

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 25th OF MAY, 2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

SUIT NO : FCT/HC/PET/186/21

BETWEEN

NGOZI VALERIE UGWU-IKPOJI.....PETITIONER

AND

OKECHUKWU PAUL MICHAEL IKPOJI.....RESPONDENT

JUDGEMENT

By notice of petition dated 21st June, 2021 and filed on the 7th July, 2021, the Petitioner herein commenced the suit against the Respondent.

In the petition the petitioner seeks the following relief:

1. A decree of dissolution of marriage on the ground that the Respondent has wilfully and persistently refused to consummate the marriage; that the Respondent has deserted the petitioner for a continuous period of one year immediately preceding this petition and that the parties to the marriage have lived apart for a continuous period of 2 years.

The petition is supported by 12 paragraph affidavit deposed to by Ngozi Valerie Ugwu-Ikpoji, the Petitioner.

The Respondent was served the court processes and was not represented by counsel at the proceedings neither did the respondent file an answer or anything in opposition to the petition.

The matter went on trial and the Petitioner testified as PW1. An original copy of the Marriage Certificate dated 2nd December, 2017

was tendered and admitted in evidence by this court and marked as Exhibit A.

After the testimony of the Petitioner, her counsel urged the court to proceed to enter judgement by dissolving the marriage as prayed by petitioner.

I have considered the Petitioner's case before the court and oral submission of the petitioner's counsel. I am of the view that the issue for determination is:

'Whether the petitioner has successfully established that the marriage which is subject matter of this Petition has broken down irretrievably'

The counsel canvassed that the parties have lived apart for a continuous period of one (1) year immediately preceding the presentation of the petition. That they have also been living apart since 31st March, 2018 and the petition was presented on 7th July, 2021.

It is trite law that dissolution of marriage contracted pursuant to our Marriage Law is guided by the Matrimonial Causes Act, 1970. Under the said law, a petition 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. See

GABRIEL OLORUNFEMI PIUS v. BOSEDE PIUS OLORUNFEMI (2020) LPELR-49579(CA) (Pp. 9-10 paras. D) where his lordship Per SHUAIBU, J.C.A reasoned as follows:

"I have also restated the legal position that a petition under this Act by a party to a marriage for a decree of dissolution of marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably under Section 15 (2)

of the Act. The Court hearing a petition for a decree of dissolution of marriage shall hold that the marriage to have broken down irretrievably if but only if the petitioner satisfied the Court that one or more of the situations set out in Section 15 (2) (a) - (h) of the Act - has occurred."

See also

MRS. HELEN ANIOKE v. MR. BEN CHARLES ANIOKE (2011) LPELR-3774(CA) (Pp. 34 paras. B)

It is important to note that the evidence of the petitioner remains unchallenged and uncontradicted, thus same ought to be admitted and acted upon by this court. See

ALHAJI ALI BUKAR MANDARA v. ALHAJI USMAN ALI & ANOR (2017) LPELR-43433(CA) Pp. 29 paras. C)

One of the grounds upon which the petitioner has brought this petition is amply stated on the face of the petition, which is the fact that the petitioner and the respondent have lived apart for a period of two years. It is stated that the marriage between the petitioner and the respondent has broken down irretrievably because they have lived apart for a continuous period of at least two years immediately preceding the presentation of petition.

One of the facts which if proved, would convince the Court that the marriage has broken down irretrievably is where 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. See **Section 15(2)(e) of the Matrimonial Causes Act.**

And

IBRAHIM V. IBRAHIM (2007) ALL FWLR (PT. 346) 474 AT 491 PARA. G (CA) OR (2006) LPELR- 7670 P 7-9 PARA F-E
where the court reasoned as follows:

“Generally, dissolution of marriage contracted pursuant to our marriage law is guided by Matrimonial Causes Act, Cap. 220. Under the said law, a petition 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. See Section 15 of Matrimonial Causes Act. 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.

In this case, the petitioner’s oral testimony is that she got married to the respondent on the 2nd of December, 2017 at the Federal Marriage Registry, Area 3 Abuja. This evidence was neither discredited nor challenged by any contrary evidence. This fact is supported by documentary evidence (Exhibit A) which is the marriage certificate in respect of the marriage between the petitioner and the respondent. Section 86 of the Matrimonial Causes Act states that proof of marriages shall be by production of either the original or certified copy of the marriage certificate.

The petitioner also stated that the marriage between the petitioner and the respondent has not been consummated. Section 15(2)(a) and section 21 of the Matrimonial Causes Act sets out in detail the facts for dissolution of a marriage where the respondent has wilfully refused to consummate the marriage. They provide thus:

“15(2)(a) “that the respondent has wilfully and persistently refused to consummate the marriage.”

21- “The court shall not find that a respondent has wilfully 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 had not been consummated.”

See the case of **MR. ABDULAZEEZ AKINLOLU v. DR. AMINAT YEWANDE AKINLOLU (2019) LPELR-47416(CA) (Pp. 25-26 paras. B) Per SAULAWA ,J.C.A**

From the facts before the court, the petitioner has proved that the parties have lived apart for a period of two years and that the respondent has deserted her for a continuous period of over one year immediately preceding the presentation of this petition.

The Petitioner has established the facts under **Section 15(2)(d and e) of the Matrimonial Causes Act**. The Petitioner has thus been able to convince this Court that the marriage between herself and the Respondent contracted on 2nd December, 2017 has broken down irretrievably. See:

OGUNTOYINBO v. OGUNTOYINBO (2017) LPELR-42174(CA) PP 8-14 PARAS E-A

This court in the circumstance has no option but to grant the relief for dissolution of Marriage sought by the petitioner.

Consequently, it is hereby ordered:

That the marriage had and solemnized on the 2nd day of December, 2017 at Federal Marriage Registry, Area 3, Abuja between the petitioner Ngozi Valerie Ugwu-Ikpoji and the respondent Okechukwu Paul Michael Ikpoji shall be and is hereby dissolved on ground that same has broken down irretrievably having proved that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of this petitioner and the respondent does not object to a decree being granted.

Decree Nisi will issue forthwith and shall be made absolute after three months from the date hereof if there be no cause to the contrary.

Signed

Honourable Judge

Representation

Harrison Amachuma Esq with Ozioma Nwankwo Esq for petitioner.