

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/260/2020

BETWEEN:

DR. TED ISEGHOHI-EDWARDS.....PETITIONER

VS

MRS. TRUDY ISEGHOHI-EDWARDS.....RESPONDENT

JUDGMENT

By a Notice of Petition dated 15/5/2020 and filed same day, the Petitioner, Dr. Ted Iseghohi-Edwards seek the following orders as contained in Paragraph 10 of the Petition;

- (a) A Decree for Dissolution of the Marriage on the ground herein before stated that the marriage has broken down irretrievably.
- (b) A Decree that both the Petitioner and Respondent is entitled to shared custody of Daphine Iseghohi-Edwards.
- (c) A Decree that the Petitioner shall enjoy custody of Daphine Iseghohi-Edwards during his vacations from school, whilst the Respondent shall enjoy this custody during his school period.

The facts upon which the Petition is predicated upon as gleaned from the pleading and evidence are those facts contained in Paragraph 15(2) (e) (f) of the Matrimonial Causes Act.

The Petition was served on the Respondent at her last known address at 30 Parkside Place, Unit 614 Malden Massachusetts 02148 United States of America via DHL courier service along with other court processes pursuant to court order made on 15/10/2020.

The Respondent on the other hand did not file an Answer to the Petition and was not represented by Counsel and was also absent throughout trial. Upon the application of Petitioner's Counsel, the Petition thus proceeded as undefended.

On 22/11/2021, Petitioner opened his case and testified as PW1 and told the court that the parties celebrated the marriage in the Registry in the USA. As PW1 sought to tender the copy of the Marriage Certificate. Having carefully considered the submission of Petitioner's Counsel on the issue of the validity of the Marriage contracted outside Nigeria, the court in a considered Ruling agreed with the submission relying on Section 2(3) and 3(1) (c) of the Matrimonial Causes Act and held that the said marriage is valid before the court.

The case continued on 13/2/2021 after the Ruling of court on the issue of jurisdiction, with PW1 continuing his evidence. He told the court that the parties resided at No. 40B Agborofa Street GRA Benin City in 1994 and later lived in Atlanta Georgia from 1994 to 2009 when they relocated to Nigeria. PW1-Petitioner further told the court that Respondent travelled to

the USA to visit the children and while there informed the Respondent to seal off everything he had in Nigeria and move back to the USA as she had no intention to come back to Nigeria and if the Petitioner fail to do so, Petitioner should consider that the marriage was over and done with.

PW1 further told the court that when he informed the Respondent of his decision not to do as she had told him, "Respondent told me that she and her family have decided to move on and that the marriage was over" and this action of the Respondent made him to approach the court for dissolution of the marriage, the parties having lived apart since 2014.

PW1 also told the court that the marriage produced three children namely;

1. Darus Iseghohi-Edwards, born on 24/4/1994.
2. Davina Iseghohi-Edwards, born on 16/10/1997.
3. Daphine Iseghohi-Edwards, born on 11/7/2003.

PW1 finally told the court that he pray the court to dissolve the marriage.

In the course of the Examination-in-Chief of PW1 – Petitioner the following documents were tendered and received in evidence.

1. The copy of the affidavit of change of name, the PW1 having stated the whereabouts of the original was admitted as Exhibit "A".
2. The copy of the Marriage Certificate evidencing marriage between the Petitioner and the Respondent issued by the State of Georgia in U.S.A celebrated on 10th day of May 1998 admitted as Exhibit "B".

At the close of the evidence of the Petitioner - PW1, there was no cross-examination as the Respondent failed and/or neglected to appear to cross-examine the Petitioner despite service of Hearing Notice. Upon the application of Petitioner's Counsel, the Respondent was on 10/1/2022 foreclosed from Defence and the matter adjourned for Judgment.

Having carefully considered the pleadings and evidence of the Petitioner, the court finds that only one (1) issue call for determination that is;

“Whether in this instant case, the Petitioner has sufficiently proved the grounds relied on for the dissolution of the marriage to be entitled to the reliefs”

In the determination of a Petition for dissolution of marriage under Section 15(1) of the Matrimonial Causes Act. It is competent for a marriage to be dissolved, once a court is satisfied that the marriage has broken down irretrievably and to come to that conclusion, the Petitioner must prove to the reasonable satisfaction of court of any of the facts as prescribed by Section (2) of the Matrimonial Causes Act categorized in subsection (a) – (h).

