

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 24
CASE NUMBER:	SUIT NO. FCT/HC/PET/296/2017
DATE:	22/3/2022

BETWEEN:

MR. ANTHONY OBI.....PETITIONER

AND

MRS. FAVOUR OBI.....RESPONDENT

APPEARANCES:

Anderson Ohoshimite Ejiofor Esq for the Petitioner.

JUDGMENT

The Petitioner Mr. Anthony Obi has filed a Petition for dissolution of the marriage to his wife, Mrs. Favour Obi, the Respondent.

The said Petition is filed and dated the 1st of March 2019 and was settled by the Petitioner’s Counsel, Anderson Ojoshimite Ejiofor Esq of Ojoshimite & Associates, Solicitors to the Petitioner.

The grounds stated in the Notice of Petition for seeking the dissolution Order are as follows:-

“(1). **FRAUD:** The particulars of fraud include:

- (a). The Respondent fraudulently misrepresented facts to the Petitioner as to her true status as at the time of contracting the marriage sought to be nullified.
- (b). The Respondent misrepresented facts about her true identity. Whereas the Respondent's true maiden name is "Cecilia Omata Nwankwo", she told the Petitioner and officials at AMAC Marriage Registry, Abuja that her name is "Favour Nwankwo".
- (c). The Respondent concealed facts relating to her children by another man whom she has been legally married to prior to the purported marriage contracted in November 2006.

(2). NULLITY of MARRIAGE:

- (a). The Respondent was duly married to one "Mr. Ugochukwu Nwagwu" (an indigene of Okija who now resides in Burkina Faso) and as at 24th November, 2006, when this marriage to the Petitioner was purportedly contracted the Respondent and Mr. Nwagwu were legally married.
- (b). The purported marriage between the Petitioner and Respondent is a nullity abinito.

The brief facts of the case as stated in the Petition are as follows:-

- (1). That the Petitioner avers that sometime in 2005 during a religious programme organized by the Lord's Chosen Charismatic Revival Church in Lagos, he met the Respondent and both of them cultivated a mutual affection which metamorphosed into a short courtship.
- (2). That contrary to the doctrinal values which both of them shared, the Respondent concealed facts about her background thereby misleading the Petitioner to believe that she was a spinster without a dependent child.

- (3). That on the basis of the facts stated above in March, 2006, the Petitioner in company of his family members (mother, father and siblings) and Church members (including one Daniel Chukwu and John Anigwe) travelled to the Respondent's ancestral home in Okija, Anambra State where the traditional marriage rites were performed.
- (4). That sequel to the performance of traditional marriage rites on 24th November, 2006 at the Abuja Municipal Area Council Marriage Registry, the Petitioner and the Respondent celebrated what was erroneously believed to be a valid marriage in accordance with the Marriage Act and continued to co-habit until June, 2017.
- (5). That soon after the marriage ceremony, the Respondent relocated to Abuja and began to co-habit with the Petitioner in Kubwa, Abuja.
- (6). That being a Businessman, the Petitioner knew the importance of financial independence and thus gave the Respondent the sum of N1, 200, 000.00k to establish a clothing business.
- (7). Few months after contracting what was erroneously believed to be a valid marriage, the Respondent admitted that she had a child out of wedlock.
- (8). That the Petitioner was shocked by the Respondent's confession but had to salvage what he erroneously believed to be a valid marriage because their doctrinal creed has stringent rules against divorce.
- (9). That on the 10th August, 2009, our son Franklin Anthony was born and whole capitalizing in the euphoria of a new born, the Respondent requested the Petitioner to allow her child (Uchechukwu) to come and live with them.
- (10). That in order to please the Respondent, the Petitioner acceded to her demand and a few days later Uchechukwu arrived from the Eastern part of the Country and started living with them.
- (11). That after a few years Uchechukwu started living with them, the Petitioner began to notice her weird behavior which included weeping profusely without any cause.

