

**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/218/2020

BETWEEN:

JENNIFER SUOYO ANOCHIRIONYE.....PETITIONER

VS

IFEANYI PATRICK ANOCHIRIONYE.....RESPONDENT

JUDGMENT

By a Notice of Petition dated 3/3/2020 and filed same day, the Petitioner herein- Jennifer Suoyo Anachirionye seeks the court the relief set out in Paragraph 11 of the Petition as follows;

- (a) A Decree of dissolution of the Marriage between the Petitioner and the Respondent on the ground that the marriage between both parties have broken down irretrievably.

The ground upon which the Petitioner relies on for court to dissolve the marriage is premised on the facts contained in Section 15 (2) (c) (d) of the Matrimonial Causes Act as gleaned from the pleadings and evidence of the Petitioner.

The Petition along with other court processes were served on the Respondent by substituted means vide an order of court made on

11/11/2020. On the other hand, Respondent did not file his Answer to the Petition although represented by counsel. The case thus proceeded as Undefended.

On 18/10/2021 Petitioner opened her case and testified as PW 1. She adopted all the depositions in the 10 Paragraph Witness Statement on Oath filed on 3/3/2020, as oral evidence in proof of her Petition. In the course of her Examination-in-Chief, the marriage certificate and the translated copy from the Embassy of Nigeria in Rome, Italy evidencing marriage between the Petitioner and Respondent was admitted in evidence as Exhibit "A – A1". Petitioner told the court that she wants the court to grant her relief.

At the close of the testimony of PW1- Petitioner the case was adjourned for the Respondent to Cross-examine PW1. On 25/2/2022 being the adjourned date, N.C. Anyanwu Esq holding brief of A.A. Okoro Esq. for the Respondent, informed the court that they have not filed any response to the Petitioner, therefore rest their their case on the Petitioner's case and declined to cross-examine PW1. The court subsequently adjourned for Judgment.

Having carefully considered the pleadings and evidence of the Petitioner, the court finds that only one (1) issue called for determination, in all of these and that is;

"Whether the Petitioner has proved the ground alleged in seeking the decree of dissolution of marriage and therefore entitled to the relief sought"

First, it is on record that the Respondent did not file an Answer to the Petition, although in court declined to defend the Petition, but rest his case on the evidence of the Petitioner, therefore the Petitioner in proof of the Petition remained unchallenged and uncontroverted. The implication of this, is that the evidence of the Petitioner is taken as true and correct and the court can act on it. See CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. In Afribank (Nig) Ltd Vs Moslad Enterprise Ltd (2008) ALL FWLR (PT. 321) 879 @ 894 Paragraph Akaahs JCA (as he then was) had this to say;

“Where a Defendant does not produce evidence or testify or call witness in support of his defence, 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 to ground the Plaintiff’s relief. See Zeneca Ltd Vs Jagal Pharma Ltd (2007) ALL FWLR (PT. 387) @ 950 Para F – G.

Again Respondent elected not to call any evidence and rested on the case of the Petitioner, Respondent is therefore bound by the evidence called by the Petitioner and the case must be dealt with on the evidence as it stands. See Toriola Vs Williams (1982) 2 ALL NLR 188 @ 205. See also Abdullahi Vs Military Administrator, Kaduna State (2003) 28 WRN 50 @ 67.

In the instant case, Petitioner relies on the facts contained in Section 15 (2) (c) (d) of the Matrimonial Causes Act which 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 head, the Petitioner must lead sufficient evidence to the reasonable satisfaction of the court of acts or conduct of the Respondent which would warrant the grant of the relief sought and such acts or conduct relied on must be grave and weighty to lead the court to that conclusion that both parties cannot live together. See Ibrahim Vs Ibrahim (2007) ALL FWLR (PT.343) @ 480 – 490 Para H – B. See also the English Case of Katz Vs Katz (1972) ALL E.R 219;

“In proof of this ground, Petitioner stated in Paragraph 10 (a) of her Witness Statement on Oath that since the marriage, the Respondent has carried out the act of emotional violence against me that the Respondent has abandonhis responsibility of taking care (food, accommodation etc) of the family and have even abandoned the family”.

She further stated in Paragraph 10 (b) of the said Witness Statement on Oath that;

“Since the marriage the Respondent has behaved in such a way that I cannot reasonably be expected to live with the Respondent anymore. The Respondent has always exhibited aggressive tendencies towards me which have caused me to suffer from severe depression. Also the Respondent is nonchalant about the welfare of

the family as he finds it very difficult to make Provisions for the feeding, clothing and accommodation.

All of these are of cruelty and cruelty on the part of the Respondent to the Petitioner have been held by the court as satisfactory to establish the facts of Section 15 (2) (c) of the Matrimonial Causes Act. See the case of Damulak Vs Damulak (2004) 8 NWLR (PT. 817) 151 @ 154 Ratio 1 and 2. I have earlier stated that the conduct or acts of the Respondent relied on for the grant of the relief sought must be grave and weighty to the reasonable satisfaction of court, to enable it come to the conclusion that further co-habitation between the parties is impossible. And after a careful consideration of the evidence of PW1 – Petitioner which remained unchallenged. I find that the behaviour or conduct of the Respondent as stated by the Petitioner are weighty and grave enough to hold that this ground relied on by the Petitioner for the dissolution of the marriage has been proved to the reasonable satisfaction of the court 1 so hold.

On the fact of Section 15 (2) (d) relied on by the Petitioner which is reproduced hereunder.

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

Petitioner pleaded the above ground but failed to lead sufficient evidence to enable the court determine the period of desertion as no time was stated in her evidence when the Respondent deserted the

Petitioner. Therefore this ground relied on for the dissolution of marriage cannot avail the Petitioner. I so hold.

From all of these and having proven to the reasonable satisfaction of the court of facts relied upon for the dissolution of the marriage particularly the facts of Section 15 (2) (c) of the Matrimonial Causes Act, which facts remained unchallenged and uncontroverted this Petition succeeds and Judgment is accordingly entered in favour of the Petitioner as follows;

- (1) The marriage celebrated on 10/3/2010 at Rome Italy between the Petitioner- Jennifer Suoyo Anochirionye and the Respondent Ifeanyi Patrick Anochirionye 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 three (3) months from the date of Judgment.

Signed
HON. JUSTICE O. C. AGBAZA
Presiding Judge
26/4/2022

APPEARANCE:

CHRISTABEL AYUK FOR THE PETITIONER

M.C. ANYANWU HOLDING BRIEF FOR A.A. OKORO FOR THE
RESPONDENT.

