

**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/351/2020

BETWEEN:

CHINENYE MAUREEN OGUCHI.....PETITIONER

VS

ANDRE PETERS.....RESPONDENT

(FORMERLY KNOWN AS IFEANYI CHIGOZIE IWUCHUKWU)

JUDGMENT

This Petition for Dissolution of Marriage was filed by Chinenye Maureen Oguchi (hereinafter called the Petitioner) on 16/7/2020 for the reliefs set out in Paragraph 23 of the Petition as follows;

- (1) The Petitioner seeks a decree of dissolution of the marriage between her and the Respondent.

The facts upon which the Petitioner seeks the dissolution of marriage as pleaded in Paragraph 19 of the Petition are;

- (a) The Respondent has behaved in such a manner that the Petitioner cannot be reasonably expected to live with him.
- (b) The marriage has broken down irretrievably.

- (c) Parties have lived apart for three and half year (as at the time of presenting this Petition.

The Petition along with other processes of court were served on the Respondent by substituted means to wit; by sending to his E-mail address Peters.andrex@gmail.com and andre.petersx@outlook.com pursuant to order of court made on 3/2/2021. On the other hand Respondent did not file his Answer to the Petition and was absent during hearing of the Petition despite service of Hearing Notices on each adjourned date. The Petition was therefore held as undefended.

On 22/7/2021 Petitioner opened her case and testified as PW1 and adopted all the depositions in her Witness Statement on Oath sworn on 7/7/2021 as oral evidence in proof of her Petition. In the course of the Examination-in-Chief of PW1 the Certified True Copy of Marriage Certificate evidencing marriage between the Petitioner and the Respondent celebrated at the Federal Marriage Registry Abuja on 6/8/2013 was tendered and admitted in evidence as Exhibit "A", the E-Ticket issued by Qatar Airways issued to Chinenye Oguchi and a Boarding Pass issued to Chinenye Oguchi by Qatar Airways for 20/1/2017 were both admitted in Evidence as Exhibits "B1-B2".

At the close of the Examination-in-Chief of PW1, the case was adjourned for the Respondent to cross-examine PW1 – the Petitioner the Respondent who was duly served with Hearing Notice as ordered by the court failed to show up or be represented by Counsel of his choice. Consequently, upon the application of Petitioner's Counsel, the Respondent was foreclosed from

cross-examining PW1 – Petitioner and the case adjourned for Adoption of Final Written Address.

Addressing the court on 7/2/2022, Dubem Anene Esq. adopted the Final Written Address dated 1/11/2021 as oral submission in support of the Petition and submitted a sole issue for determination, which is;

“Whether the Petitioner is entitled to her claim for the dissolution of the marriage between her and the Respondent”

Submits that, Section 15 (2) of the Matrimonial Causes Act provides the grounds on which a court can grant an order for the dissolution of marriage. Petitioner relies on the grounds of Section 15 (2) (c) and (e) and has established those grounds by her testimony.

Submits further that the Petitioner has by her testimony discharged the burden of proof imposed on her by Section 131 of the Evidence Act which was not rebutted or controverted and court will have no option but grant her reliefs, particularly where the facts are not incredulous. Refer to CBN Vs Beckiti Const. Ltd (2011) 5 NWLR (PT. 1240), Elema Vs Akenzua (2000) 13 NWLR (PT. 683) 92 @ Ratio 5, Sunday Modupe Vs the State (1988) 9 SCNJ 1 and Omamen Vs Ekpe (2000) 1 NWLR (PT. 641). Submits that Respondent was served the court processes and Hearing Notices but elected not to defend the Petition therefore he cannot be heard to complain of lack of fair hearing. Refer to Okoteha Vs Herwa Ltd (2000) 15 NWLR (PT. 690) 249 @ 251, Ratio 3.

Submits that the evidence of the PW1 – Petitioner has satisfied the ground of Section 15 (2) of the Matrimonial Causes Act as well as the annexure to

the affidavit of service filed on 16/6/2021 as it clearly shows that the Respondent have no objection to the decree being granted. Refer to Akinbuwa Vs Akinbuwa (2002) SMC 1.

Finally urge court to hold that the Petitioner has fulfilled the Provisions of Section 15 of the Matrimonial Causes Act and grant an order of dissolution of.

Having carefully considered the unchallenged evidence of the Petitioner, the submission of Counsel to the Petitioner and the judicial authorities cited, the court finds that there is only one issue for determination that is;

“Whether the Petitioner has successfully made a case as alleged, enabling the court to hold that the marriage has broken down irretrievably and entitled to the relief sought”

In the first place, the Respondent was duly served with the Petition and all other processes of court and at each adjourned date the Respondent was also served with Hearing Notices, yet failed to file an Answer to the Petition, nor did he put up appearance in court or represented by Counsel of his choice. It is also in the record of court that the Respondent sent E-mail to the Petitioner’s Counsel informing Counsel of his decision not to defend the Petition. The implication of this, is that the testimony of PW1 – the Petitioner is taken as unchallenged and undefended.

It is trite law that, where a party is served with court processes in a matter and fails to react, by challenging those facts and evidence, that party is deemed to have accepted those facts and evidence which remain unchallenged and uncontroverted as true and correct and the court can act

on it. See *Ozigbu Engineering Co. Ltd Vs Iwuamadi* (2009) 16 NWLR (PT. 1166) 44 @ 63 Para D – F.

