

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

PETITION NO. FCT/HC/BW/PET/01/2021

BETWEEN:

MRS. OKUGBENE OLURONKE MOSUNMOLA PETITIONER

AND

MR. OKUGBENE EJIRO JOSHUA DEFENDANT

JUDGMENT

DELIVERED ON 15TH FEBRUARY, 2022

This is a Petition filed by the Petitioner against the Respondent in which the Petitioner is praying the court for a decree of a dissolution of the marriage between her and the Respondent on the ground that the marriage has broken down irretrievably. The Petitioner also filed a witness statement on oath, a verifying affidavit as well as a copy of the Marriage Certificate. The Respondent was served with the Petitioner's Petition by substituted means by order of this court. The Respondent filed no answer to the Petition nor did he enter any appearance. This Petition is therefore heard as an undefended Petition pursuant to Matrimonial Causes Rules.

When the matter came up for hearing, the Petitioner gave evidence as PW1. In her evidence which was contained in her witness statement on oath adopted before the court on 28th September, 2021. The PW1 told the court that she was married to the Respondent under the Act at the Marriage Registry Bwari on 23rd June, 2011 and that at the time she was a spinster while the Respondent was a Bachelor.

It was her evidence that all through the marriage she and the Respondent were domicile in Nigeria at Plot 189 BD, Dawaki Extension Bwari, Cohabitation between the parties cease in 2017 when the Respondent deserted her, move out of the Matrimonial home to take up residence in a location unknown to the Petitioner. And that since the said 2017, she had live apart from the Respondent up till date. The witness gave evidence that she has not connived with the Respondent in bringing this case nor condone the action of the Respondent or collude with him in bringing this Petition. It is the evidence of the PW1 that there is no child in the marriage. The PW1 then urged the court to grant the decree of dissolution of the said marriage between her and the Respondent.

Counsel to the Petitioner filed a final written address which was adopted before the court. The said address, the

Petitioner raised one issue for determination namely:
“Whether the Petitioner has made out a case to warrant the grant of the reliefs sought in the Petition”

In arguing the issue, counsel submitted that the evidence of the Petitioner is unchallenged, uncontroverted and uncontradicted. As such, the onus of prove on the Petitioner is naturally discharge on a minimum of prove. counsel relied on the case of Shell Vs. Edamkue, Koro & Nwaikunee (2009) 39 N.S.C.Q.R. 597 at 628 to 629 relying on Section 15(1) & (2) of the Matrimonial Causes Act,.

Counsel submitted that the Petitioner has fulfilled the conditions set out therein for the dissolution of marriage in her evidence in that the Respondent deserted the Petitioner and the matrimonial home since 2017 and they have live apart for over three years and that the Respondent has wilfully and persistently refused to consummate the marriage. That since the evidence is uncontroverted; the court should grant the Petitioner a decree dissolving her marriage with the Respondent.

I have carefully read the evidence of the Petitioner as well as the exhibit tendered. This court is only empowered to assume jurisdiction to entertain an application for the dissolution of

marriage brought under the Matrimonial Causes Act where the marriage is contracted under the Act.

To prove that a marriage is contracted under the act, it will be enough if the certificate of marriage is tendered and the court is satisfied that it was issued to the parties in pursuant to a marriage contracted under the Act at a Marriage Registry. Exhibit PP1 was tendered by PW1 to prove that she contracted the marriage under the Act with the Respondent in 2011. I am satisfied that the marriage between the parties is a marriage under the Act and this court has the jurisdiction to entertain the Petition brought by the Petitioner for its dissolution.

Now Section 15(1) of the Matrimonial Causes Act Provides that a decree of dissolution of marriage shall only be presented upon the grounds that the marriage between the parties had broken down irretrievably. Section 15 (2) of the Matrimonial Causes Act spelt out facts which if proven before a court shall satisfied the condition that the marriage has broken down irretrievably.

According to PW1, the marriage between her and the Respondent has broken down irretrievably. The facts she relied on are that the Respondent deserted her since 2017 and all entreaties to reconcile them and get the Respondent

back to the matrimonial home failed. She also gave evidence that the Respondent has wilfully refused and persistently remained adamant in consummating the marriage. Finally that the Respondent and the Petitioner have live apart for a continuous period of at least three years since 2017 before the Petition was presented to the court in January, 2021.

Let me quickly say that in order to succeed to prove that the marriage has broken down irretrievably the Petitioner need not prove all the facts contained in section 15 (2) of the Matrimonial Causes Act. If the Petitioner succeed in proving any one of the facts it will be enough for the court to hold that the marriage has broken down irretrievably.

In the instant Petition the evidence of the PW1 is that the parties have been living apart since 2017. This Petition was presented in January, 2021. I hold that the parties have lived apart for an unbroken period of at least three years immediately preceding the presentation of this Petition in satisfaction of Section 15 (2) (f) of the Matrimonial Causes Act.

Similarly, the evidence of the PW1 is to the effect that the Respondent deserted the Petitioner since 2017. This evidence has not been controverted or contradicted by the Respondent. I am satisfied that this desertion has continued for over at

least one year continuously preceding the presentation of this Petition by the Petitioner in 2021. These satisfy the fact as provided for in Section 15(2) (d) of the Matrimonial Causes Act. Where a party satisfy the court that any of the facts or conditions set out in section 15 (2) of the Matrimonial Causes Act has been met.

The court is duty bound to hold that the ground for the dissolution of the marriage has been proven. Where as in this case the case of the Petitioner is undefended the burden of proof on the Petitioner is minimal. I hold that the Petitioner has Respondent.

According, the marriage between the Petitioner and the Respondent celebrated at the Marriage Registry Bwari on the 23rd June, 2011 be and is hereby dissolve on the ground that the marriage has broken down irretrievably.

I hereby order that a decree nisi be issued to the Petitioner. That is the judgment of the court.

APPEARANCE:

Martina I. Dajo, Esq. for the Petitioner

The Respondent is not in court.

Sign
Hon. Judge
15/02/2022