Firstly, Respondent did not file an Answer to the Petition and did not challenged the evidence of the Petitioner; the implication of this is that the court will deem the unchallenged and uncontroverted evidence of the Petitioner as true and correct and act on it. See the case of CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. In the case of Afribank Vs Moslad Enterprises Ltd (2008) All FWLR (PT. 421) 879 @ 894 Paras E – F; Akaahs JCA (as he then was) had this to say;

“Where a Defendant does not produce evidence or testify or call witness in support of Defence, slight or minimum evidence which can discharge the onus of proof would be required to ground the Plaintiff’s Claim”

I am, however, quick to add that, that minimum evidence must be credible enough for court to grant the claim of the Petitioner. See Zengal Ltd Vs Jagal Pharma Ltd (2007) All FWLR (PT. 387) @ 950 Para F – G.

In the instant case the Petitioner relies of the facts of Section 15(2) (e) (f) of the Matrimonial Causes Act which reads;

“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”

“(f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition”

On what may constitute living apart the court, in the case of Nnana Vs Nnana (2006) 3 NWLR (PT. 960) @ 32 held that;

“It is not enough to show that the parties have lived apart for a continuous period of two (2) years immediately preceding the presentation of the Petition, but that the desertion within Section 15(2) (e) and (f) must be one where any of the parties have been abandoned and forsaken without justification thereby renouncing his or her responsibilities and evading its duties”.

The evidence of PW1 – the Petitioner reveal that both parties have lived apart since 2014 a period of over 6 years before the Petition was filed. And that the Respondent had informed the Petitioner that the marriage between them was over. It is clear from all of these that the Petitioner has been abandoned and forsaken and Respondent is evading her duties towards the Petitioner. I therefore finds these pieces of evidences sufficient proof of the facts of these ground relied upon by the Petitioner for the dissolution of the marriage and hold that it avails the Petitioner. The court therefore holds that the marriage between the Petitioner and the Respondent has broken down irretrievably.

On the issue of custody, it is at the discretion of the court. And it is the interest of the child that is of paramount consideration in the determination of the issue of custody. See Section 71(1) of the Matrimonial Causes Act and the case of *Damulak Vs Damulak* (2004) 8 NWLR (PT. 874) 151 @ 167 – 168.

“That in all matter relating to custody and welfare of the child of the marriage the dormant issue that calls for careful examination and consideration is the absolute interest of that child or children”.

The Petitioner in Paragraph 7 of the Petition has proposed adequate arrangement for the children of the marriage and in my opinion they are in line with the position of the law that it is the duty of a father to cater for the welfare of the children. I also find the proposed arrangement as adequate to cater for the welfare and maintenance of the children of the marriage.

From all of these and having considered the evidence of the Petitioner in support of the ground and fact relied on for the dissolution of the marriage, and which remained unchallenged and uncontroverted, this court having found them satisfactory and in conformity with the law particularly Section 15(2) (e) (f) of the Matrimonial Causes Act, the court holds that the union has broken down irretrievably and deserves a judicial burial, consequently the Petition succeeds, judgment is hereby entered in favour of the Petitioner as follows;

1. The marriage celebrated between the Petitioner Dr. Ted – Iseghohi-Edwards and the Respondent Mrs. Trudy Iseghohi-Edwards on 16th day of May 1998 in the State of Georgia Marriage Registry United States of America has been broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the parties.
2. The said order shall become absolute after a period of three (3) months from today.
3. The Petitioner and Respondent shall be entitled to shared custody of Daphine Iseghohi-Edwards; child of the marriage.
4. The Petitioner shall enjoy custody of Daphine Iseghohi-Edwards during vacation from school, whilst the Respondent shall enjoy his custody during school period.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

27/1/2022

APPEARANCE:

OLADAPO .O. AGBOOLA ESQ. FOR THE PETITIONER

NO REPRESENTATION FOR THE RESPONDENT