- (12). That all efforts at unraveling the cause of the queer behavior were unfruitful because neither she nor her mother was ready to disclose the issue to the Petitioner. In 2011, Uchechukwu left the house and ran to Pastor Chidera whom she narrated an account of how her Mom had previously married their father.
- (13). That the said Pastor Chidera then invited both the Petitioner and Respondent to his house and narrated to them what Uchechukwu had told him earlier. That the Pastor then directed the couple to the Church's State Co-ordinator in Jabi, Abuja.
- (14). That at the scheduled meeting with the Church's State, Co-ordinator, Pastor Godwin at Jabi, Abuja, the Respondent admitted that she had three children, but out of wedlock.
- (15). That alarmed by the shocking confessional statements in January, 2012, the Petitioner commenced personal investigation aimed at unraveling further secrets about the Respondent.
- (16). That on account of the fact stated in the preceding paragraphs, the Petitioner travelled to the Respondent's ancestral home in Okija, Anambra State and was led to the home of one Mr. Nnonyelugo (one of the elders of the Respondent's clan) and he revealed the following things to him about the Respondent.
 - (a). That the true and correct name of the Respondent was Cecilia Omata Nwankwo.
 - (b). That he witnessed the marriage of the Respondent to Ugochukwu Nwagwu (Indigene of Okija, Anambra State).
 - (c). That it was the Respondent's father who married her to Ugochukwu Nwagwu in accordance with the customs and traditions of Okija people.
- (17). That the Petitioner reported his findings to the Marriage Committee Church Council of the Lord's Chose Charismatic Revival Church, Abuja.

- (18). That in order to corroborate his findings, the Petitioner volunteered to sponsor anyone whom the Church would nominate to accompany him to the Respondent's ancestral home in Okija. Thereafter, the Church nominated Mr. Emeka to follow him on the fact finding mission.
- (19). That the Petitioner reported that in May, 2017, himself, the Respondent and Franklyn Anthony (their son) travelled to Imo State for the burial ceremony of his mother.
- (20). That after the burial ceremony, the Respondent and their son, Franklyn Anthony returned to Abuja, while the Petitioner and Emeka (the person nominated by the Church) travelled to Okija, Anambra State, where they met one Pastor Anthony (Head of Anambra State Marriage Committee) one Tochukwu and Ugochukwu Nwagwu's sister.
- (21). That all the above mentioned persons in the preceding paragraph, then proceeded to the Nnanyelugo's home and at the said meeting; the elderly Mdu repeated what he told the Petitioner five months earlier.
- (22). That while corroborating the septuagenarian's account Ugochukwu Nwangwu's sister revealed the following facts:
- (a). That her brother Ugochukwu Nwagwu lawfully married the Respondent and that the marriage produced three children (all girls).
 - (b). That her brother who (now resides in Burkina Faso) has not divorced the Respondent.
 - (c). That the Respondent carried the three children away and abandoned her matrimonial home on the pretext of going home to take care of her ailing mother.
 - (d). That while their late father was alive (her former father-in-law), he tried several times to reconcile the Respondent and Ugochuchukwu without any success.

- (e). That the Respondent is still their wife because Ugochukwu has not divorced her.
 - (f). That her brother, had to migrate from Nigeria because the Respondent absconded from her matrimonial home.
- (23). That on the 7th May, 2017, the Petitioner returned to Abuja and discovered that the Respondent had evacuated all her personal belongings and relocated to another part of Abuja with their son, Franklyn Anthony.
- (24). That two weeks after, the Petitioner was able to locate where the Respondent had relocated to and thereafter requested custody of Franklyn Anthony.
- (25). That the Petitioner was inclined to take custody of their son. Franklyn Anthony due to the deplorable state that he found him, he was seriously sick and had to seek medical attention at Ampex Hospital, Kubwa Abuja.
- (26). That in order to provide for his son, Franklyn Anthony with a quality education, the Petitioner registered him at Kings Court Academy Gwagwalada. He later moved the child to Starlight International School in Prince and Princess Estate Gudu and is currently at Covenant Foundation School, Gudu District, Abuja.
- (27). That the Petitioner believes that based on the facts stated above in paragraphs 16, 18 and 19 above, the purported marriage between him and the Respondent was tainted by fraudulent misrepresentation and is thus a nullity.
- (28). That the Petitioner believes that the purported marriage never existed ab-initio and it is in the overriding interest of justice to nullify the purported marriage on account of the fact highlighted above.
- (29). That as the Petitioner has wholeheartedly made up his mind to dissolve the marriage based on the above mentioned facts; he has proposed the following resolution on custody and maintenance of their only child of the marriage as follows:-

