

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

BEFORE HON. JUSTICE J.E. OBANOR
ON MONDAY THE 18TH DAY OF OCTOBER, 2021.

SUIT NO: FCT/HC/PET/034/2021

BETWEEN:

LADI ANENE

....PETITIONER

AND

UGOCHUKWU MADU

..... RESPONDENT

JUDGMENT

By a Petition for a decree of dissolution of marriage filed by Isaac T. Okpanachi Esq on 27th January 2021, the Petitioner seeks for:-

“A decree of dissolution of marriage on the ground that the marriage has broken down 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 7-paragraph Verifying Affidavit and Witness statement on oath 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 23rd 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 Gwagwalada Area Council Marriage Registry Abuja on 1st December 2012. They were issued a Marriage Certificate which was tendered and admitted in evidence as Exhibit A.

Since the marriage she had suffered physical assault, battery and abuse which made to them to lived apart for a period of more than two years. She 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 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 12th October 2021 slated for defence, the Respondent was not in court to conduct his defence despite hearing notice served on him. With this his right to defence was foreclosed following the Petitioner's counsel request to that effect.

Judgment was then reserved for today 18th 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 she contracted with the Respondent on 1st December, 2012 at Gwagwalada Area Council Marriage 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.

She 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 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 the 1st December 2012 as shown in Exhibit A and thereafter commenced living apart in 2019 and this petition was filed on 27th January 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 Gwagwalada Area Council Marriage Registry Abuja on 1st December 2012 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
18/10/2021

LEGAL REPRESENTATIONS:

- (1). Isreal G. Abah Esq for the Petitioner.
- (2). No Legal Representation for the Respondent.