

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON FRIDAY THE 31st DAY OF MARCH, 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO: FCT /HC/PET/263/2019

LADE JAASIEL SOLOMON-----PETITIONER/RESPONDENT

AND

AYORINDE OJIE -----RESPONDENT/CROSS PETITIONER

JUDGMENT

By a Petition for a decree of dissolution of marriage filed on 20/5/2019 the Petitioner seeks for a decree of dissolution of marriage against the Respondent on the ground that the marriage between them has broken down irretrievably for the reason that parties to the marriage have lived apart for a continuous period of at least 3years immediately preceding the presentation of the Petition and the Respondent does not object to a decree being granted. She seeks for the following Orders.

- a. A Decree of dissolution of the marriage on the grounds that since the marriage, the Respondent has been irresponsible and the Petitioner finds it intolerable to live with the Respondent.
- b. Custody of the child of the marriage; Jesse Ayorinde.

In response, the Respondent filed an answer and Cross Petition to the Petition on the grounds that the marriage has broken down irretrievably on the following facts;

- i. That the Petitioner is guilty of desertion which has lasted for a continuous period of at least one year immediately preceding the presentation of this cross petition having failed to resume cohabitation with the Cross Petitioner nor return to their matrimonial home since she deserted the Cross Petitioner in November, 2017.

- ii. That the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of this cross petition and the Petitioner does not oppose the marriage being dissolved.
- iii. That since the marriage, the Petitioner has behaved in such a way that the Cross Petitioner cannot reasonably be expected to live with the Petitioner.

In it, Cross Petitioner prays for the following:

- a. That the said marriage be dissolved on the ground of this cross petition.
- b. That the Petitioner cause be dismissed.
- c. That the Petitioner should be ordered by this Honourable Court not to change the name of the only child of the marriage Jesse Ayorinde, that he shall continue to bear the name 'Jesse Ayorinde.'
- d. That the only child of the marriage shall continue to live with the Petitioner.
- e. That the Cross Petitioner shall assist the Petitioner in taking care of the upkeep of the only child of the marriage, his education needs and other incidental expenses relating to the child.
- f. That the Respondent shall have unrestricted access to the only child of the marriage.

On 21/11/2019, the Petitioner, through her counsel applied to withdraw her Petition, the Respondent did not object, hence the Petition was in consequence struck out same day thus leaving only the Respondent's Cross Petition to be heard.

Thereafter the Cross Petition proceeded to trial with the Cross Petitioner testifying for himself by adopting his written deposition titled "affidavit of evidence of Respondent/Cross Petitioner" on Oath deposed to on 17/01/2020 as his evidence in chief.

The gravamen of his evidence is that he and Petitioner were lawfully married at the Abuja Municipal Area Council (AMAC) Registry, Abuja on

the 26th day of June, 2015. That the marriage between the Petitioner and him is blessed with one boy, whose name and date of birth are as follows Jesse Ayorinde, born on the 1st day of January, 2016. That the Petitioner is a woman of ungovernable tempers, extremely difficult, very quarrelsome, intolerable behaviour, violent and extremely deceptive and overbearing who in anger beats him up and tore his clothes on several occasions. That the Petitioner deserted him about 8 times between 2015 and 2017 and finally deserted him on the 11th day of May, 2017 till date. That he has been sending money to the Petitioner for the upkeep and other necessities of their son Jesse Ayorinde. That the Petitioner has denied him access to the only child of their marriage since November, 2018. That life has been difficulty for him lately as he does not have any reasonable job he is doing presently. That he cannot continue to live with the Petitioner who derives joy in deserting him.

The witness tendered the following documents in evidence which were admitted and marked as follows: -

- i. Certificate of marriage no 1114 dated 26/06/2015 - Exhibit A.
- ii. Certificate of compliance - Exhibit B.
- iii. Access bank Statement of account of Respondent from 1/11/2017 to 01/01/2019 – Exhibit C.
- iv. Picture of Marcel and Mrs. Ayorinde - Exhibit D1.
- v. Picture of overhead bridge with four (4) people walking on same – Exhibit D2 & D3.

At the end of examination in chief Petitioner/Respondent to Cross Petition counsel suggested a date in 2nd week in April and case was adjourned to 16/4/2020 for cross examination and continuation of hearing.

After series of adjournment with no legal representation from either party case was struck out on 25/2/2021 for want of diligent prosecution and was later relisted on the application of the Cross Petitioner on 13/10/2021. On the next adjourned date for cross examination of the Cross Petitioner, Petitioner/Respondent was absent and no legal representation, despite being served with the processes and the hearing notices. Counsel for the Cross Petitioner prayed the court to foreclose the Petitioner same was

granted and case adjourned to 14/12/2021 for adoption of final written address.

In the Cross Petitioner's written address, counsel raised three (3) issues for determination to wit:

- a. Whether the Respondent/Cross-Petitioner has proved that the marriage him and the Petitioner/Respondent to the Cross Petition has broken down irretrievably.
- b. Whether the Petitioner/Cross Respondent's behaviour against the Respondent/Cross Petitioner constitutes an intolerable behaviour.
- c. Whether the unchallenged evidence adduced by the Respondent/Cross-Petitioner with respect to the behaviour of the Petitioner/Respondent to the Cross-Petition amounts to admission by the Petitioner.