- (a). That the Petitioner shall have custody of the child of the marriage; one Franklyn Anthony, (male), born on the 10th of August, 2009.
- (b). That Master Franklyn Anthony currently attends Covenant Foundation School, Gudu District, Abuja with the school fees presently at the sum of One Hundred and Ten Thousand Naira (N110, 000.00)
- (c). That the Petitioner believes that Master Franklyn Anthony would fare better educationally, morally, spiritually, medically, emotionally and physically if he continues to retain custody of him; especially as the child is now in his pre-teen and teen development stages.
- (d). That the Petitioner has a reliable and stable source of income as a businessman and can fend for himself and the child.
- (e). That being a Christian and strong member of the Lord's Chosen Charismatic Revival Church, the Petitioner resolves to continue to train the child in accordance with the creeds of Christianity, a faith both the Respondent and Petitioner practice.
- (d). That the Petitioner is not inclined to take care of the Respondent with maintenance, as he believes the Respondent can take care of herself having established a lucrative textile business for her some years ago.
- (e). That since the child of the marriage, Franklyn Anthony has been residing with the Petitioner since 2017, he would fare better emotionally, educationally, socially and morally if custody is granted to the Petitioner.

The Petition is undefended, as the Respondent has failed to enter appearance in the suit either by herself or be represented by Counsel. The Respondent has also failed to file any process herein to defend the matter, and the Court proceeded to hear the case of the Petitioner.

According to Court records, the matter is a transferred case. The matter came up on the 20th October, 2020, wherein the Petitioner was represented

by his Counsel Anderson Ojoshimite Ejiofor Esq, who sought the leave of Court to serve the Respondent by substituted means which was granted by the Court. The Respondent was duly served and trial commenced on the 15th March 2021.

The Petitioner was represented by his Counsel, Anderson Ojoshimite Ejiofor Esq. The Respondent was duly served however was absent and unrepresented. The Petitioner, Anthony Obi gave evidence before the Court on the same date. In his testimony before the Court, the Petitioner testified that his name is Anthony Obi, residing at Kubwa Phase 2, Abuja and a Businessman by profession. The Petitioner testified that he signed a Witness Statement on Oath on the 1st March 2019 with his name and signature and adopted same as his evidence before the Court.

The Petitioner further testified that a marriage was conducted between himself and the Respondent to which they were issued a Marriage Certificate by the Abuja Municipal Area Council Registry, FCT, Abuja. The Certificate of Marriage dated the 24th November, 2006 issued by the AMAC Registry, Abuja was tendered and accepted in evidence as Exhibit A and the matter was adjourned for cross examination of the Petitioner.

In support of the Notice of Petition dated and filed on the 1st of March 2019, is the Petitioner's Witness deposition on Oath.

The Petitioner has also attached a Verifying Affidavit dated and filed on the 1st March, 2019.

On the next adjourned date, being the 30th March, 2021 the Petitioner and his Counsel, Anderson Ojoshimite Ejiofor Esq were present in Court. The Respondent was absent and unrepresented. The matter was adjourned for cross-examination of the Petitioner by the Respondent. Learned Counsel to the Petitioner informed the Court, that the Respondent had not filed any Reply to the Petition which goes to show that the Respondent was unwilling to defend the Petition. Learned Counsel to the Petitioner, urged the Court to foreclose the Respondent's right to cross-examine the Pw1 and for the Pw1 to be discharged.

The Court granted the application and thereafter observing that Court records show that the Respondent was duly served with the Petition and hearing notices, and there was no response by the Respondent. The Pw1

was discharged by the Court and the matter was accordingly adjourned for continuation of hearing.

The trial continued on the 21st June, 2021 with the Petitioner in Court and his Counsel, Anderson Ojoshimite Ejiofor Esq. The Petitioner presented his second and last witness (Pw2) who testified under oath as follows:-

That his name Emeka Nonso of Area 7 Shopping Complex Garki Abuja. Pw2 testified that he is a Christian and a Businessman. Pw2 stated that he signed a Witness Statement on Oath dated the 1st March 2019, with his name and signature and adopted same as his evidence before the Court.

