

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA

THIS MONDAY, THE 28TH DAY OF FEBRUARY, 2022.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

SUIT NO: FCT/HC/PET/018/2021

BETWEEN:

ALEX UKA IBE UDO.....PETITIONER

AND

HALIMA ABBA IBE UDO.....RESPONDENT

JUDGMENT

Vide a petition dated 4th day of March, 2021 and filed on the 5th day of March, 2021, the petitioner, a business man, who was lawfully married to the respondent sought for the dissolution of their marriage contracted at the Abuja Municipal Area Council (AMAC) Marriage Registry on the 27th day of October, 2012 on the ground that the marriage has broken-down irretrievably.

The factual grounds upon which the petitioner predicated his petition are contained in paragraph H of his petition as follows:-

- i. That the Respondent has deserted the petitioner.
- ii. That the parties have not consummated the marriage for a continuous period of four (4) years and up till date.
- iii. That the parties have continuously lived apart for a cumulative period of over three (3) years and there is no more love, affection, trust, tolerance or respect remaining to sustain their union as husband and wife.
- iv. That the Respondent has conducted herself in such a manner, which the Petitioner cannot reasonably be expected to bear. The

Respondent's incessant intransigence and marital indiscipline have brought intolerable pain, disgrace and suffering to the person of the petitioner.

- v. The Petitioner can no longer trust his life in the hands of the Respondent and claims he may die miserably if he lives any further with the Respondent.

The notice of petition was supported by a 5-paragraph verifying affidavit verifying the facts contained in the petition.

The respondent, was served the petition and other originating processes and same was reported to the court by the petitioner's counsel.

Thereafter the case was adjourned to 14th day of July, 2021 for hearing. On the 14th July, when this case came up for hearing, both the petitioner and the respondent were represented and the learned counsel on both sides mutually agreed to adjourned this case to 1st November,2021 for hearing because the parties were absent. On the 1st November,2021, this case was further adjourned to 2nd December, 2021.

On 2nd December, 2021 when this petition came up for hearing the petitioner as PW1 testified in support of his petition by adopting his witness statement on oath dated 28th day of November,2021 and filed 25th day of November,2021.

The Petitioner as PW1 testified that he met the respondent for the first time on the 4th day of April, 2012 in Abuja and propose marriage to her on the 20th of June, 2012 and they finally contracted the marriage at the AMAC marriage Registry on the 27th of October, 2012 and tendered a marriage certificate and this was admitted in evidence.

The Petitioner, as PW1 further avermed that his first pain in the marriage was on the 27th of April, 2015, when he and the respondent underwent series of medical tests and discovered that the respondent has fibroid (tumor in the

stomach), but that she (the Respondent) vehemently refused to undergo medical treatment. The petitioner further stated that he felt embarrassed and astonished at the refusal of the respondent to give in for a medical treatment of the fibroid. PW1 further testified that the respondent subsequently developed the attitude of incessant nagging and hostility against him for taking her for the medical diagnosis. PW1 also added that despite several entreaties he and the family members made to the Respondent to yield for medical surgery as a way of lasting treatment for the tumor so that they can begin to raise children, the respondent remained adamant.

PW1 further testified that their marriage is now about nine (9) years old without any child as a result of the respondent's refusal to submit to treatment of her stomach sickness and that they are not getting younger.

It was the testimony of the Petitioner as PW1 that the Respondent deserted him at their Matrimonial Home at No. 6B Karu Mami Street Phase 3, Jikwoyi Abuja and stays at Karamajiji Tudun Munsera Airport Road Abuja since 5th day of January, 2018 to date, without mutual communication and intimacy with him. The petitioner further testified that in their marriage, while he always spent himself to please the respondent, all that he got in return has been pain, pain and more pain. He added that there is no evidence that there is any single love, happiness, trust, affection or cordiality that is left in the marriage. He further testified that they have lived apart for a continuous period of more than three years immediately preceding the presentation of this petition and that they have not consummated the marriage within this period of time.

The petitioner also stated that since their marriage, the respondent has behaved in such a way that he cannot reasonably be expected to live with her. The petitioner finally stated that he can no longer trust his life in the hands of the respondent and that he may die miserably if he lives any further with the respondent and that they have amicably agreed to go their separate ways.

After, the petitioner's testimony as PW1, the Respondent's counsel was called upon to cross-examine the petitioner based on his evidence, but the learned counsel to the Respondent, **Haggai Adinnu, Esq** stated that he will not cross-examine the petitioner based on his evidence.

