

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU – ABUJA**  
**DELIVERED ON TUESDAY THE 22<sup>ND</sup> DAY OF FEBRUARY, 2022.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**  
**SUIT NO. PET/136/2020**

**BETWEEN**

**ADESORO TOLUWA AUSTEN----- PETITIONER**

**AND**

**ADESORO-OMOTOSHO-----RESPONDENT**

**JUDGMENT**

This petition is brought against the Respondent, Adesoro-Omotosho, by the Petitioner AdesoroToluwa Austen for a decree of dissolution of their marriage entered into on the 29<sup>th</sup> day of October, 2011 at the Marriage Registry, Ibadan Nigeria on the ground that the marriage has broken down irretrievably. The Petitioner seeks the following reliefs;

1. A DECREE of dissolution of the marriage between the Petitioner and the Respondent contracted on the 29<sup>th</sup> day October, 2011 on the ground that the marriage has broken down irretrievably.
2. AN ORDER restraining the Respondent from interfering with, dealing adversely with the Petitioner in any way whatsoever that may infringe or impugn on the compliance with the orders of this Honourable Court in anyway whatsoever.
3. AND FOR SUCH FURTHER orders as the Court may deem fit to make in this circumstance.

The Petition was filed 10/1/2020 and served on the Respondent who upon receipt of the Petition and Petitioner's witness statement on oath filed an answer on 11/3/2020 and prayed for the following orders:

- i. AN ORDER for the Petitioner to pay her the sum of N 100,000.00 as monthly maintenance for the welfare and general upkeep of the child of the marriage.
- ii. AN ORDER directing the Respondent to pay the school fees of the child of the Marriage henceforth and not later than a week before such School fees becomes due and payable to the respective educational institution up to First Degree level at reputable Universities.
- iii. AN ORDER for the Petitioner to pay the sum of N 100,000.00 as monthly maintenance and for the welfare of the Respondent.
- iv. And for such further or other ancillary reliefs that the Honourable Court may deem fit to make in the circumstances.

The Petitioner testifying on oath adopted his witness statement on oath wherein he averred that he contracted a marriage with the Respondent at the Federal Marriage Registry, Ibadan Nigeria on the 29<sup>th</sup> of October 2011. That since his marriage with the Respondent, they lived together at No. 2 Bayelsa Street Moore Estate, Lugbe Abuja between 2011—2014 and No. 5 Anyim Pius Street, CBS Estate Von Lugbe Abuja FCT until sometime in March 2016 when the Respondent left Abuja and relocated to Ilesha Osun State via Ekiti state for a supposed coal business. That they have lived part since 2016 and have continuously

lived apart. That due to the Respondent's relocation, the child of the marriage Benjamin Adesoro Omotosho has been with his Guardian in London United Kingdom. That the Respondent has since ceased all communication with him since she left their matrimonial home in 2016 and has rebuffed all pleas to return home. That the Respondent has been moving her personal effects from their Matrimonial home gradually since she left and sometime in January 2019, requested that all her belongings left be sent to her at Efab Estate Lokogoma, Abuja. That due to the fact that the Respondent had abandoned both the marriage he consented to the appointment of a Guardian for the child. That the Respondent's attitude towards their marriage has indicated the fact that she is no longer interested in the Marriage and same has broken down irretrievably. That he shall provide for the education of the child of the marriage up to university level and also send monthly upkeep allowance to the child's guardian for the upkeep of the child. That he shall not provide for the maintenance of the Respondent due to the fact that she has a business and is able to cater for her needs. That it will be in the interest of justice that the Court dissolve the marriage between the Respondent and himself in view of the fact that the marriage has broken down irretrievably.

Petitioner tendered two documents which were admitted in evidence and marked as follows;

- a. Copy of marriage certificate no MRC/363/2011 dated 29<sup>th</sup> October, 2011 admitted and marked Exhibit A.

- b. Certified True Copy of court order appointing Ms. Victoria Oyewumi Gabriel as guardian of Benjamin Adesoro Omotosho dated 7/11/2016.