Trial continued on the 7th October, 2021. Both the Petitioner and his Counsel, Anderson Ojoshimite Ejiofor Esq were present in Court the Respondent was absent and unrepresented despite the Notice of Petition and several hearing notices served on her. Learned Counsel to the Petitioner urged the Court to foreclose the Respondent's right to cross-examine the Pw2, as the Respondent was not in Court and had not entered any appearance nor file any reply to the Petition. This Honourable Court granted the application and the matter was adjourned for defence.

Court reconvened on the 21st January, 2022 with the Petitioner and his Counsel present in Court, while the Respondent was absent and unrepresented. Learned Counsel to the Petitioner urged the Court to foreclose the Respondent's defence, as the Respondent had not put up appearance in the matter since the inception of the matter and has equally not filed a response to the Petition despite the Notice of Petition and repeated service of hearing notices on the Respondent.

This Honourable Court granted the application and foreclosed the Respondent's right to open her defence. Learned Counsel to the Petitioner urged the Court to grant an adjournment to adopt their final Written Addresses which was granted by the Court.

On the date of adoption, being the 7th February, 2022, only the Petitioner and his Counsel, Anderson Ojoshimite Ejiofor Esq were present in Court. The Respondent was absent and unrepresented, despite evidence of service on her. This Honourable Court adopted the final Written Address of the Petitioner as their oral arguments in support of their Petition and the Court adjourned the matter to the 22nd March, 2022 for Judgment.

The final Written Address prepared by Anderson Ojoshimite Ejiofor Esq, learned Counsel to the Petitioner; captured all the grounds on which the Petition is predicated and formulated a sole issue for determination by the Court thus: -

“Whether having regard to the unchallenged evidence on record, the Petitioner is entitled to the reliefs sought in the Petition.”

Firstly, learned Counsel to the Petitioner submits that the General Principle of “Onus Probandi” or (burden of proof) as contained in Sections 132 and 133 of the Evidence Act 2011 rests entirely on the party who alleges or asserts positively stating not generally, the burden of proof in a civil action comprises the legal burden (pleading) and evidencing burden (evidence be it oral or documentary) Counsel referred the Court to the following cases in supporting his argument: -

1. ***OREDOLA OKEYA TRADING COMPANY AND ANOR V BANK OF CREDIT AND COMMERCE INTERNATIONAL & ANOR (2014) LPELR-22011 (SC) P.2, Paras B – G.***
2. ***EZEMBA V IBENEME AND ORS (2004) LPELR-1205 (SC) Pg. 20 Paras d –F.***

Secondly, learned Counsel to the Petitioner submitted in paragraph 14 of the final Written Address that the Petitioner had discharged the burden of proof by pleading facts grounding the Petition. He further submitted that the Petitioner led credible, compelling, convincing, and unchallenged evidence. In his evidence before the Court, on the 15th of March, 2021, the Petitioner testified on Oath and adopted his sworn Statement filed on 1st March 2019. Counsel to the Petitioner submitted on how the Petitioner was hoodwinked into contracting marriage with the Respondent. See paragraphs 3 t- 6 of the Pw1 Witness Statement on Oath.

How the Petitioner testified that the Respondent was already married to another man called Ugochukwu Nwagwu with whom she had three children see paragraphs 16 to 17 of the Witness Statement on Oath. The Petitioner testified further that the Respondent admitted having three children but out of wedlock see paragraph 15 of the Witness Statement on Oath. The Petitioner tendered the Marriage Certificate and same was admitted in evidence as “EXHIBIT A”. Learned Counsel to the Petitioner stated that

the matter was adjourned to 20th March 2021 to enable the Respondent exercise her right to cross-examination and defence. She failed to utilize that opportunity and upon application, she was foreclosed.

On June 21st 2021, Emeka Nonso testified as Pw2 he told the Court that he was a member of the team appointed by their Church to investigate the Respondent's alleged prior marriage; see paragraph 2 of the Petitioner's Witness Statement on Oath. He testified further that during the investigation, his team met the eldest man in the Respondent's clan who confirmed that the Respondent is lawfully married to Ugochukwu Nwagu; see paragraph (5)(c) of the Petitioner's Witness Statement on Oath. Pw2 further revealed that the Respondent's maiden name was Cecilia Omata Nwankwo; see paragraph 5(a) of the Petitioner's Witness Statement on Oath Pw2 was discharged on 7th October, 2021 and the case was subsequently adjourned to 21st January, 2022 for defence. On that date, the Respondent did not show up as usual and was eventually foreclosed, paving the way for the final address by the Petitioner's Counsel.