Thereafter, the petitioner closed his case and was discharged.

After the petitioner closed his case, learned counsel to the respondent informed the court that the Respondent has no defence to the petition and the petitioner's counsel consequently apply to this court to enter judgment for the petitioner.

I have carefully considered the facts of this petition and the legal submissions of counsel on both sides, and I am of the considered view that the only issue that call for determination is ***whether the petitioner has satisfied this court that his marriage to the respondent has broken-down irretrievably to be entitled to the reliefs he seeks?***

By section 15(1) of the Matrimonial Causes Act, a petition under this Act by a party to a marriage may be presented upon the ground that the marriage has broken-down irretrievably. The Matrimonial Causes Act also went further to provide that a court hearing a petition for decree of dissolution of 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 facts provided in section 15(2) a – h of the Act. See ***Ibrahim Vs. Ibrahim (2007) 1NWHR (Pt. 1015) 583 and Joshua Omotunde Vs. Mrs. Joshua Yetunde Omotunde (2001) 9 NWHR (Pt. 718) 525*** Essentially, the Matrimonial Causes Act provides for eight (8) factual grounds upon which a court presented with a petition for dissolution of a marriage can hold that the marriage has broken-down irretrievable and any one or more of these eight (8) factual grounds can validly and properly ground dissolution of a marriage. See ***Nnanna Vs. Nnanna (2005) LPEHR-7485 (CA), Ibrahim Vs, Ibrahim (2007) 1 NWLHR (Pt. 1015) 385.***

In the instant petition before this court, the petitioner is essentially relying on three out of the eight factual grounds upon which a court of law can validly dissolve a marriage. The first of the two factual grounds that the petitioner is relying on is that he has lived apart with the Respondent for a period exceeding three years immediately preceding the presentation of this petition and the second is that since their marriage, the respondent has behaved in such a way that he (the Petitioner) cannot be reasonably be expected to live with the Respondent.

On the issue of living apart for more than three years preceding the presentation of this petition, at trial, the petitioner as PW1 testified that the Respondent deserted him at their Matrimonial Home No. 6B Karu Mami Street, Phase 3, Jikwoyi Abuja since the 5th day of January, 2018 to date, without mutual communication and intimacy with him. It must be emphasized that this piece of evidence remains unchallenged and uncontradicted. The law is trite that an uncontradicted evidence and an unchallenged evidence is deemed admitted. The law is also trite that where evidence is given by a party to any proceedings is unchallenged by an adversary who has the opportunity to do so, then it is always open to the court seised of the proceedings to act on the unchallenged evidence before it see. ***UMOH VS. TITA & Co. (1999) 12 NWLR (Pt. 631) 427 at 434. AIGBODON Vs. state (2000) 7 NWHR (PT 666) 686 AT 702-703, CAMEROON AIRLINES VS. OTATUIZU (2005) 9 NWHR (PT. 929) 202 AT 224. IJEBUODE LOCAL GOVERNMENT AREA VS. ADEDEJI (1001) LPELR SC 22/1989. CHIEF SUNDAY OGUNYADE VS. SOLOMON OLUYEMI OSHUNKEYE & ANOR (2007) 7 SC (PT 11) 60, ODULAJA VS. HADDAD (1973) 11 SC 337 NIGERIA MARITIME SERVICE LTS VS. AFOLABI (1978) 2 SC 79.***

In the instant case, the unchallenged evidence before this court is that the respondent deserted the petitioner in their Matrimonial Home in Jikwoyi on the 5th day of January, 2018 and moved to Karamajiji Tudeen Munsera Airport Road