The Respondent testifying on oath adopted her witness statement on oath wherein she averred that she and the Petitioner got married at the Federal Marriage Registry, Ibadan Nigeria on the 29<sup>th</sup> of October, 2011. That they had their first and only child of the marriage BENJAMIN ADESORO OMOTOSHO on the 12<sup>th</sup> day of November, 2011. That they continued to live together ever since their marriage until sometimes in March, 2016 when she asked for permission from the Petitioner to allow her travel to Ekiti State for a coal business so that she can earn money and support the family financially, having noticed that the Petitioner have been finding it difficult to cater for the family needs. That the Petitioner was very delighted and he happily gave her the permission and consent to embark on the said trip. That she was however surprised that when she finally returned to Abuja about a month after to reunite with her husband, she discovered that the Petitioner has moved out of the house without notifying her. That all effort to reach the Petitioner proved abortive and when the petitioner was finally contacted, he refused to disclose his location to her. That the Petitioner had to drop her clothes somewhere at Lokogoma, Abuja before informing her to go pick them up there. That she never abandoned the Petitioner. That she has always shown affection, love and care of mother to their only child of the marriage and never abandoned the child nor the Petitioner.

Parties were duly cross examined and case was adjourned for final written address subsequently.

At the close of trial, Learned Counsel for the Respondent, Wole Abidakun Esq. adopted the Respondent's Final Written Address dated and filed 23/6/2012. In the said address, counsel formulated three (3) issues for determination, namely: -

- a. Whether the Respondent is against the Decree of Dissolution of the marriage by the Petitioner?
- b. Whether the Respondent is against the Declaration for a Decree of Dissolution of the marriage?
- c. Whether the Petitioner is to be held responsible for the upkeep and maintenance of the Respondent and the child of the marriage.

Summarily, learned counsel submitted that admitted fact need no further proof. That when evidence is not attacked, nor successfully discredited, it is said to be uncontroverted and is good and credible evidence that can be relied upon by the court. He relied on the case of **Owners of m/v Gongola Hope vs Smurfit Ltd (2007) All FWLR (Pt 388) 1005 S.C.** and urged the court to grant all the prayers of the Respondent concerning the upkeep of the only Child of the Marriage, also for the upkeep of the Respondent. He further urged the Court to grant all the Petitioner's reliefs in this case.

On the other hand, counsel to the Petitioner, Safiya J. Hamza, Esq. filed Petitioner's final written address on 24/6/2021, also formulated two (2) issues for determination namely: -

- a. Whether having regards to the evidence led by the Petitioner at the trial, the Petitioner is not entitled to an Order of Dissolution of the marriage between the Petitioner and the Respondent.
- b. Whether having regard to the totality of the evidence led by the Respondent before this Honourable Court, the Respondent is entitled to any of the reliefs sought.

In summary, learned counsel submitted that the questions during cross examination have not in any way impugned the testimony of the Petitioner but rather corroborated the fact the Petitioner and the Respondent have been separated and living apart since 2016. He urged the court to hold that the Petitioner's evidence, being unchallenged and uncontroverted, is true and worthy of being relied on in showing that since the 2016, the Respondent had abandoned the Petitioner and the parties have continuously lived apart. Hence the court should hold that the marriage has broken down irretrievably. Counsel further submitted that as evidenced by all the processes before the Court, the Respondent in this case only filed an Answer to the Petition and a Witness Statement of Oath, wherein she prayed for certain reliefs. Hence that since the Respondent has not filed any Cross-Petition before this Court, she cannot in law be praying for any relief. In conclusion counsel submitted that the Petitioner has

satisfied the requirement of the law to entitle him to the reliefs sought in this petition. He therefore urged the court to dissolve the marriage between the Petitioner and the Respondent, also grant all the other reliefs sought in the petition and that the Respondent is not entitled to any of the reliefs sought in the answer to the Petition. He relied on the following authorities amongst others;

- i. **IGBINOVIA & ORS VS. AGBOIFO (2002) FWLR (PT. 103) 505 @ 514.**
- ii. **OGUNYADE VS. OSHUNKEYE (2007) 15 NWLR (PT. 1057) 218.**
- iii. **ABOBO BAALO VS FEDERAL REPUBLIC OF NIGERIA (2016) LPELR-40500 (SC).**
- iv. **UZOCHUKWU V UZOCHUKWU (2014) LPELR 24139 (CA).**
- v. **EFFIOM V EDET (2016) LPELR-42047(CA)**
- vi. **Section 15 (1) and (2) of the Matrimonial Causes Act.**

First and most, the Respondent in her Respondent's answer to Petition prays this court for four (4) reliefs, this is actually strange as there is no Cross Petition before this court. A cross petition being a separate action and independent of the main petition, would have been the appropriate way of placing the agitation of the Respondent before the trial Court to enable her seek the reliefs she is praying the court for. The court of Appeal in **EFFANGA BASSEY EFFIOM v. BASSEY EFIOM EDET (2016) LPELR-42047 (CA) Per OYEWOLE, J.C.A (Pp. 12 paras. A)** on the difference between an answer and a cross petition held thus;

*"...while the Answer is in essence a rebuttal of the facts contained in the petition and narration of a contrary story as in a Statement of Defence in a civil action commenced via a Writ of summons without seeking any prayer within the context of a matrimonial cause, a cross-petition goes further to seek a dismissal of the petition while seeking a relief in the context of a matrimonial cause similar to a Counter-Claim."*

Therefore, the Respondent having not filed a Cross Petition is not entitled to the reliefs sought in her answer to petition as there are no basis for such. Hence the reliefs sought are hereby struck out.

