

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI**

**THIS 8<sup>TH</sup> FEBRUARY, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA**

**SUIT NO: PET/262/2021**

**BETWEEN:**

**AMINA IBRAHIM ----- PETITIONER**

**AND**

**OLAKUNLE OLUWASEUN OBIDIPE-----RESPONDENT**

**JUDGMENT**

This is a petition for dissolution of marriage dated 15<sup>th</sup> day of July 2021 and filed on the same date. The petitioner is praying this Honourable court for the following reliefs:

1. A decree of dissolution of marriage on the ground that since the marriage the petitioner and the Respondent have lived apart for a period more than two years; and the marriage has broken down irretrievably.
2. An Order of the Honorable court directing the Respondent to be paying the children's school fees as at when due and to provide Medical insurance or Bill for the children
3. An Order of the Honorable Court directing the Respondent to be paying the sum of sixty thousand Naira (N 60,000.00) monthly for upkeeping the children.

4. An Order of the Honorable Court directing the Respondent to provide clothes for the children every three months of the year.
5. And for such further order or orders this Honorable Court may deem fit to make in the circumstance.

The grounds upon which the application is brought are:

The petitioner avers that the parties to the marriage have lived apart since year 2014, about 7 years prior to filing this petition. The petitioner avers that she cannot continue with the marriage oath. That the petitioner has no more love and affection for the Respondent which prompted the petitioner to move out of their matrimonial home, so as to avoid the petitioner committing sin in the sight of her creator. The petitioner avers that she does not have love nor affection for the Respondent.

In support of the petition, the petitioner filed a verifying affidavit and a certificate relating to reconciliation and a marriage certificate marked as Exhibit A.

The petition and other accompanying processes were duly served on the Respondent. At the hearing on the 16<sup>th</sup> day of November 2021, the petitioner was led in chief by learned counsel to the petitioner. In her oral testimony she stated that she and the Respondent got married on the 23<sup>rd</sup> day of December 2009 .That the marriage was blessed with two (2) (twins girls) born on the 3<sup>rd</sup> January 2010. That the daughters are now in junior secondary school class two (2), the petitioner testified further that she and her husband (Respondent) use to have misunderstanding and sometimes it becomes violent. The petitioner testified that she no

longer has love and affection for the Respondent. That she left her matrimonial home sometimes September, 2014 she urged the court to dissolve the marriage between her and the Respondent. The petitioner prayed this Honorable court to grant her custody of the children of the marriage and a monthly fee of N60,000 as upkeep for the children.

The Respondent who was present in court but not represented by any legal counsel said *"I do not wish to cross-examine the petitioner"* at the close of her testimony. The Respondent when given the opportunity to open his case said *"I don't have anything to say, I agree totally with the petitioner"*.

In his written address dated the 2<sup>nd</sup> December 2021 and filed on the same date, learned counsel to the petitioner formulated a lone issue for determination to wit:

***"Whether the petitioner has proved her case to enable the petitioner entitle to the reliefs sought"***

Learned counsel submitted on the lone issue above that the marriage has broken down irretrievably; counsel cited the provisions of section 15 (1) and (2) (c) of the matrimonial causes Act as follows;

*15(1)" A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably."*

*15(2)"the court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down*

*irretrievable if, but only if, the petitioner satisfies the court of one or more of the following facts:*

*15(2) (e)- that the parties to the marriage have live 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;*

*15(2)(f)- that the parties to the marriage have lived apart for a continues period of at least three years immediately preceding the presentation of the petition.”*

Counsel cited the case of IBRAHIM VS IBRAHIM (2009)1 NWLR (PT 1015)383 CA.

It is the contention of learned counsel that parties in this petition have lived apart for more than 7 years. Counsel argued that the Respondent does not deny the facts/evidence given by the petitioner in the court. Therefore the piece of evidence in proof that the marriage has broken down irretrievably remains unchallenged and uncontroverted. counsel relied on **AFRIBANK (NIG) LTD Vs MOSLAD ENTER PRISES LTD (2008) ALL FWLR (PT 421)879.at 894 paragraphs e-f per Akaahs, JCA** to the effect that where a defendant does not produce evidence or testify or call witness in support of his defence, slight or minimum evidence which can discharged the onus of proof will be required to grant the plaintiffs claim.