In totality learned counsel submitted that in view of the evidence adduced by the Cross-Petitioner and consequent upon the fact that the Petitioner has not adduced any evidence to controvert the evidence of the Cross-Petitioner, he urged this Honourable Court to dissolve the marriage having satisfied the requirement of section 15 (2) (d) of the Matrimonial Causes Act and in the interest of justice and grant all the prayers of the Cross Petitioner. Counsel relied on the following authorities amongst others:

- i. Section 15 (1) & (2) of the Matrimonial Causes Act, Cap M7 LFN 2004.
- ii. *Anioke v. Anioke* (2011) LPELR 3774 (CA)
- iii. *Nanna Vs Nanna* (2006) 3 NWLR (Pt. 966) 1 at 49. (2005)
- iv. *Njiokwuemeni v. Ochei* (2004) 15NWLR (Pt. 859) at 226 – 227
- v. *Olowofoyeku v. Olowofoyeku* (2011) 1 NWLR (Pt 1227) (Pp 202-203, paras. F-A)

From the evidence before me, the issues for determination is:

“Whether Respondent/Cross Petitioner has proved that he is entitled to his prayers in his Cross Petition”.

The principle of law is 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 Cross petitioner's depositions are without reply from the Respondent. The evidence of the Cross Petitioner is therefore not challenged or contradicted by the Respondent. The effect is that the evidence of the Cross Petitioner will be taken as accepted or established as held in **OLOFU v. ITODO(2010) LPELR-2585(SC)**. Therefore, 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**. In the circumstance, the Cross Petitioner's evidence stands, unassailed and the Court has no option than to accept and act on it. In the circumstances, the evidential burden on him to prove the ground of the Cross Petition is discharged on minimal proof. See **NANNA V. NANNA (2006) 3 NWLR (PT 966) P.1**

An overview of the Cross Petition shows that the Cross Petitioner seeks for a decree of dissolution of the marriage he contracted with the Respondent on the ground that it has broken down irretrievably for the reason that the Petitioner/Respondent deserted him for over a year preceding the presentation of the petition. He testified along these lines in his evidence in chief and tendered their marriage certificate as Exhibit A. As aforesaid the evidence was unchallenged and accordingly accepted by the Court. Under **Section 15(1) of the Matrimonial Causes Act**, either party to a marriage under the Act may approach the Court vide a Petition for a decree of dissolution of the marriage on the general ground that the marriage has broken down irretrievably. Under **Section 15(2)**, the Court seized of the Petition shall hold the marriage has broken down irretrievably and pursuant thereto grant a decree in dissolution of it if the Petitioner by evidence adduced satisfies it of the existence of one or more of the grounds set out in **Section 15(2) (a) to (h) of the Matrimonial Causes Act**. The import of the provisions of **Section 15(1) and (2) (a) to (h) of the Matrimonial Causes Act** is that proof vide evidence of one of the grounds set out under **Section 15(2) (a) to (h) of the Act** may suffice for the Court to hold that the marriage has broken down irretrievably and pursuant thereto the Court may grant a decree in dissolution of the

marriage. See: **EKEREBE V. EKEREBE (1999) 3NWLR (Pt. 569) p.514** and **NANNA V. NANNA (2006) 3 NWLR (Pt. 966) 1 at 49.**

By the combined effect of **Section 15(1) and 15(2)(d) of the Matrimonial Causes Act**, the Court shall hold that a marriage has broken down irretrievably if there is evidence showing the Respondent deserted the Petitioner for a period of one year immediately preceding the presentation of the petition. For clarity, Section 15(2) (d) provides: -

“The Court hearing a Petition for a decree of dissolution of a 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:-

(d) That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition”.

In this Petition, there is the unchallenged and uncontroverted evidence of the Cross Petitioner that for over a year before the Petitioner instituted the Petition in 2019, she deserted the Cross Petitioner. In the circumstances, I therefore hold that the marriage has broken down irretrievably and the marriage ought to be dissolved and it is accordingly dissolved.

Consequently, it is hereby ordered as follows;

1. I hereby pronounce a decree nisi dissolving the marriage celebrated between the Petitioner, LADE JAASIEL SOLOMON and the Respondent, AYORINDE, contracted on the 26th day of June, 2015 with Marriage Certificate number; 1114 at the Abuja Municipal Area Council (AMAC) Registry, Abuja.
2. 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.
3. The Petitioner/Respondent is hereby ordered not to change the name of the only child of the marriage Jesse Ayorinde.

4. That the only child of the marriage Jesse Ayorinde shall continue to live with the Petitioner/Respondent and the Respondent/Cross Petitioner shall have unrestricted access to the only child of the marriage Jesse Ayorinde every two (2)weekend.
5. That the Cross Petitioner shall assist the Petitioner in taking care of the upkeep, educational needs and other incidental expenses relating to the only child of the marriage Jesse Ayorinde.
6. That the only child of the marriage Jesse Ayorinde shall be spending his school holidays with the Respondent/Cross Petitioner.

Parties: Absent

Appearances: AjikeUkonu appearing for Cross Petitioner. No legal representation for the Petitioner/Respondent.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
31STMARCH, 2022**