Counsel referred the Court to the cases of: **(1). GABRIEL OLORUNFEMI PIUS VS BOSEDE PIUS OLORUNFEMI (2020) LPELR-49579**, where the **Court of Appeal held that a Petitioner must plead and prove facts of his/her petition** and the case of **WOKOMA V WOKOMA (2020) LPELR-49882** – where the Court held that **it is settled in a civil case that standard of proof is on the preponderance of evidence or what is commonly called the weight of evidence.**

Thirdly, learned Counsel to the Petitioner urged the Court in paragraph 1.5 of the Written Address to nullify the proposed marriage on the ground that the Respondent had contracted a prior and subsisting marriage. He relied on the provision of 5.3(1)(a) of the Marriage and Matrimonial Causes Act 2004, which states that “a marriage is void if either of the contracting parties at the time of the marriage is lawfully married to somebody else.”

Learned Counsel to the Petitioner referred the Court to the case of **OGHOYONE V OGHONYONE (2010) LPELR-4689 (CA)** where the Court held that: **“A void marriage is a marriage that produces no legal consequences. That is to say, it is a marriage that never took place.”** Learned Counsel submitted that in the instant case, having regard to the evidence led, by the Petitioner, it is beyond every shadow of doubt that

there was a marriage between the Petitioner and the Respondent, as it is void ab-initio.

Lastly, learned Counsel to the Petitioner in paragraphs 1.6 and 1.7 of the final Written Address submitted that despite the service of the Notice Petition and several hearing notices on the Respondent, she did not file an answer or appear in Court. In other words, the Respondent was offered the opportunity to defend herself but chose to stay away. Consequently, she cannot complain about the denial of fair hearing. The Counsel referred to the case of **ADEREMI ADEMOLA AJIDAHUN VS MRS. DAPHINE OTERI AJIDAHUN (2000) LPELR-6774 (CA)**.

Learned Counsel further submitted that failure to cross-examine the Petitioner amounts to admission of all the facts pleaded in the Petition. He argued that the law is that unchallenged evidence amount to admission on the part of the party who ought to rebut it. Where such occurs, the Court has no choice but to rely on the uncontroverted evidence learned Counsel referred the Court to the following cases:-

- “(1). IFEDIWA & ORS V OKAFOR & ORS (2019) LPELR-49518 P.12 Paras B – C (SC) and**
- (2). BAWA NATTY TOWAK BAKAU V HANNATU AMAFANI BAKAU (2013) LPELR-22689 PP.330-31 (CA).”**

In conclusion, learned Counsel submitted that this Honourable Court should hold that the marriage between the Petitioner and the Respondent is void ab-initio on the ground that the Respondent cannot be married to two men at the same time and that it is in the interest of justice to nullify the purported marriage that never existed.

I have carefully considered this Petition, the grounds upon which same is predicated, the Verifying Affidavit, the reliefs sought and the evidence of the Petitioner as Pw1 and Emeka Nons as Pw2 on Oath, the Exhibit tendered as well as the final Written Address in support of the Petition.

It is on the record of the Court that the Respondent has never appeared in this matter, nor sent a representation in her place. There has not been a response or reply to the Petition on her behalf since the inception of the matter in Court.

The Orders sought by the Petitioner as contained in the Notice of Appeal are as follows:-

- “(1). An Order of Court declaring the purported marriage between the Petitioner and the Respondent invalid on the ground of an earlier and subsisting marriage between the Respondent and one Mr. Ugochukwu Nwagu.***
- (2). An Order of Court nullifying the purported marriage between the Petitioner and Respondent on the ground of fraud or fraudulent misrepresentation.***
- (3). An Order of Court awarding custody of Franklyn Anthony to the Petitioner in the over-riding interest of the child.”***

With regard to the first relief sought by the Petitioner which is:

“An Order of Court declaring the purported marriage between the Petitioner and the Respondent invalid on the ground of an earlier and subsisting marriage between the Respondent and one Mr. Ugochukwu Nwagwu.”

The matrimonial Cause Act 2004 states the condition where a marriage may be declared invalid or void.

