

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 20 GUDU - ABUJA
ON TUESDAY THE 8TH DAY OF MARCH 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -
ADEBIYI

SUIT NO. PET/295/2019

BETWEEN

DANIELLA NYEMACHI WAMI-====------PETITIONER

AND

OGHENETEGA MICHAEL OMIMI=====RESPONDENT

JUDGMENT

The Petitioner with leave granted by this Court to file this suit having been commenced less than the prescribed two years, filed on the 18th day of June 2019 filed this suit against the Respondent praying the Court for the following reliefs;

1. A Decree of dissolution of marriage between the Petitioner and the Respondent contracted on the 8th day of December 2017 at Abuja Municipal Area Council Registry, Abuja, FCT.
2. And any order or further orders as this Honourable Court may deem fit to make in the circumstances.

The facts relied upon by the Petitioner as constituting the ground for a decree for the dissolution of the marriage as the marriage has broken down irretrievably are as follows;

- a. That the Respondent fraudulently deceived the Petitioner into conducting marriage at the Marriage Registry and abandoned the Petitioner immediately after the marriage.
- b. That the Respondent refused to pay the bride price and refused to consummate the marriage despite pleas from the Petitioner.
- c. That the Petitioner and the Respondent have lived apart since the marriage preceding the presentation of this petition.
- d. That the Petitioner has suffered lots of deprivation, wanton abuse, lack of love and dishonesty that the Petitioner finds intolerable to live with the Respondent or continue with the marriage.
- e. That the marriage has broken down irretrievably.

Attached to the Petition are the accompanying documents. The Respondent was served with the processes in this suit via substituted means on the order of this Court.

Trial in this case commenced on the 19th day of March 2022 with the Petitioner testifying as the sole witness and adopting her witness statement on oath as her evidence in chief. From the facts as deposed therein, it is the case of the Petitioner that parties got married on the 8th day of December, 2017, at the Abuja Municipal Area Council Marriage Registry, Abuja FCT. That they never cohabited immediately

after the marriage. That the traditional and church wedding were fixed afterwards but the Respondent failed to show up. That the Respondent after the Marriage at Abuja Municipal Area Council Marriage Registry on the 8th of December 2017 abandoned Petitioner and refused picking her calls or even see her and all efforts to reach him proved abortive. That the actions of the Respondent abandoning her has cost her lots of deprivation, wanton abuse, lack of love, and dishonesty that Petitioner find it intolerable to continue with the marriage as it is obvious the respondent is not interested in the marriage. That the Respondent abandons her, she have suffered untold hardship, rejection, mockery, emotional and psychological trauma. That the marriage has broken down irretrievably as a result of deprivation, fraud, lack of love, dishonesty, and abandonment.

In proof, Petitioner tendered the original certificate of marriage between parties with no.2462 dated the 8th day of December 2017 as Exhibit A.

At the Close of the Petitioner's case, the Court adjourned for cross examination and Defence. The Respondent, despite being served with the processes and the hearing notices, failed to appear, or was represented by Counsel. The Respondent was therefore on application of the Petitioner's Counsel, foreclosed from cross examination and defence.

The Petitioner's Counsel filed and adopted their final written address wherein Counsel raised a sole issue for determination; thus, "Whether the marriage between the parties has broken down irretrievably and

whether the petitioner has proved her case to be entitled to the relief sought in the petition”

Arguing the sole issue, Counsel submitted that the marriage between the parties has broken down irretrievably having regards to the facts placed before this Honourable Court by the Petitioner.

Submitted that from the facts constituting the ground for the petition and the unchallenged evidence put forward by the Petitioner in her witness statement on oath solidifies the assertion that the marriage between parties has broken down irretrievably having satisfied Section 15 (2) (a) and (c) of the Matrimonial Causes Act. Counsel urged the Court to hold that petitioner has established cogent facts and evidence in her petition, witness statement on oath and in her testimony before the court to be entitled to the relief sought and we urge the Court to so hold. Counsel relied on the following authorities:

- a. SKYPOWER EXPRESS AIRWAYS LTD VS. OLIMA (2005) 18 NWLR (PT. 957) 244 at 225A- D,
- b. M/V GONGOLA HOPE V. SMURFIT CASES LTD (2007) 15 NWLR 189 or All FWLR (Pt. 388) 1005 at 1026, paras. C - H
- c. SHELL PETROLEUM DEVELOPMENT COMPANY NIGERIA LIMITED V. CHIEF TIGBARA EDAMKUE & ORS. (2009) LPELR-SC.60/2003 PP. 43-44, PARAS. B-B

The principle of law is well settled that, where a party served with the Court processes, refuses to file a response or come to Court to defend the suit, such a party cannot be heard to complain that he was deprived the right of fair hearing. In this case, the petitioner’s depositions are without reply from the Respondent. The evidence of the Petitioner is therefore not

challenged or contradicted by the Respondent. The effect is that the evidence of the Petitioner will be taken as accepted or established. See the case of **OLOFU v. ITODO(2010) LPELR-2585(SC)**.

The Court hearing a Decree for the dissolution of marriage would grant same if the Petitioner has proved that the marriage has broken down irretrievably. See Section 15 of the Matrimonial Causes Act, *Damulak Vs. Damulak* (2008) 8 NWLR (Pt. 874) P. 651; *Olabiwonu Vs. Olabiwonu* (2014) LPELR – 24065. Therefore, by the provisions of Section 15 (2) of the Matrimonial Causes Act, the Petitioner at the hearing must satisfy the Court of one or more of the facts stated therein by evidence of the allegations put forward by the petition. See *Omotunde Vs. Omotunde* (2000) LPELR – 10194. In this instant case, from the evidence adduced before me, it is not challenged or controverted that the parties have lived apart since March 2011. I am therefore satisfied by the evidence of the petitioner, which is not controverted, that the Respondent after the marriage at the Abuja Municipal Council Marriage Registry on the 8th day of December 2017 abandoned the Petitioner and all efforts and attempts by the Petitioner to call or see the Respondent proved abortive. It is therefore my firm view that the unchallenged evidence of the Petitioner has satisfied the provisions of Section 15(2) (a), (c), and (d) of the Matrimonial Causes Act 2004, that the marriage has broken down irretrievably and as a result, in that since the marriage the respondent willfully and persistently refused to consummate the marriage, has behaved in such a way the Petitioner cannot reasonably be expected to live with and that the Respondent has deserted the Petitioner which are

proof that the marriage has broken down irretrievably. The Petitioner, having discharged the burden placed on her to prove the petition, I find merit in her claim, and I hereby dissolve the marriage between the Petitioner and the Respondent.

Consequently it is hereby ordered as follows:-

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **DANIELLA NYEMACHI WAMI** and the Respondent, **OGHENETEGA MICHAEL OMIMI**, celebrated at the Abuja Municipal Area Council Marriage Registry, Abuja, on the 8th day of December 2017.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.

Parties:Absent

Appearances:E. C. Aviagbobe for the Petitioner. Respondent is not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
08/03/2022