Learned counsel to the petitioner urged this Honorable court to grant the other reliefs sought by the petitioner having not been challenged and discredited by the Respondent. He relied on the case of **CBN Vs OKOJIE (2015) 14 NWLR (PT 1479) 231 SC**

**Ratio 7 per Rhodes –Vivour** , JSC to the effect that the evidence that is not challenged nor discredited should be accepted and relied on if such evidence is adduced to establish a relevant fact.

Learned counsel on the whole submitted that the burden of proof in civil cases is on the basis of preponderance of evidence while the petitioner in this suit has discharged, counsel cited **JINAIDU Vs ESUROMBI (2005) ALL FWLR (PT 251) 349 at 372**

I have perused the evidence before me both oral and documentary. It is my humble legal view that this petition raises a lone issue for determination.

*“Whether the Petitioner has placed sufficient evidence before this honourable court to entitle the grant of the reliefs sought?”*

The court would commence by alluding to the fact that the petitioner’s pleading and evidence are not contested, the respondent having been served but not having filed any response there to the court is this enjoined to act on such uncontested evidence. See the case of **EGBUNIKE & ANOR V A.C.B (1995) NWLR (PT.375) at page 55**. The provision of section 15 (1) matrimonial causes Act 1970 state that the only premise upon which a legal marriage such as that entered into by the parties can be dissolved is where the marriage has broken down irretrievably, in keeping with section 15 (2) (a)-(a) of the matrimonial causes Act See **Harriman Vs Harriman (1985) 5 NWLR 119, 196**. The petitioner has relied on section 15 (2) (D) & E of the matrimonial causes Act.

Section 15 (2) (D) states that a marriage would be deemed by the court, to have broken down irretrievably where a respondent has deserted the petitioner for two (2) years immediately preceding the presentation of the petition.

Indeed, from the uncontested testimony of the petitioner, the respondent has no more love for her; which prompted the petitioner to move out of their matrimonial home since 2014 absent (7) years prior to filing this petition. This petition was sealed at the High Court Registry, on the 15<sup>th</sup> July, 2021

The issue of consent can be inferred from the respondent's attitude, having been served with all the process in this suit, yet not having bothered to respond: would be seen as acquiescence. Section 15 (2) (D) & (E) having been proved to the recommendable satisfaction of the court, with the applicant's unchallenged testimony, in accordance with section 82 (1) matrimonial Cause Act, the petition here to, dated 15<sup>th</sup> July 2021, thus succeeds upon which premise **It is thus ordered as follows :-**

- (I.) A decree NISI is hereby pronounced dissolving the marriage between MRS. AMINA IBRAHIM and OLAKUNLE OLUWASEUN OBIDIPE which solemnized on the 23 December 2009 at Abuja Area Municipal Council Marriage Registry, Fct, Abuja.
- (II.) This Decree shall become Absolute after three (3) Months would have lapsed (sic), commencing from this day of 08/02/2022, provided nothing to sway the Courts mind to the contrary is brought forth.

- (III.) It is ordered that the respondent shall pay the school fees of the children of the marriage as to when due, inclusive of medical and insurance Bill of the children.
- (IV.) The respondent shall pay to the petitioner the sum of Sixty Thousand Naira (N 60,000) monthly as upkeep allowance for the children of the marriage.
- (V.) Prayer No 4 is hereby covered by order for children upkeep as stated in prayer 4 above.

**Appearance –**

Parties Petitioner in the court while the Defendant is absent.

Musa Ibrahim for the plaintiff Defendant not represented in Court by any Counsel.

Judgment read in open Court.

**Signed**

**08/02/2022**

**Presiding Hon. Judge**