

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 19TH DAY OF JANUARY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/PET/188/2018

HENRIETTA NGOZI OFORBUIKE PETITIONER

AND

OBINNA NWANERI RESPONDENT

JUDGMENT

By Notice of Petition dated 11th day of April 2018 and filed the same date, the Petitioner herein commenced the instant suit against the Respondent. In her Petition, the Petitioner seeks the following reliefs;

- a. A decree for the dissolution of marriage between the Petitioner and the Respondent by virtue of the fact that the marriage has broken down irretrievably.*
- b. A decree NISI of dissolution of marriage between the Petitioner and the Respondent by reason of matters herein before stated.*

The Petition is supported by a four paragraphs Verifying Affidavit deposed to by the Petitioner herself.

The records of this Court show that the Respondent was served with the Petition and hearing notices. Although the Respondent was represented by Counsel at the proceedings, he never filed anything in opposition to the Petition against him.

The matter went to trial whereat the Petitioner testified as PW1. A Certified True Copy of Marriage Certificate dated 7th March, 2014 was tendered by her and admitted in evidence by this Court as Exhibit A.

At the close of the case of the Petitioner, the matter was adjourned for adoption of final written address. The Petitioner's Counsel adopted his final written address dated 19th April, 2019 and filed on 1st August, 2019. In his said Address, Counsel to the Petitioner formulated and argued a sole issue for determination to wit;

“Whether the marriage between the Petitioner and the Respondent has broken down irretrievably.”

In view of the fact that the Respondent neither filed any address nor formulated any issue for determination of the petition, I shall consider the instant Petition under the issue formulated by the Petitioner.

In adducing evidence in support of her Petition, the Petitioner (PW1) sought leave and adopted her witness statement on oath which she had deposed to on 11th April, 2018 as her oral testimony. She testified that being of marriageable age, she was married to the Respondent under the Marriage Act on 7th March, 2014. Exhibit A is the Certified True Copy of Marriage Certificate dated 7th March, 2014 issued to parties. That both the Petitioner and Respondent cohabited briefly at House 75, Road 62, Gwarimpa Estate Abuja and at 5, Oba Adesoji Street Annex, Works and Housing Estate, Gwarimpa Estate Abuja. She testified that herself and the Respondent ceased cohabitation sometime in 2015. That the Petitioner had moved out of the matrimonial home due to unrest, emotional and physical distress as the marriage had been plagued with quarrels. That since she moved out of the matrimonial home over two years before, all attempts to reconcile the parties have since proved abortive. That the marriage has broken down irretrievably and the Respondent does not object to the decree being granted.

In his address, learned Counsel to the Petitioner submitted on his sole issue that a petitioner would be deemed to have established that the marriage has broken down irretrievably if he/she proves any of the facts stated under Section 15(2)(a) – (h) of the Matrimonial Causes Act. He contended that the Petitioner in this case is relying on facts enumerated in Section 15(2)(e) of the Act. He argued that the Respondent did not controvert the Petitioner's evidence and therefore urged this Court to accept same. He relied on the case of *IJEBU-ODE V. ADEDEJI* (1991) LPELR-SC.22/1989. He urged this Court to hold that the Petitioner has proved that parties have lived apart and the marriage has broken down irretrievably. Counsel thus urged this Court to resolve the sole issue in the Petitioner's favour and grant her claim.

In the resolution of the issue before this Court, it must be noted that the Petitioner's instant action is one for dissolution of marriage. As observed earlier, the instant action is practically undefended as the Respondent did not file anything to defend the action against him. This alone however does not entitle the Petitioner to the decree of dissolution of marriage being sought by her as the divorce courts do not, as other courts do, act on mere consents or defaults of pleading, or mere admission by parties since the stability of the marriage tie and the terms on which it should be dissolved involve far wider consideration than the will or consent of the parties to the marriage.

Now, by virtue of **Section 15(1) of the Matrimonial Causes Act** the ground upon which a Court may hear a petition for the decree of dissolution of a marriage is that the marriage has broken down irretrievably. – see also **IBRAHIM V. IBRAHIM (2006) LPELR-7670(CA)**. The facts upon which a marriage would be held to have broken down irretrievably are set out in **Subsection (2)(a) – (h) of Section 15** as follows;

a. that the respondent has wilfully and persistently refused to consummate the marriage;

- b. *that since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;*
- 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. *that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;*
- 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. *that the parties to the marriage have lived apart for a continuous period of a least three years immediately preceding the presentation of the petition;*
- g. *that the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;*
- h. *that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.*

