

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

**BEFORE HON. JUSTICE J.ENOBIE OBANOR**  
**ON MONDAY THE 22ND DAY OF NOVEMBER, 2021.**

**SUIT NO: FCT/HC/PET/114/2021**

**BETWEEN:**

**MRS SANDRA AYANBADEJO**

**....PETITIONER**

**AND**

**MR IBIDAPA AYANBADEJO**

**..... RESPONDENT**

**JUDGMENT**

By a Petition for a decree of dissolution of marriage filed by Yewande Ogundipe Esq on 1<sup>st</sup> March 2021, the Petitioner seeks for:-

*“A decree of dissolution of marriage on the ground that the marriage has brokendown irretrievably in that (i) The Petitioner and Respondent have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (ii) Since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him (iii) The Respondent deserted the Petitioner; (iv) An order granting the Petitioner sole custody of the only child of the marriage namely Seyifunmi Ayanbadejo (9 years old) (v)An Order directing the Respondent to pay the school fees of the child of the marriage until her Post Graduate Level (vi) An Order directing the Respondent to pay the sum of N150,000.00 (One hundred and fifty thousand Naira) monthly to the Petitioner for the upkeep and maintenance of the child of the marriage (vii) An Order restraining the Respondent from assaulting, harassing, threatening, abusing, embarrassing and intimidating the Petitioner.”*

The Petition was filed with a 5-paragraph Verifying Affidavit, a 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, although his counsel Samson A. Eigege Esq made appearances on his behalf with an attempt to settle the matter out of court.

On 27<sup>th</sup> September, 2021, the court was informed that parties have agreed to some terms as it relates to custody of the child of the marriage, maintenance, school fees and medical bills as means of settling their affairs peacefully. However since the marriage can only be dissolved upon proof of the ground for dissolution of it vide the evidence of the Petitioner, the Petition proceeded to trial.

Trial commenced as scheduled on 27<sup>th</sup> September, 2021 with the Petitioner testifying for herself as Pw1.

She adopted her witness statement on oath deposed to on 1<sup>st</sup> March 2021 as her evidence in this case and testified inter alia that she, then a spinster was lawfully married to the Respondent, then a bachelor at Marriage Registry Ikeja Local Government Onigbongbo L.C.D.A. Lagos, Nigeria on 17<sup>th</sup> December 2010. They were issued a Marriage Certificate which was tendered and admitted in evidence as Exhibit A.

Their marriage is blessed with a child Seyifunmi Ayanbadejo born on the 19<sup>th</sup> July 2012. She cohabited with the Respondent between 2010 and 2015. She has been overseeing the educational, physical and spiritual development of the child of the marriage. Love and relationship between her and the Respondent deteriorated because of the intolerable behaviors of the Respondent. They have 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.

She testified further that her counsel and the Respondent's counsel met for the purpose of settlement and certain terms were agreed by her and the Respondent as it relates to the maintenance and custody of the child. They agreed that the Respondent will be paying a monthly allowance of N50,000.00 to the her for the maintenance of the child of the marriage. They also agreed that the Respondent will be responsible for the child's school fees, medical bills, and lessons fees. As it relates to custody of the child, they agreed that the child will be with her with visiting right granted to the Respondent but under supervision.

Under cross examination by the learned Respondent's Counsel, the witness confirmed to the court that it was not agreed that the Respondent will be responsible for the Child's school fees up to post graduate level but rather graduate level. In the absence of question in re-examination, the witness was discharged and the Petitioner closed her case.

In his defence, the Respondent's counsel informed the court that the Respondent has no defence. With this, the Respondent closed his 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.

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). ....

(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 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 17<sup>th</sup> December 2010 at the Marriage Registry Ikeja Local Government Onigbongbo L.C.D.A. Lagos, Nigeria 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 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 after their marriage and since the time their love and affection deteriorated, they have lived apart for over 2 years. The Respondent did not deny the evidence 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 his lawyer

that he has no defence, 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 17<sup>th</sup> December 2010 as shown in Exhibit A and thereafter commenced living apart sometimes in 2015 and this petition was on 1<sup>st</sup> March 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) 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 agreed to certain terms as testified by the Petitioner and confirmed by both her counsel and counsel for the Respondent and urged the Court to accept them as agreed by the parties as it relates to custody of the child of the marriage, access, maintenance and payment of school fees and medical bills as means of settling their affairs peacefully is hereby entered as part of judgment of this court in this petition. For the avoidance of doubt, the court orders as follows:

- a. The custody of the child of the marriage being Seyifunmi Ayanbadejo is granted to the Petitioner with visiting right to the Respondent but under supervision.
- b. The Respondent is ordered to be paying a monthly allowance of N50,000.00 to the Petitioner for the maintenance of the child of the marriage.
- c. The respondent is to be responsible for the Child's school fees, medical bills and lessons fees up to graduate level.

d. It is hereby declared that the marriage the Petitioner entered into with the Respondent at Marriage Registry Ikeja Local Government Onigbongbo L.C.D.A. Lagos, Nigeria on 17<sup>th</sup> December 2010 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**  
**22/11/2021**

**LEGAL REPRESENTATIONS:**

- (1). Yewande Ogundipe Esq for the Petitioner.
- (2). Samson A. Eigege Esq for the Respondent.