

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 20 GUDU - ABUJA
ON WEDNESDAY THE 16TH DAY OF MARCH 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO. PET/254/2021

BETWEEN

YETUNDE ABIDEMI OYEFUGA=====PETITIONER

AND

GABRIEL OLUWATOSIN OYEFUGA=====RESPONDENT

JUDGMENT

The Petitioner by a notice of Petition filed on the 13th day of July 2021 against the Respondent prayed this Court for the following reliefs:

1. A decree of dissolution of marriage on the ground that the Respondent has behaved in such a way that the Petitioner cannot be expected to live with the Respondent.
2. And or such other order or further orders that this Honourable Court may deem fit to make in the circumstance of this suit.

Filed along with the Petition are the verifying affidavit and the certificate relating to reconciliation.

Trial in this case commenced with the Petitioner testifying as the sole witness and adopted her witness statement on oath. From the evidence of the Petitioner, what gave rise to the institution of this suit is that parties lawfully got married at the Estate Baptist

Church, AgborokoIba Lagos on 15th April 2017. That the marriage between parties did not produce any child.

That the marriage was built on a web of extreme lies and misrepresentations including the Respondents true sexual health status and the Respondents means of Livelihood. That after the marriage Petitioner noticed the Respondents chronic erectile dysfunction an ailment he never disclosed prior to marriage, which resulted in numerous failed sexual acts and underperformance. That after years of trying to get pregnant without any success, parties visited the hospital where it was confirmed that Respondent suffers from Oligospermia (Low Sperm count) another ailment the Respondent failed to disclose. That all efforts at conceiving proved abortive as a result of the Respondents nonchalant attitude towards judicious use of prescribed medications. That this cost a strain in their marriage and all efforts made at reconciliation did not yield any positive result as the Respondent was totally unyielding to advice and family persuasions as well as visit to a marriage counsellor. That there is no love for the Respondent as the marriage has broken down irretrievably.

In proof, Petitioner tendered a Certified True Copy of the marriage certificate dated 15/4/2017 admitted in evidence as Exhibit A. The Petitioner was not cross examined on her evidence.

The Respondent in answer to the petition filed an answer stating the following facts that he never misrepresented his sexual health status to the Petitioner that he never experienced an Erectile Dysfunction until 2019 which the doctor attributed to stress at the time. That he

had never taken sperm count test until after marriage and could never have known of that condition. That having discovered, he religiously followed through with the medications. prescribed and showed marked improvements in the tests conducted after 3 (Three) months and 6 (Six) months respectively. That the grounds upon which the Petition is brought are based on false allegations and baseless assumptions. That he has fallen out of love with the Petitioner and his marriage with the Petitioner has broken down irretrievably and thus prays the Court for a Decree of Dissolution of Marriage.

The Respondent gave evidence to the fact that the Petitioner around July 2020 intimated him that she was no longer interested in the marriage. That they saw a marriage counsellor who tried to mediate to no avail as the Petitioner was insistent. That respondent is not averse to the grant of this petition.

At close of hearing, respective Counsel addressed the Court orally. The Petitioner's counsel addressing the Court submitted that this suit is predicated in Section 15 of the MCA as the marriage has broken down irretrievably. Counsel urged the Court to dissolve the marriage.

In response, the Respondent's counsel submitted that the marriage between parties has broken down irretrievably and urged the Court to dissolve the marriage.

Having considered the entirety of the Petition and the evidence before this Court, the issue to be determined is "Whether this Court

can dissolve the marriage between the Petitioner and the Respondent”.

The Court on hearing a 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**. The Court of Appeal in **AKINLOLU V. AKINLOLU (2019) LPELR-47416 (CA)** held on conditions for the grant of dissolution of marriage as follows;

"Instructively, a petition by a party to a marriage for a decree of dissolution of that marriage may be presented to the Court by either party thereto, upon the ground that the marriage has broken down irretrievably. The Court seized of the petition for a decree of dissolution of a marriage shall adjudge the marriage to have broken down irretrievably upon the petitioner satisfying the Court of one or more of the following conditions: (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. (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 a part 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 continuance 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”.

In this instant case, the evidence of the Petitioner in proof of the facts required for the Court to hold that the marriage has broken down irretrievably are succinctly stated in the earlier part of this judgement. The said evidence was not controverted by the Respondent and the law is settled that where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seised of the proceedings to act on the unchallenged evidence before it. See the case of OGUNYADE v. OSHUNKEYE & ANOR(2007) LPELR-2355(SC). The Respondent in fact urged the Court under oath to dissolve the marriage between the parties.

On the whole, it is my considered view that, the Petitioner having satisfied Section 15 (1) and (2) (c) of the Matrimonial Causes Act, 2004, and as things stand now, although the Respondent filed an answer he neither filed a statement on oath nor controverted the petitioner's averments in cross-examination, the law is that the court is bound to accept the petitioner's narrative as true and act upon it. In my considered view, the evidence of the Petitioner has satisfied the

requirement of the Matrimonial Causes Act, 2004, in Section 15 (1) and (2) (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. I am satisfied that the Petitioner has established a case sufficient to justify the grant of a decree of dissolution of the marriage between the parties and I so hold.

Consequently, it is hereby ordered as follows;

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **YETUNDE ABIDEMI OYEFUGA** and the Respondent, **GABRIEL OLUWATOSIN OYEFUGA**, celebrated at the Estate Baptist Church, Agborokolba Lagos on 15th April 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. A. Adesiyakan for the Petitioner. Mustapha Lawal for the Respondent.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
16/03/2022