The law is that a petitioner for the dissolution of a marriage must prove one of the facts contained in **Section 15(2) of the Matrimonial Causes Act** above before such a petition can succeed. Where the petitioner fails to prove that, the petition for the dissolution of a marriage will be dismissed notwithstanding the fact that the divorce is desired by both parties. – see the case of **AKINBUWA V. AKINBUWA (1998) 7 NWLR PT. 559 P. 661 AT P. 669 PARAS. D-E**. See also **IBRAHIM V. IBRAHIM (SUPRA) AT PP. 7 – 9 PARAS. F – E** and **ORERE V. ORERE (2017) LPELR-42160(CA) AT PP. 12 – 13 PARAS. B – F**.

The grounds upon which the Petitioner has brought his petition is copiously stated on the face of the petition. It is stated therein that the marriage between her and the Respondent has broken down irretrievably

because they 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.

One of the facts which if proved, would convince the Court that the marriage has broken down irretrievably is where *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 for the dissolution of the marriage being granted.* See **Section 15(2)(e) of the Matrimonial Causes Act.**

To successfully establish the fact under the aforementioned **Subsection 2(e) of Section 15 of the Matrimonial Causes Act**, a petitioner must establish the following;

- (i) 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
- (ii) that the respondent does not object to the decree being granted.

See the cases of **IBRAHIM V. IBRAHIM (SUPRA) AT PP. 23 – 24** and **EZIAKU V. EZIAKU (2018) LPELR-46373(CA) AT PP. 28 – 34 PARAS. D – E.**

In the instant case, the Petitioner's oral testimony that she was married to the Respondent on 7th March, 2014 under the Marriage Act was neither discredited under cross-examination nor challenged by contrary evidence. This fact is further supported by documentary evidence (Exhibit A) which is the Certified True Copy of the Marriage Certificate in respect of the marriage between the Petitioner and the Respondent. By virtue of **Section 86 of the Matrimonial Causes Act** proof of marriages shall be by production of either the original or certified copy of the marriage certificate. See also **Section 32 of the Marriage Act, CAP. M6, Laws of the Federation of Nigeria 2004.**

The unchallenged and credible fact before this Court is further that the Petitioner and the Respondent ceased cohabitation sometime in 2015 when the Petitioner moved out of their matrimonial home “*over two years ago*”.

As observed earlier, the records show that the instant petition was presented on the 11th day of April, 2018. Although the Petitioner did not state exactly when in 2015 cohabitation ceased between herself and the Respondent and when she moved out. Even if it was in the last month of 2015 it would still be over two years before the presentation of this petition in 2018. The Petitioner has thus successfully proved the first leg of the fact under **Subsection 2(e) of Section 15 of the Matrimonial Causes Act** which is that that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition.

Regarding the second leg, the Petitioner testified that the Respondent does not object to the decree sought in this Petition being granted. The Respondent did not deny this fact. Nowhere was this piece of evidence discredited or challenged by the Respondent. In fact, at the proceedings of this Court in this matter on 26th February, 2019, learned Counsel to the Respondent stated categorically in open Court that the Respondent concedes to the Petition and the Petitioner’s claims therein. I therefore find that the Petitioner has established that the Respondent does not object to the grant of the decree being sought for the dissolution of the marriage contracted between them.

From the facts before this Court therefore, the Petitioner has proved that the parties to the marriage (celebrated between herself and the Petitioner) have lived apart for a continuous period of at least two years immediately preceding the presentation of the instant petition and the Respondent does not object to the grant of the decree being sought for the dissolution of the marriage. The Petitioner has thus established the fact under **Section 15(2)(e) of the Matrimonial Causes Act**.

Consequently, I find that the marriage contracted between the Petitioner and the Respondent on 7th March, 2014 has broken down irretrievably and the Petitioner is thus entitled to a favourable exercise of this Honourable Court's discretion granting her the decree for the dissolution of said marriage in the circumstance. The sole issue for determination in this case is thus hereby resolved in favour of the Petitioner.

Pursuant to all the foregoing, a decree *nisi* of dissolution of the marriage contracted on 7th March, 2014 between the Petitioner and the Respondent is hereby made and entered in favour of the Petitioner.

The said Decree Nisi shall become absolute after three months if there be no cause to the contrary.

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Honourable Justice M. E. Anenih

APPEARANCES:

Richard N. Ossai Esq holds the brief of Adaora Igbokwe (Ms) for the Petitioner.

J. O. Yakubu Esq holds the brief of Chukwuemeka C. Clement for the Respondent.