Section 3(1)(a) of the Act states:

“Subject to the provisions of this Section, a marriage that takes place after the commencement of this Act is void in any of the following cases but not otherwise, that is to say that where:-

- (a). either of the parties is at the time of the marriage, lawfully married to some other person.***
- (d). The consent of either of the parties is not a real consent because:-***
 - (i). It was obtained by duress or fraud. Under Section***

3(1)(a) and Section 3d(i) the Court is empowered to declare a marriage void or invalid, where it is satisfied that the Petitioner has led evidence to show that the Respondent was legally married to another man, called Ugochukwu Nwagwu as at the time of her marriage to the Petitioner; and that the non-disclosure of this fact amounts to fraud i.e obtaining the Consent of the Petitioner to marry her on the 24th November, 2006 at the Marriage Registry of AMAC, FCT Abuja.

Therefore, unless the Petitioner satisfies the Court through evidence of the above facts, the Court cannot hold that the marriage is void or invalid. It is trite law that the Petitioner has a duty to prove his case before the Court notwithstanding the fact that the Respondent did not file an Answer to the Petition. Thus failure of the Respondent to file an Answer to the Petition does not relieve the Petitioner of the burden of proving his case to the satisfaction of the Court. See the case of **OLOWU V OLOWU (1973) SUIT NO: AB/51/71 HIGH COURT OF WESTERN STATE, ABEOKUTA JUDICIAL DIVISION. Judgment delivered on 10th April, 1973.**

In the instant case, the Petitioner in his Witness deposition on Oath dated and filed on the 1st March, 2021 states the following:-

“Paragraph 3: Contrary to doctrinal value which we shared the Respondent concealed facts about her background thereby misleading me to believe that she was a spinster without any dependent child.

- 4. *On the basis of the facts stated above (in paragraphs 2 and 3 of the Witness deposition on Oath) in March, 2006, my family members (mother, father and siblings) and Church members (including Daniel Chukwu and John Anigwe) accompanied me to the Respondent’s Ancestral home in Okija, Anambra State where the traditional wedding rites were performed.***
- 5. *Sequel to the performance of traditional marriage rites on the 24th November, 2006, at the Abuja Municipal Area Council Marriage Registry, the Respondent and myself***

celebrated what was erroneously believed to be a valid marriage under the Act and we continued to cohabit until June 2017 also in paragraph 8 of the Petitioner deposition on Oath, the Petitioner stated thus: “A few after months contracting what was erroneously believed to be a valid marriage, the Respondent admitted to me that she had a child outside wedlock. In paragraph 15, the Petitioner stated “At the scheduled meeting with the Church’s state co-ordinator, Pastor Godwin at Jabi Abuja, the Respondent admitted that she had three children but out of wedlock.”

In paragraph 17 the Petitioner continued “I travelled to the Respondent ancestral home Okija and was led to the home of Mr. Nnanyelugo (one of the elder in her clan) and he revealed the following things about the Respondent: -

- “(a). That the true and correct maiden name of the Respondent was Cecilia Omata Nwankwo.***
- (b). That he witnessed the marriage of the Respondent to Ugochukwu Nwagwu (an indigene of Okija, Anambra State).***
- (c). That it was the Respondent’s father who married her to Ugochukwu Nwagwu in accordance with the customs and traditions of Okija people.”***

The above information was also corroborated by the Pw2, one Emeka Nonso in his witness deposition on Oath dated and filed on the 1st March 2019 and adopted.

It is settled law that although in Matrimonial Causes proceedings, corroboration of any fact alleged is generally desirable, it is not however indispensable. See the case of ***ASUNI V ASUNI (1971) SUIT NO. 1/125/70, HIGH COURT OF WESTERN STATE, IBADAN JUDICIAL DIVISION, delivered in the 21st May, 1971.***

However the Courts have stressed that in undefended suits, the need for corroboration is greater than in defended suit see the case of ***OSHINLOYE VS OSHINLOYE (1960) LLR 18.***

KAFTON V. KAFTON (1978) 1 ALLER 435.

Therefore in the instant case, going by the totality of evidence presented by the Petitioner as Pw1 and Emeka Nonso Pw2, I find strongly that the Respondent knew she was legally married to another man and her concealment of this fact to the Petitioner amounted to obtaining his mutual consent to marry her by fraud.

