

**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/57/2018**

**BETWEEN:**

**OLATUNJI AYOADE.....PETITIONER**

**VS**

**MRS. CHINELO J. AYOADE.....RESPONDENT**

**JUDGMENT**

By a Notice of Petition filed on 10/12/2018, the Petitioner, Olatunji Ayoade seeks the reliefs contained in the Petition as follows:

- (1) A Decree of Dissolution of Marriage on the ground that the marriage has broken down irretrievably and the Petitioner cannot be reasonably expected to continue to live with the Respondent.
- (2) An Order granting the custody of;
  - i. Oluwadunilola Bolarinwa Ayoade male 14 years old.
  - ii. Oluwafunmilola Olufisayo Ayoade female 12 years old and;
  - iii. Oluwatomilola Olubusayo Ayoade female 8 years old to the Petitioner.

The facts upon which the Petitioner seeks the court to dissolve the marriage is premised on the facts contained in Section 15 2 (c) of the Matrimonial Causes Act as can be gleaned from both the pleadings and evidence adduced in support of the Petition.

This Petition was filed on 10/12/2018 and served on the Respondent on 19/2/2019. The Respondent on the other hand did not file an Answer to the Petition, was absent through hearing of the Petition and was not represented by Counsel of her choice, despite repeated services of Hearing Notices. Thus the Petition proceeded as undefended.

The Petitioner testified as PW1 and adopted the deposition in his Witness Statement on Oath filed on 10/12/2018 as oral evidence in proof of his case. In the course of the Examination-in-Chief of PW1 the following documents were tendered and received in evidence;

- (1) The letter dated 13/3/2009 written in long hand by Mrs. Chinelo J. Ayoade (Respondent) to the Petitioner Lt. Olatunji .B. Ayoade admitted as Exhibit "A".
- (2) A copy of receipt issued by National Hospital Abuja dated 15/03/2009 admitted as Exhibit "B".
- (3) The Certified True Copy of Marriage Certificate No. 49 evidencing marriage Celebrated at Oritamefa Baptist Church Ibadan between the Petitioner and the Respondent on 14/2/2004 admitted as Exhibit "C".

At the close of the Petitioner's evidence the case was adjourned for cross-examination and defence. Respondent failed to be in court on the adjourned date despite service on her of Hearing Notice, consequently, upon the application of the Petitioner's Counsel, the court ordered the foreclosure of the right of Respondent to cross-examine PW1 and also to defend the Petition and adjourned for filing and Adoption of Final Written Address.

Addressing the court on 6/12/2021, Victor Abasi – Akan Ekenn Esq. for the Petitioner adopted the Final Written Address dated 7/7/2021 and filed same day; as oral argument in support of the Petition.

In the said Address, Petitioner's Counsel formulated a sole issue for determination that is;

“Whether the Petitioner has proved his case in order to be entitled to the relief sought”

Submits that this court is clothed with jurisdiction to hear the Petition under Section 2(1) of the Matrimonial Causes Act. Submits further that the grounds upon which the court can dissolve a marriage is that the marriage has broken down irretrievably. Refer to Section 15(1) of the Matrimonial Causes Act and the court can reach that finding under any of the grounds contained in Section 15(2) of the Matrimonial Causes Act.

Submits that the Petitioner relies on the grounds of Section 15 (2) (a) and (c) and led credible evidence in proof of those grounds which were neither challenged nor contradicted. Urge court to accept the evidence of the

Petitioner. Refer to Ifediora Vs Okafor (2019) 16 NWLR (PT. 1098) 322 336  
Re: Abiola (2019) 12 NWLR (PT. 1685) 27 19.

Submits that in view of the unchallenged and uncontroverted evidence of the Petitioner urge court to believe the said evidence and grant all the relief sought by the Petitioner. Refer to Etim Vs Etim (1975) NSCC 329 @ 331.

Having carefully considered the unchallenged and uncontroverted evidence of the Petitioner, I find that only one issue call for determination, that is;

“Whether the Petitioner has made out a ground so as to be entitled to the relief sought”

First, it is in the record of court that the Respondent was served the Petition and other processes of court but failed to file an Answer to the Petition. The court have held that where evidence is neither challenged nor controverted, court should deem that evidence as admitted correct and act on it. See CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406 and Iyere Vs Bendel Feed and Flour Mill Ltd (2009) All FWLR (PT. 453) 1217 @ 122. In the case of Afribank Ltd 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”

However the burden of proof imposed on the Petitioner by Section 131-134 of the Evidence Act as well as Section 15 (1) and 15(2) (a)-(h) of the Matrimonial Causes Act must be discharged for the Petition to succeed.

