondent neither filed an answer nor any other process in response to the Petition.

Trial commenced as scheduled on 30th September, 2021 with the Petitioner testifying for herself as Pw1.

She testified inter alia that she, then a Spinster was lawfully married to the Respondent, then a bachelor at AMAC Registry Abuja Nigeria on 28th May 2007. They were issued a Marriage Certificate which was tendered and admitted in evidence as Exhibit A.

Since the marriage the Respondent has shown lack of love and communication to the Petitioner which led to disagreements between them to the extent of the Respondent moving out of their matrimonial home sometime in 2014 and has continued to live outside the matrimonial home since then, ignoring all entreaties from the Petitioner and members of the petitioner's family.

The Respondent was not present in court to cross examine the Petitioner despite service of hearing notices on him. In the absence of question in re-examination, the witness was discharged and the Petitioner closed her case and the case adjourned for defence by the Respondent.

On 6th October 2021 slated for defence, the Respondent was not in court to conduct his defence despite hearing notice served on him. On the 18th October 2021 his right to defence was foreclosed following the Petitioner's counsel request to that effect.

Judgment was then reserved for today 12th November, 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).

(d).

(e).

(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 she contracted with the Respondent on 28th May 2007 at AMAC Registry Abuja on the ground that it has broken down irretrievably for the reason that the parties have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition.

She testified in support of the ground, inter alia, that since their marriage they have lived apart for about 6 years. The Respondent did not deny the evidence of the Petitioner but rather choose not to file an answer or any process in challenge or response. 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, cross examination or defence contradicting that of the Petitioner on the aforesaid act of living apart, it simply means that he 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 28th May 2007 as shown in Exhibit A and thereafter commenced living apart sometime in 2014 and this petition was filed on 21st December 2020. From the foregoing, it is obvious that the parties have lived

apart for a continuous period of at least 3 years immediately preceding the presentation of this petition.

By reasons of the foregoing, the Court holds the Petitioner has satisfied the ground provided for in Section 15(2)(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. It is hereby declared that the marriage the Petitioner entered into with the Respondent at AMAC Registry Abuja on 28th May 2007 has broken down irretrievably for the reason that the Petitioner and the Respondent have lived apart for a continuous period of at least 3 years immediately preceding the presentation of this Petition. 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
12/11/2021

LEGAL REPRESENTATIONS:

- (1). A.T. Ibrahim Esq and T.A. Gidado Esq for the Petitioner.
- (2). No Legal Representation for the Respondent.