In a matrimonial proceedings such as this, it is necessary to bear in mind the fact that although the Matrimonial Causes Act created only one ground for divorce, that is; that the marriage has broken down irretrievably. See Section 15 (1) of the Matrimonial Causes Act and the case of *Ibrahim Vs Ibrahim* (2007) 1 NWLR (PT. 1015) 383 @ 386, the facts that may lead to the marriage breaking down irretrievably were categorized under Sub-Section (a) – (h) of Section 15 (2) of the Matrimonial Causes Act only these facts can suffice to ground a Petition for divorce. A court therefore hearing a Petition for divorce shall hold that a marriage has broken down irretrievably by one or more of the facts stated therein in sub-section (a) – (h) of Section 15 (2) of the Matrimonial Causes Act.

In this instant case the grounds upon which the Petitioner rely on for the dissolution of marriage as gleaned from the pleadings and evidence of the Petitioner, are those facts listed in Section 15 (2) (c) and (e) of the Matrimonial Causes Act Section 15 (2) (c) reads;

“That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent”

To succeed under this ground, the Petitioner must state the particulars of behaviour where at all material times during the marriage he finds not reasonably be expected to live with and such acts or behaviour must be weighty and grave in nature to make further co-habitation virtually

impossible. See the case of Ibrahim Vs Ibrahim (Supra). See also the English case of Katz Vs Katz (1972) All ER 219.

In proof of this ground as alleged, Petitioner stated in Paragraphs 14, 15, 16, 17 21 and 22 of her Witness Statement on Oath that, some of the issues had started showing early signs while the Respondent was in Nigeria, adopted a more serious dimension when both parties started living together in Australia, Respondent subjected the Petitioner to constant verbal and emotional abuse and practically turned into a stranger and Petitioner endured the abuse having made up her mind to make the marriage work. And overtime the behaviour of the Respondent became even stranger. Respondent constantly threatened to harm both parties if anyone came between them. PW1 stated;

“Things finally came to a head in May 2016, when the Respondent threw me and my belongings out of our Matrimonial home in Australia which forced me to move to the city where I resorted to doing menial jobs to enable me feed and pay my rent”

PW1 stated further that;

“The Respondent completely neglected me between August to October 2016 when I was forced to live alone until we reconciled. Upon the reconciliation, I conceived but due to all the stress, I suffered a miscarriage at twelve weeks, when the Respondent threw me out of the house again”

Petitioner by her evidence relies on cruelty on the part of the Respondent and the court has held that;

“Cruelty is regarded as a conduct which is grave and weighty as to make co-habitation virtually impossible coupled with injury or a reasonable apprehension of injury (Physical or minor) to health the accumulation of minor acts or ill treatment causing or likely to cause the suffering spouse to break down under strain constitute the offence of cruelty” See Damulak Vs Damulak (2004) 8 NWLR (PT. 874) 151 @ 154 Ratio 2.

Applying the above authority to the instant case, I find that the behaviour or conduct of the Respondent as narrated by the Petitioner are grave and weighty enough to make further co-habitation impossible. Therefore this ground relied on for the dissolution of the marriage having been proven avails the Petitioner, I so hold.

“On the ground of Section 15 (2) (e) which reads; that 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”

To succeed under this ground, the Petitioner must prove to the reasonable satisfaction of the court that the parties have lived apart for a period of at least two (2) years and that the living apart was without mutual consent and justification. And that the Respondent does not object to a decree being granted. See the case of Nnana Vs Nnana (2006) 3 NWLR (PT. 966) i.e. 32. The evidence of the Petitioner in support of this ground is that the Respondent threw the belongings of the Petitioner out of their matrimonial

home a second time in 2016. PW1 informed the court in Paragraph 23 of her Witness Statement on Oath that;

“It was after this incident that I decided that I had had enough and found my way back to Nigeria in January 2017”

On what may constitute living apart, the court in the case of Nnana Vs Nnana (Supra) that;

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

The evidence of the Petitioner is to the effect that both parties have lived apart since January 2017 without mutual consent. This Petition was filed on 16/7/2020 and a computation of time shows that the parties have indeed lived apart for a period of more than two (2) years before the Petition was filed. And the annexure of the affidavit of service filed on 16/6/2021 is an E-mail wherein the Respondent had informed the Petitioner’s Counsel upon receipt of the Petition that he had no intention to defend the Petition nor further involvement in the matter. The implication of this is that Respondent is taken not to object to a decree of dissolution of the marriage. I find these pieces of evidence of the Petitioner though remained unchallenged and uncontroverted, sufficient proof of the fact of this ground relied upon by the Petitioner for the dissolution of the marriage

and therefore avails the Petitioner. The court therefore holds that the marriage between the Petitioner and the Respondent has broken down irretrievably.

Consequently, the Petition succeeds judgment is hereby entered in favour of the Petitioner as follows;

- (1) The marriage celebrated between the Petitioner Chinenye Maureen Oguchi and the Respondent – Andre Peters (formally known as Ifeanyi, Chigozie Iwuchukwu) on 6/8/2013 at the Federal Marriage Registry Abuja, accordingly to the Marriage Act has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the parties.
- (2) The said order shall become absolute after a period of three (3) months from today.

Signed
HON. JUSTICE O. C. AGBAZA
Presiding Judge
18/5/2022

APPEARANCE:

DUBEM ANENE FOR THE PETITIONER

NO REPRESENTATION FOR THE RESPONDENT.