In the determination of a Petition for dissolution of marriage under 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 satisfy the court of any of the facts laid down in Section 15 (2) of the Matrimonial Causes Act categorized under sub section (a)-(h).

In the instant case, the Petitioner in seeking the court to dissolve the marriage, placed reliance on the facts contained in Section 15(2) (c) of the Matrimonial Causes Act Section 15 (2) (c) reads;

“That since the marriage, the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent”

To succeed under this ground, the party relying on it must lead sufficient and credible evidence to the reasonable satisfaction of court of acts of the Respondent, which will warrant the grant of the relief sought. On what may constitute conduct or behaviour of the Petitioner finds cannot be expected to live with, it has been stated in the case of Ibrahim Vs Ibrahim (2007) All FWLR (PT. 346) 474 @ 489 – 490 Para H – B, that the conduct or behaviour of the Respondent must be weighty and grave in nature to make further co-habitation virtually impossible. See also the English case of Katz Vs Katz (1972) ACE E – R 219.

In support of this ground PW1 – Petitioner informed the court that the Respondent has constantly fomented trouble in the matrimonial home thereby making peace elusive and illusory, fond of moving out of the matrimonial home after quarrels started by her, Petitioner has tried to live peacefully and peaceably with the Respondent to no avail as he has consistently pestered the life of the Petitioner. PW1 stated further that.

“On one occasion, the Respondent broke the door to my bedroom while she threatened to kill me if she laid her hands on me. On 15<sup>th</sup> March 2019, Respondent attempted to commit suicide by drinking poison.

I took the Respondent to the National Hospital for treatment after her suicide attempt. The Petitioner is scared for life in that the Respondent who is capable of attempting poisoning herself could poison him”

PW1 also informed court that;

There is no love between the Petitioner and the Respondent as the marriage is full of trouble, pains, heartaches and quarrels. The Respondent when in the fit of anger destroys household property and broke the door of the Petitioner’s room.

All of these are acts of cruelty and cruelty on the part of Respondent to the Petitioner have been held by the court as satisfactory to establish the facts of Section 15(2) (c) of the Matrimonial Causes Act, see the case of Damulak Vs Damulak (2004) 8 NWLR (PT. 874) 151 @ 154 Ratio 1 and 2. I have earlier stated that the conduct or behaviour of Respondent relied on

for the grant of the relief sought must be grave and weighty to the reasonable satisfaction of court, to enable it come to the conclusion that further co-habitation between the parties is virtually impossible and after a careful consideration of the evidence of PW1 – the Petitioner, which remained unchallenged, I find that the behaviour or conduct of the Respondent as stated by the Petitioner are weighty and grave enough to hold that this ground relied on by the Petitioner for the dissolution of the marriage has been proved to the reasonable satisfaction of court. I so hold.

On the claim for award of custody of the three (3) children of the marriage, Section 71 (i) of the Matrimonial Causes Act gives the court discretionary powers to decide the ground or otherwise of custody of children. However, it calls on the court to consider the interest of the children as the paramount consideration in reaching its decision on the matter of custody of children of marriage in a matrimonial proceedings such as this, see *Nnana Vs Nnana* (2006) 3 NWLR (PT. 966) 1 @ 32.

In his evidence PW1 – Petitioner stated;

“On 13<sup>th</sup> March 2009 after one of such quarrels the Respondent wrote a letter to the Petitioner giving her consent to peacefully dissolve the marriage due to irreconcilable differences. The Respondent also surrendered the custody of the children of the marriage through the said letter of 13<sup>th</sup> March 2009”

Petitioner also pleaded arrangement made for the children in conformity with the Provision of the Matrimonial Causes Act.

From the unchallenged pieces of evidence Exhibit "A" and the authorities cited as well as the proposed arrangement made for the children, the court is of the considered view that the welfare and interest of the children will be better served if awarded to the Petitioner. I so hold.

In conclusion, the court finds that this Petition has merit and should succeed. Thereafter Judgment is entered in favour of the Petitioner as follows;

- (1) The marriage celebrated at Oritamefa Baptist Church Ibadan under the Marriage Act, between Olatunji Ayoade - the Petitioner and Chinelo J. Ayoade - the Respondent on 14/2/2004 has 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 the date of this Judgment.
- (3) Custody of Oluwadunilola Bolarinwa Ayoade male, Oluwafunmilola Olufisayo Ayoade female and Oluwatomilola Olubusayo Ayoade all of them children of the marriage are hereby granted to the Petitioner with unrestrained access at reasonable time of the day to the Respondent.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

2/3/2022



**APPEARANCE:**

VICTOR ABASIAKAN –EKUM ESQ - FOR THE PETITIONER

NO REPRESENTATION FOR THE RESPONDENT