

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/386/2020

BETWEEN:

CHIKA ORAEBUNAM.....PETITIONER

VS

STEPHEN CHIGOZIE ORAEBUNAM.....RESPONDENT

JUDGMENT

The Petitioner, Chika Oraegbunam filed a Notice of Petition, along with the Petition on 4/8/2020, against the Respondent – Stephen Chigozie Oraegbunam, seeking for the reliefs set in Paragraph 10 (a) (b) of the Petition as follows:

- (a) A Decree of Dissolution of Marriage between the Petitioner and the Respondent on the grounds that same has broken down irretrievably as the Respondent has since deserted the marriage for a continuous period of over 1 (One) year and thereby also conducted himself in a manner that the Petitioner cannot reasonably be expected to stay married to him (Respondent) any longer.

(b) And such other orders as the court may deem justice and equitable to make in the circumstance.

The process was served on the Respondent by email with the leave of court granted on 18/11/2020, but the Respondent did not file any process, nor represented by counsel, rather sent a Reply mail stating that he is not opposed to the application of the Petitioner. Consequent upon that and pursuant to application of the Petitioner's counsel, the matter proceeded as "Undefended".

The Petitioner – Chika Oraegbunam, testified as PW1, adopted her Witness Statement on oath of 29 Paragraphs, sworn to on 4/6/2021 as her oral testimony in proof of the Petition. In the course of her testimony, in-chief, the Petitioner tendered the Certified True Copy of Marriage Certificate issued by the Federal Marriage Registry, in Njikota Local Government Area of Anambra State; as Exhibit "A".

At the close of Petitioner's – PW1 testimony, the Petitioner Counsel prayed the court to proceed to enter Judgment, in view of the fact that the Respondent did not file any process and not represented by counsel, throughout the trial, and more importantly, by the Respondent Reply mail dated 25/2/2022, stating that he does not intend to oppose the said Petition and prays the court to treat the Petition as unchallenged.

Consequent upon the application of Petitioner Counsel and noting the contents of the Respondent Reply mail of 25/2/2022, the court proceeded to proceed to Judgment in this instance suit.

Having carefully considered the unchallenged evidence of PW1 – Petitioner, and noting the position of the Respondent, this court finds that the issue to be considered in the determination of the case is;

“Whether the Petitioner has made out a case deserving of the grant of the relief sought”

Firstly, Respondent did not file an Answer to the Petition and did not challenge the evidence of the Petitioner, the implication of this is that the court will deem the unchallenged and uncontroverted evidence of the Petitioner as true and correct and act on it. See the case of CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. In the case of Aribank (Nig) Ltd Vs Moselad Enterprises Ltd (2007) ALL FWLR (PT. 421) 879 @ 894 Para E – F; Akaahs JCA (as he then was) had this to say;

“Where a Defendant does not produce evidence or testify, slight or minimum evidence, which can discharge the onus of proof would be required to ground the Plaintiff’s claim”

I am, however, quick to add that minimum evidence must be credible enough for court to grant the claim of the Petitioner. See Zenegal Ltd Vs Jagal Pharm Ltd (2007) ALL FWLR (PT. 387) 950 Para F – G.

Now, in the determination of a Petition for dissolution of marriage, under Section 15 (1) of the Matrimonial Causes Act, it is competent for a marriage to be dissolved once a court is satisfied that the marriage has broken down irretrievably and to come to that conclusion, the Petitioner must prove to the reasonable satisfaction of court any of the facts

as prescribed by Section 15 (2) of the Matrimonial Causes Act categorized in sub-section (a) – (h).

In this instant case, the Petitioner place reliance upon the grounds of Section 15 (2) (d) of the Matrimonial Causes Act, as gleaned from the pleading and evidence adduced before the court. The Section 15 (2) (d) read;

“That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition”.

On grounds bothering Section 15 (2) (d) of Matrimonial Causes Act, the court has held in case of Nnana Vs Nnana (2006) 3 NWLR (PT. 966) 1 @ 32, that

“It is not enough to show that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the Petition, but that the living apart within Sections 15 (2) (d) (e) & (f) must be one where any of the parties have been abandoned and forsaken without justification thus renouncing his or her responsibilities and evading its duties”.

In this case, it is the evidence of the PW1- Petitioner stated that;

“In Para “9” ...Two weeks after the marriage precisely on 16h January, 2019, the Respondent departed Nigeria and went back to Melbourne, Australia without arrangement for me to go with him”

“Para 12a....Normal communication between me and the Respondent took place only for a few months, but started to get strained from around March, 2019”

“Para 18.....On 25/10/2010, the Respondent made good his threat and sent his parent to his family to perform the traditional rites of calling of the marriage and retrieving the dowry paid”

The matrimonial Act merely requires on grounds of Section 15 (2) (d), the desertion should be for at least one year preceding of presentation of Petition to ground dissolution of the marriage. In this case, co-habitation between the parties ceased on 16th January, 2019 and the Petition was filed on 4/8/2020, which is clearly more than the prescribed period of desertion. And this suffice for the ground of dissolution of the marriage. Accordingly, this ground avails the Petitioner.

Having so found, it is the holden of this court that the Petitioner have proven to the satisfaction of the court of the facts relied on for the dissolution of the marriage, thus this petition succeeds and Judgment is hereby entered in favour of the Petitioner as follows:-

- (1) The marriage celebrated at the Federal Marriage Registry in Njikota Local Government Secretariat, on 27/12/2018 between the Petitioner – Chika Oraegbunam and the Respondent – Stephen Oraegbunam has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between them.

- (2) The order shall become absolute after three (3) months from the date of Judgment.

This is the Judgment of court.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

14/4/2022

APPEARANCE:

JUDE DANIEL ODI –FOR THE PETITIONER

NO REPRESENTATION - FOR THE RESPONDENT