

**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 7<sup>TH</sup> DAY OF OCTOBER, 2021.**

**SUIT NO: FCT/HC/PET/110/2021**

**BETWEEN:**

**JOHN ATAFACHE JATAU**

**....PETITIONER**

**AND**

**GRACE IMBAHEEMAH ILIYA**

**..... RESPONDENT**

**JUDGMENT**

By a Petition for a decree of dissolution of marriage filed by Onyinyechi Unogu Esq on 26<sup>th</sup> February 2021, the Petitioner seeks for:-

*“A decree of dissolution of marriage on the ground that the marriage has brokendown irretrievably in that the parties to the marriage have lived apart for a continuous period of more than 2 years immediately preceding the presentation of the petition.”*

The Petition was filed with a 8-paragraph Verifying Affidavit and Witness statement on oath deposed to by the Petitioner as well as a Certificate Relating to Reconciliation.

The Petition was served on the Respondent personally on 6<sup>th</sup> April 2021 and subsequent hearing notices by substituted means. The Respondent neither filed an answer nor any other process in response to the Petition.

Trial commenced as scheduled on 30<sup>th</sup> June, 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 AMAC Registry FCT Abuja on 7<sup>th</sup> August 2018. They were issued a Marriage Certificate which was tendered and admitted in evidence as Exhibit A.

Since the marriage they have lived apart for a period of more than two years. 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 two years.

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

On 21<sup>st</sup> September 2021 slated for defence, the Respondent was not in court to conduct her defence despite hearing notice served on her. With this her right to defence was foreclosed following the Petitioner's counsel request to that effect.

The case was further adjourned for written address and subsequently on 30<sup>th</sup> September, 2021, Judgment was then reserved for today 7<sup>th</sup> October, 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). *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). ....

(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 7<sup>th</sup> August 2018 at the 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 2 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 since their marriage they have lived apart for over 2 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 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 7<sup>th</sup> August 2018 as shown in Exhibit A and thereafter commenced living apart immediately after the marriage on 7<sup>th</sup> August 2018 and this petition

was filed on 26<sup>th</sup> February 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 having not challenged same.

By reasons of the foregoing, the Court holds the Petitioner has satisfied the ground provided for in Section 15(2)(e) 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 7<sup>th</sup> August 2018 has broken down irretrievably for the reason that the Petitioner and the Respondent 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 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**  
**7/10/2021**

**LEGAL REPRESENTATIONS:**

- (1). Onyinyechi Omoaka Esq for the Petitioner.
- (2). No Legal Representation for the Respondent.