Abuja and that parties have remained separated from that date to the 4th of March, 2021 when this petition was filed in this court. This is a period of about three years and two months of living apart by the parties. This period clearly more than satisfied the statutory provision of three years as provided for in section 15 of the Matrimonial Causes Act. It also trite that from the wordings of the statutory provisions relating to living apart under Section 15(2) e and F of the Matrimonial Causes Act, that the law on living apart is not concerned with the guilt or innocence of any of the parties. Rather the law is that once it is established that the parties have lived apart for the period stated therein, the court must proceed to give a decree of dissolution of the marriage. See **OMOTUNDE VS. OMOTUNDE (2001) 9 NWLR (PT. 718); MC DONALD VS. DONALD (1964) 6 FLR 58; AKIOYE VS. AKIOYE SUIT NO. 1/136/70 OF 1ST MARCH, 1970, PER SOMOLU, CJ; ANOKA VS. ANOKA (1973) ECCLR VOL. 3 (PT. 1) 1 AT 56; AGBAKWURU VS. AGBAKWURU SUIT. NO. HD/3/76, PER SAWAGE, J; OCHIE VS. OCHIE SUIT NO. O/9D/71 PER OPUTA, J (AS HE THEN WAS); AS WELL AS NIGERIAN FAMILY LAW, BY PROF. ITSE SAGAY, MALTHOUSE PRESS (1999) AT PAGE 331.** I therefore hold the view that the petitioner has established that the parties to this marriage have lived apart for a continuous period of more than three years immediately preceding the presentation of this petition.

On the factual allegation of the petitioner that since their marriage, the Respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with her. The law is that the allegation of intolerable conduct under Section 15(2) C of the Matrimonial Causes Act, the petitioner can only succeed if he or she is able to establish to the satisfaction of the court a conduct of the Respondent which is grave and weighty as to make cohabitation virtually impossible. In other words, the petitioner must establish a sickening and detestable behavior of the Respondent and the fact that he or she has found it intolerable to live with the Respondent. See **BIBILARI VS. BIBILARIC (2011)**

LPELR-4443 CA, IBRAHIM VS. IBRAHIM (2007) 1 NWHR (PT.1015) 383, NANNA VS. NANNA (2005) LPELR- 7485 (CA) OR (2005) 3 NWLR (PT 966)1, DAMULAK VS. DAMALAK (2004) 8 NWLR (PT 874) 151.

Although the evidence led by the petitioner in this case is unchallenged and uncontroverted by the Respondent, the principal relief of dissolution of marriage sought by the petitioner in this case is in the nature of a declaratory relief. The law is that a party seeking a declaratory relief must establish his entitlement to such relief with cogent and credible evidence. The petitioner is therefore required to satisfy the court with credible evidence of her entitlement to the principal relief of dissolution of marriage which he seeks in this case. In so doing, the petitioner succeeds only on the strength of his case and not on the weakness of that of the respondent. The relief of dissolution of marriage is therefore, not granted even on admission by the respondent. See Sections 44 (3) and 82 of the matrimonial Causes Act and the cases of: **OGOLO & ORS. VS. OGOLO & ORS (2003) LPELR-2309(SC), PER EDOZIE JSC AT PAGES 25-26, PARAS. F-G; CONFITRUST (NIG) LTD. VS. EMMAX MOTORS LTD & ORS (2016) LPELR-41428(CA), PER GEORGE WILL, JCA AT PAGES 56-57, PARAS. E-B; AND OMOTUNDE VS. OMOTUNDE (2000) LPELR-10194(CA), PER ADEKEYE, JCA AT PAGES 43-44, PARAS. A-G**

I hold the considered view that the petitioner has not proved this ground.

On the allegation that the marriage has not been consummated in the last four years. A careful study of this petition reveals that the petitioner lived together with the Respondent after their marriage from 27th day of October, 2012 to 5th day of January, 2018 and that it was when they were having difficulty in child bearing that they went for medical checks up which revealed that the Respondent has tumor in her stomach for which she refused medical operation. Therefore, if this marriage has not been consummated as alleged by

the petitioner why did the parties go for medical check-up? Section 21 of the matrimonial causes Act provides that:

“The court shall not to find that a respondent has willfully and persistently refused to consummate the marriage unless the court is satisfied that, as at the commencement of the hearing of the petition, the marriage has not been consummated.”

I therefore hold the considered view that the factual allegation that this marriage has not been consummated has not been proved by the petitioner and this ground also fails.

On the whole, I hereby resolve the sole issue for determination in this case in the affirmative and hold that the petitioner has proved that her marriage to the respondent has broken down irretrievably and as such he is entitled to a decree of dissolution of marriage. This petition succeeds on the ground that the parties to this marriage have lived apart for more than three years immediately preceding the presentation of this petition.

Accordingly, this court hereby decrees that, upon and subject to the decree of the court becoming absolute the marriage solemnized on the 27th day of October, 2012 at AMAC Marriage Registry between Alex Uka Ibe Udo and Halima Abba is hereby dissolved.

*Signed:
Hon. Judge
28th/02/2022*