Moreso, it is trite law that the Court is empowered to act on the unchallenged, credible evidence of a witness. In this case the Petitioner as Pw1 and Emeka Nonso as Pw2. On this premise, see the case of **OLUFENKE V ADEAGBO (1988) 2 NWLR (Pt. 75) Pg. 238 and MOHAMMED VS ALI (1989) 2 NWLR (Pt. 103) Pg. 349.**

In the case of **NASIN V C.S.C KANO STATE (2010) 6 NWLR (Pt. 1190)** the Supreme Court held thus: -

“Evidence that is relevant to the matter in controversy and has not been challenged or debunked remains good and credible evidence that may be used in the just determination of a dispute.”

Also in the case of **HEIN N EBUEUNG ISENSEE K.G VS. U.B.A PLC (2012) 10 NWLR (Pt. 1326) 357 @ 384 Para C** the Court held thus:-

“Where evidence is uncontroverted, unchallenged and credible, the Court will be left with no option than accept same.”

Therefore, I have reviewed the evidence led herein and find same to be credible and that being the case, I am bound to act on it since it is unchallenged and uncontroverted. I so hold.

On the issue of the Court awarding custody of the only child of the marriage, Master Franklyn Anthony born on the 10th of August, 2009, and is currently 12 years and 7 months. The Petitioner has urged the Court in his reliefs sought attached to the Petition to be given sole custody of Franklyn Anthony in the over-riding interest of the child.

This position is also enumerated in the Petitioner’s final Address by learned Counsel to the Petitioner, urging the Court to grant custody to the Petitioner

having regard that the child had been living with the Petitioner, since the Respondent abandoned their matrimonial home in 2017 the learned Counsel argued that the Petitioner has always cared for the child emotionally, financially, educationally, parentally and morally and is eager to continue to do so.

I have taken into consideration the issue of custody. Even though, as earlier stated, the Petition is unchallenged, nevertheless, the first thing to note is that the child is protected by law.

By the provision of Section 69(1)(a) and (2) of the Child Right Act 2014, every parent is guaranteed to have access to their child. In other words, the welfare of the child is the prime consideration of who should be granted custody amongst the parties.

In the case of **MRS. LYDIA OJUOLA OLOWUN FOYEKU VS MR. JAMES OLUSOJI OLOWUN FOYEKU (2011) 10 NWLR (Pt. 1227) Pg. 177 @ 203 Paras E-F** where the Court of Appeal held thus:-

“In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, Court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.....custody is never awarded for good conduct, nor is it ever denied as punishment for the guilty party in matrimonial offences. The welfare of the child of a marriage that has broken down irretrievably is not only paramount consideration but a condition precedent for award of custody.”

In the instant case, the child of the marriage is 12 years and 7 months, and is in no doubt in need of parental love and attention. The child will need a healthy, safe and peaceful environment to be able to thrive physically and emotionally. Therefore in the circumstances, I have considered the best interest of the child as paramount. I so hold.

In this regard see the case of **WILLIAMS V WILLIAMS (1987) LPELR-8050** where the Supreme Court per Obaseki JSC held thus: -

“It seems to me that order for custody must have in view the opportunity of sound education as well as physical and mental

welfare. A parent who will deny these of his or her child is not worthy of an order for custody from Court.”

In the instant case, the Petitioner in his witness deposition on Oath has informed the Court that he is a Businessman who has been taking care of the child since the Respondent left the matrimonial home in 2017. It is my firm belief, that the child Master Franklyn Anthony who is a male and 12 years and 7 months, is about to enter the teenage years, will receive adequate care and attention both educationally, and morally if given to the Petitioner. I so hold.

In view of the above, I find the Petitioner has satisfied the Court that the marriage is void, invalid and obtained by fraud under Section 3(1)(a) and Section 3d(1) of the Matrimonial Causes Act.

The Court hereby declares as follows: -

- (1). That the Court hereby grants an Order Nisi dissolving the marriage between the Petitioner, Anthony Obi and the Respondent Mrs. Favour Obi registered at the Abuja Municipal Area Council Marriage Registry on the 24th of November, 2006. On the ground of nullity, the marriage being void abinitio.
- (2). Petitioner is granted sole custody of the child of the marriage and the Respondent is granted visitation rights and access to the child upon notification of such to the Petitioner.

Signed:

**Hon. Justice S. U. Bature
22/3/2022.**