

**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/472/2020**

**BETWEEN**

**NIHINLOLA MARY DADA=====PETITIONER**

**AND**

**DADA OLUWAFEMI OLADAYO=====RESPONDENT**

**JUDGMENT**

The Petitioner filed this Petition on the 29<sup>th</sup> day of September 2020 praying for the following reliefs:

1. A decree of dissolution of marriage between the Petitioner and the Respondent on the grounds that;
  - a. The marriage has broken down irretrievably
  - b. Since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to live with the Respondent.
  - c. The Respondent has deserted the marriage over eight years ago.

Filed along with the petition is the verifying affidavit, list of documents to be relied upon by the Petitioner, Certificate of reconciliation and witness statement on oath as required by the Matrimonial Causes Rules.

The Respondent was served with the Petition by substituted means on orders of this Court, however, the Respondent failed to appear nor was represented by Counsel.

Trial in this case commenced on the 1<sup>st</sup> of December 2021 with the Petitioner testifying as the sole witness and adopting her witness statement on oath as her evidence. It is the case of the Petitioner that parties got married lawfully at Ikeja local government council marriage registry, Ikeja, Lagos on the 12th day of August 2010. That after the marriage the Petitioner and the Respondent stayed briefly in Lagos and then moved to Abuja where they reside until the Respondent disappeared to the United States of America in early 2012. That prior to the Respondent's disappearance, he was engaged in various nefarious activities including drugs, watching X-rated videos and Respondent failed to attend to the emotional needs of the Petitioner and Respondent was in the habit of beating the Petitioner and on several occasions the Petitioner sustained injuries therefrom. That Respondent sold the Petitioner's landed property without her knowledge and approval.

That while in the United States of America, the Respondent never called or bothered how the Petitioner was coping in Nigeria. That after a few years of leaving Nigeria, the Petitioner received an affidavit filed at the High Court of Lagos State, stating that the marriage between both parties no longer exists, and has since then not communicated with the Petitioner.

That while in the United States of America, the Respondent conducted another marriage with one MICHELLE RACHEL MUSOKE and has had a child.

That from 2012 till this 2020 when this Petition was filed, the Petitioner has not seen the Respondent nor has the Respondent spoken to the Petitioner. That the Respondent has deserted the Petitioner and committed adultery. That the Petitioner and the Respondent have consistently lived apart for more than seven (7) years since 2012 and they have not had any physical or conjugal connection for these number of years.

In proof, Petitioner tendered the following documents;

1. Picture of married couple attached with a certificate of authentication admitted as Exhibit A and A<sup>1</sup>.
2. Certified True Copy of Certificate of Marriage as Exhibit B
3. Email printout and documents downloaded from the internet attached with a certificate of authentication as Exhibits C<sup>1</sup>, C<sup>2</sup>, C<sup>3</sup> and C<sup>4</sup>.

The Court thereafter adjourned the case for cross examination and defence. On the next adjourned date, neither the Respondent nor his Counsel were in Court and the Court, on application of the Petitioner, foreclosed the Respondent from cross examination and adjourned the case for the Respondent to open his case, which was also met by the absence of the Respondent and his Counsel. The Court foreclosed the Respondent and ordered for Petitioner to file her written address.

The Petitioner filed her written address wherein the Petitioner's Counsel raised a sole issue to wit; Whether having regard to the circumstances of this case and the evidence before the Court, this honourable Court is entitled to dissolve the marriage of the Petitioner and Respondent celebrated on the 10<sup>th</sup> day of August 2010 on grounds of desertion?

Counsel arguing the sole issue raised submitted that circumstances of this Petition fall within the grounds mentioned in Paragraph d, e, and f of section 15(2) of the Matrimonial Causes Act. It is submitted that virtue of Section 15 (2) (d) of the Matrimonial Causes Act, a court is bound to hold that a marriage has broken down irretrievably if it is established that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition. Counsel therefore urged the Court to hold that by the unchallenged evidence of the Petitioner before this Court, the Petitioner has successfully proved her case for the Court to dissolve the marriage between the parties.

Counsel relied on the following cases to drive his argument: -

- a. Ibrahim V. Ibrahim (2007)1 NWLR (Pt.1015) p.383,
- b. Damulak V. Damulak (2004) 8 NWLR pt 874 page 151
- c. Akinbuwa v. Akinbuwa (1998) 7 NWLR (Pt.559) 661 at 669
- d. Oghenevbede v. Oghenevbede [1973] UILR 104
- e. Dr. Akinremi Oritsewetin Nanna v. Mrs Ekpehose Maryanne Nanna (2005)LPELR-7485(CA)
- f. Uzochukwu v. Uzochukwu (2014) LPELR 24139(CA)
- g. Ibeawuchi v. Ibeawuchi (1974) UILR (103) 67

h. UBN v. Fajebe Foods Ltd. (1998) 6 NWLR (Pt. 554) 380.

I have examined this Petition, the evidence adduced and the written argument of Counsel and the issue to be determined is “**whether this Court can grant the prayer of the Petitioner.**”

In this instant 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 therefore is that the evidence of the Petitioner will be taken as accepted or established. This is the position of the Court in the case of **BAKAU V. BAKAU(2013) LPELR-22687 (CA)** where it was held that

*“where evidence given by a party to a proceeding was not challenged by the other party who had opportunity to do so, it is always open to the Court seised of the matter to act on such unchallenged evidence before it”*

The law is now settled that, the fact that a marriage has broken down irretrievably is what the Court would look out for in hearing a suit for the dissolution of marriage; and the Court on hearing the petition can hold that the marriage has broken down irretrievably if the Petitioner can satisfy the Court of one or more of certain facts contained in Section 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act, 2004. In the case of **IBRAHIM V. IBRAHIM (2006) LPELR-7670(CA) Per ARIWOOLA, J.C.A in Pp. 16-17, paras. E-F held**

*"The law also provides for the facts, one or more of which a petitioner must establish before a Court shall hold that a marriage has broken down irretrievably. It reads thus - Section 15(2) - "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-- (a) that the Respondent has wilfully 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"*

See also **Bassey .V. Bassey (1978) 10-12 CCHCJ. P. 241 at p. 250** and **Yusuf .V. Yusuf (1978) 10-12 CCHCJ. p. 66 at p. 71.**

In this instant petition, the Petitioner is relying on Section 15(2 ) (d) of the Matrimonial Causes Act and the evidence of the Petitioner in proof of these facts required for the Court to hold that the marriage has broken down irretrievably are succinctly stated in the earlier part of this judgment and I find these unchallenged and uncontroverted evidence and exhibitsof Petitioner satisfactory and are in conformity with the Section 15 (2) (d) and (f) of Matrimonial Causes Act 2004 inthat the Respondent has deserted the Petitioner since 2012and have lived apart for a continuous period of more than 7 years immediately preceding the presentation of the petition.The Respondent not filing any response and the contents of Exhibit C<sup>3</sup> and C<sup>4</sup>are sufficient proof that the Respondent does not object to a decree being grantedand for that, the marriage celebrated between the parties ought to be dissolved, as it will not be in the interest of the parties for them to remain married.

Consequently, it is hereby ordered as follows:

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **NIHINLOLA MARY DADA** and the Respondent, **DADA OLUWAFEMI OLADAYO**, celebratedat the Ikeja Marriage Registry, Ikeja, Lagos State, on the 12thday of August2010.

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:**Emmanuel Onuche for the Petitioner. Respondent is not represented.

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