

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT JABI**  
**THIS 16<sup>TH</sup> OF DECEMBER, 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA**

**PETITION NO: FCT/PET/080/2021**

**BETWEEN:**

**HELEN OJOCHIDE OKEME -----PETITIONER**

**AND**

**UNUBI SALIFU-----RESPONDENT**

**JUDGMENT**

This is a petition for dissolution of marriage dated the 15<sup>th</sup> day of February 2021 and filed on the same date. The petitioner is praying this honourable court for the following reliefs.

- I. A decree of nullity of the marriage between the petitioner and the Respondent based on the following grounds
  - a.** The marriage between the petitioner and the Respondent is void.
  - b.** The Respondent has no capacity to consummate the marriage.
  - c.** The marriage has broken down irretrievably; and
  - d.** That since the marriage, the respondent behaved in such a manner that the petitioner can't reasonably be expected to live with the Respondent.

ii. AND for such further or other orders as the Honorable court may deem fit to make in the interest of justice.

The grounds upon which this application is brought are:

That the petitioner is a Regional manager with union Bank plc and also has permanent Residency in the United Kingdom (UK) where she is also enrolled for her PhD. Studies. The petitioner avers that the Respondent an acquaintance had proposed marriage to her sometime earlier in 2020 but the petitioner was reluctant because she had not known the Respondent well enough as a person with whom she should consider marriage. That Later in August 2020, after the lockdown for the corona virus pandemic was eased the Respondent came up again with the marriage proposal. At this time, he was really in a hurry so the petitioner took it for love and good will so she reluctantly followed the Respondent to the Federal Marriage Registry here in Abuja. The petitioner avers that they approached the Registry on the 5<sup>th</sup> day of August, 2020 and filed out the relevant forms in preparation for the marriage. To the petitioner's chagrin, the certificate was issued barely five (5) days later on 10<sup>th</sup> August, 2020. That unlike it is done under the Igala tradition and custom, the bride price of the petitioner was never paid neither were other marriage rites fulfilled. These facts are well known to the Respondent being an Igala man himself but as stated above in paragraph 9(b), the petitioner went along for love. That consequent upon the issuance of the marriage certificate, the Respondent took the petitioner to Lagos on a holiday as a newly married couple save for the fact that all was not well. The

petitioner avers that the respondent always complained about body pain or headache or fever as the reason why he would not consummate. These excuses continued daily as the days became weeks and the week's months. The petitioner tried to find out what the problem is exactly but the Respondent was at first skeptical elusive and at some other times suddenly violent, threatening to beat up the petitioner if she does not stay quiet. That in addition to this attitude of the respondent, the respondent also refused, failed or neglected to submit to proper diagnoses or treatment, and prefers to leave the petitioner in the dark. That the petitioner had to return back to Abuja in October, 2020 after months of frustration. She engaged the services of her counsel herein and caused a letter to the respondent concerning the issue. That the respondent refused, failed or neglected to respond to the letter and has continued to ignore the petitioner's calls. The petitioner avers that the Respondent has no capacity to consummate the marriage. That further to the above, the respondent has never given any money nor gift whatsoever to the petitioner since the marriage. That the only thing the Respondent seems to be interested in about the petitioner is requesting that they emigrate abroad to the united kingdom where the petitioner has permanent Residence.

In support of the petition, the petitioner filed a verifying affidavit and witness statement on oath and a certificate relating to reconciliation.

Upon being served with the petition and other accompanying processes through substituted means as ordered by this honorable court.

At the hearing on the 14<sup>th</sup> October 2021, learned counsel to the Respondent informs the court that he does not intend to file any process in this suit. The petitioner was led in chief by her counsel; she adopted her statement on oath and tendered the certificate of marriage between her and the Respondent. She was not cross-examined by learned counsel to the respondent.

Learned counsel to the petitioner in his written address dated 21 October 2021 and filed on the 22<sup>nd</sup> October 2021 formulated a lone issue for determination to wit:

**Whether the petitioner has proved her case to be entitled to the reliefs sought?**

On the lone issue above, learned counsel to the petitioner argued that the Respondent could not sustain an erection to consummate the marriage. That this was not challenged by the respondent. That counsel to the respondent categorically stated that the respondent is not opposing the petition and the eventual grant of the reliefs sought by the petition. Learned counsel to the petitioner cited the case of **INTERDRILL (NIG) LTD V UBA PLC (2017) 13 NWLR (PT1581)52** to the effect that evidence given but not challenged is deemed admitted.

Learned counsel argued that where the respondent lacks the capacity to consummate the marriage the very essence of marriage is defeated and such a marriage is void. He relied on section 15(2) (a) of the Matrimonial Causes Act. Counsel relied on the case of **OGUNTOYINBO V OGUNTOYINBO (2017) LPELR-42174 (CA)** to the effect that non-consummation of

marriage is a ground for divorce under section 15(2) (a) Matrimonial Causes Act.

On the whole, learned counsel urged the court to grant a decree of dissolution of marriage between the parties.

I have perused the evidence before me both oral and documentary. It is my humble legal view that this petition raises a lone issue for determination.

*“Whether the Petitioner has placed sufficient evidence before this honourable court to entitle the grant of the reliefs sought?”*

With respect to the relief of dissolution of marriage the law is fairly settled that no marriage will be dissolved merely because the parties have agreed that it be dissolved as marriage is a very important institution and it is the foundation of stable society the policy of law therefore is to preserve the institution of marriage. That is marriages will not be dissolved on agreement of the parties to it.

A decree for dissolution of marriage would therefore be granted if the petitioner has proved that the marriage had broken down irretrievable and that the petitioner finds it intolerable to live with the Respondent. See Section 15 of the Matrimonial Causes Act, **DAMULAK V. DAMULAK (2008) 8 NWLR (PT. 874) P 651, OLABIWONU V. OLABIWONU (2014) LPELR – 24065.** Therefore by the Provisions of Section 15(2) of the Matrimonial Causes Act, the Petitioner at the hearing must satisfy the court by evidence of the allegations put forward by the petition See **OMOTUNDE VS OMOTUNDE (2000) LPELR – 10194.**

In the instant case, the petitioner adduced evidence to the satisfaction of the court that the Respondent is unable to consummate the marriage on the basis of erectile dysfunction. The Respondent did not controvert or challenge this neither did he file and answer to the petition to deny the allegations against him though he was represented by counsel who also did not file a written address and told the court that the Respondent waived his right to file same.

Consequently, it is hereby ordered as follows:

1. I hereby pronounce decree nisi dissolving the marriage celebrated between the petitioner and the Respondent with certificate number 00089861 at the Federal marriage registry Abuja on the 10<sup>th</sup> August 2020 on the grounds that the marriage has broken down irretrievable and both parties find it intolerable to live with each other. The decree nisi shall be made absolute after a period of three months from the date of this pronouncement, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.

**Appearances:**

Parties –Petitioner in Court.

George Ibrahim with F.O Akoh, I D Nwaogu for the Petitioner.

N Emmanuel for the respondent.

Judgment read in Open Court

**Signed**  
**Hon. Presiding Judge**  
**16<sup>th</sup>/12/2021**