Having carefully considered the pleadings, evidence and the submission of both counsel, the court finds that there is a sole issue for determination namely: -

“Whether parties are entitled to a decree of dissolution of Marriage”.

In the Marriage Act, it is competent for a marriage to be dissolved, once a court is convinced that the marriage has broken down irretrievably and to arrive at that conclusion that a marriage has broken down irretrievably the Petitioner must satisfy the court of any of the facts as prescribed for dissolution of marriage, under the **Section 15 (2) of the Matrimonial Causes Act, categorized under paragraphs A – H**. It states:

*"(2) The court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down*



*irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts –*

*(a) that the respondent has willfully 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 at 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.*

Therefore, upon proof of any of the factors stated in **Section 15(2) (a-h)** of the **Matrimonial Causes Act**, to persuade the Court that the marriage has broken down irretrievably, the Court shall grant a decree of dissolution of the marriage if it is satisfied on all the evidence adduced as held in **UZOCHUKWU V. UZOCHUKWU (2014) LPELR-24139 (CA)**.

In this case, although both parties are not opposed to the Court granting a decree of dissolution of their marriage. The Petitioner herein must satisfy this Court of his entitlement to the principal relief of dissolution of marriage with credible evidence. In so doing, the Petitioner succeeds only on the strength of his case and not on the weakness of that of the Respondent. Indeed, like all declaratory reliefs, the relief of dissolution of marriage is not granted even on admission by the Respondent as provided in **Sections 44(3) and 82** of the **Matrimonial Causes Act** and the cases of **OGOLO & ORS. v OGOLO & ORS (2003) LPELR-2309(SC)**, per **Edozie JSC** at pages 25 – 26, paras. **F – G**. The Petitioner had informed the Court in his witness statement on oath and reiterated same during cross examination that cohabitation ceased between them since 2016. From the above testimony of the Petitioner, it is clear that he has proved physical separation since 2016 immediately

preceding the presentation of the petition. This fact is not disputed by the Respondent as Respondent also adduced evidence in support in her witness statement on oath that they have lived apart since 2016 preceding the presentation of the Petition.

It is pertinent for me to add that the law on living apart is not concerned with the right or wrong or guilt or innocence of the parties but whether it has been proved to the satisfaction of the Court that the parties have lived apart under any of the two circumstances stated in Section 15(2)(e) and (f) as held in **OMOTUNDE v OMOTUNDE (2001) 9 NWLR (Pt. 718) 252**. In my considered view, the evidence of the Petitioner is based on the requirement of the **Matrimonial Causes Act, 2004, in Section 15 (2) (f)** which provides thus:

*“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”.*

From the averments in the Petition and the evidence led in support, what is clear to me is that the marriage between the parties has broken down irretrievably owing to the fact that parties have lived apart from each other without co-habiting for a continuous period of six (6) years preceding the filing of this Petition. On the whole it is my considered view, that parties having proved that the marriage has broken down irretrievably, this Honourable Court has no more to do than to grant the relief as sought by the parties. Consequently, I therefore hold that the marriage between the Petitioner and Respondent has broken down

irretrievably. I hereby dissolve the marriage and make the following orders: -

- i. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, ADESORO TOLUWA AUSTEN, and the Respondent, ADESORO OMOTOSHO at Marriage Registry Egbeda Local Government, Oyo State on the 29<sup>th</sup> day of October, 2011.
- ii. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.
- iii. The Petitioner shall continue to provide for the education of the child of the marriage **Benjamin Adesoro Omotosho** all through his university education and also pay monthly upkeep allowance to the child's guardian as averred in his witness statement on oath.

**Parties:** Absent

**Appearances:** No legal representation for either party.

**HON. JUSTICE M. OSHO-ADEBIYI**  
**JUDGE**  
**22<sup>ND</sup> FEBRUARY, 2022**

