

**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/177/2020

BETWEEN:

LAURETTA NKECHINYERE ECHEBIRI.....PETITIONER

VS

VINCENT UCHENNA OKEKE.....RESPONDENT

JUDGMENT

By a Notice of Petition dated 7/2/2020 but filed on 12/2/2020 by the Petitioner - Laretta Nkechinyere Echebiri, against the Respondent Vincent Uchenna Okeke seeking the following reliefs in Paragraph 11 of the Petition as follows;

- (1) A Decree of Dissolution of Statutory marriage between the Petitioner and Respondent on the ground that their statutory marriage has broken down irretrievably.
- (2) Custody of the only child (Minor) of the marriage Emmanuella Amarachukwu Chidera Okeke female – born on 9th may 2015 (4yrs).
- (3) An Order of this court directing the Respondent to provide maintenance and train the only child of the marriage

(Emmanuella Amarachukwu Chidera Okeke) in Schools and bears the cost of her education up to University level i.e. 1st Degree.

- (4) The Respondent pay to the Petitioner 70% of the 2018/2019 rent already paid by the Petitioner for the apartment which is presently being occupied by the Petitioner and the only child of the marriage.
- (5) The Respondent provides 70% of the last rent he paid on their last known address to secure an apartment for the only child of the marriage (Emmanuella Amarachukwu Chidera Okeke) and the Petitioner.
- (6) The Respondent provides ₦500,000 (Five Hundred Thousand Naira) annually to cater for the upkeep of the only child of the marriage.
- (7) Cost of this action to be assessed by the court.

The facts relied on by the Petitioner as constituting grounds for the Petition are those facts contained in Section 15 (2) (C) (f) as gleaned from the pleadings and evidence of the Petitioner.

The Petition and other processes were served on the Respondent by substituted means by pasting at the last known address of the Respondent at No. 64 Moses Anyaoha Street, behind NNPC Filing Station, Arab Road Kubwa, FCT Abuja. On the other hand Respondent did not file an Answer

to the Petition, was absent throughout hearing and was not represented by Counsel. The Petition thus proceeded as undefended.

Petitioner testified as PW1 and adopted the depositions in her Witness Statement on Oath filed on 12/2/2020 as oral testimony in proof of the Petition. In the course of her Examination-In-Chief, the following documents were tendered and received in evidence;

- (1) The marriage certificate No. 383/2013 dated 21/6/2013 evidencing the Marriage celebrated at the Marriage Registry Bwari FCT between the Petitioner and the Respondent and;
- (2) The marriage certificate issued by Christ the King Church Kubwa on 31/8/2013 are both admitted in evidence as Exhibits "A" and "B" respectively.

At the close of Petitioner's evidence on 14/10/2020 the case was adjourned for Cross-examination of PW1, but Respondent was absent in court when the case came up on 13/7/21. The Respondent was foreclosed from cross-examining PW1 and thereafter adjourned for the Respondent to open his Defence.

The case came up on 28/10/21, again the Respondent was absent, the court ordered the foreclosure of the right of the Respondent to Defend the Petition upon the application of Petitioner's Counsel and adjourned for Filing and Adoption of Final Written Address.

Addressing the court on 1/2/2022 David A. Amana Esq. adopted the Final Written Address dated 30/12/21, but filed on 10/1/22 as oral submission in

support of the Petition in the said Address, Petitioner's Counsel formulated two (2) issues for determination that is;

- (1) Whether the marriage between the parties has broken down irretrievably.
- (2) Whether the Petitioner has made out a case entitling her to the relief sought.

Arguing both issues together, Petitioner's Counsel submits that Petitioner led unchallenged and uncontroverted evidence in support of her Petition and tendered Exhibits in support of her oral testimony and there was nothing to put on the side of the Respondent in the imaginary scale of justice such that the onus of proof is discharged on a minimal of proof. Urge court to hold that the Petitioner had sufficiently proved her case as required by law and is entitled to Judgment. Refer to Skyway Express Airways Ltd Vs Olima (2005) 18 NWLR (PT. 957) 224 @ 225A, Mankanu Vs Salman (2005) 4 NWLR (PT. 915) 270 @ 311 G – H, Kwasalaba Nig Ltd Vs Okonkwo (1992) 1 NWLR (PT. 218) 407 NBN Ltd Vs U.C Holdings Ltd (2004) 13 NWLR (PT. 891) 436 @ 454 F – H & 4619, Umeojiako Vs Ezenamuo (1990) 1 NWLR (PT. 126) 253 @ 267 Ajidahun Vs Ajidahun (2000) 8 WRN 17 @ 28; Adejumo Vs Ayantegbe (1989) 3 NWLR (PT. 110) 417 @ 435, Olujinle Vs Adeagbo (1988) 2 NWLR (PT. 75) 238 @ 255 A – B and Ogbobilea Vs Ogbobilea Unreported in suit No.FCT/HC/PET/59/14.

Submits that the Petition as well as the evidence in support discloses a reasonable cause of action. Refer to Ibrahim Vs Osim (1998) 3 NWLR (PT. 82) 271 – 272. Urge court to ascribe probative value to the evidence of the

Petitioner and find that the evidence is neither incredible nor otherwise worthy of belief and hold that the marriage has broken down irretrievably. Refer to *Neka BB Vs ACB* (2004) 2 NWLR (PT. 858) 521 @ 550F – 551A.

Finally submit that the Petitioner led evidence that she has been solely responsible for the financial care and upkeep of the only child of the marriage as well as herself without any contribution from the Respondent. Refer to *Nana Vs Nana* (2006) 3 NWLR (PT. 966) 1 Ratio 10 and urge court to allow the Petition and enter Judgment in favour of the Petitioner.

Having carefully considered the unchallenged evidence of PW1 – the Petitioner, the submission of Counsel and the judicial authorities cited the court finds that only one (1) issue calls for determination that is;

“Whether the Petitioner has successfully made out a case to warrant the grant of the relief sought”

Firstly the Respondent was duly served with the processes, but failed to file an Answer to the Petition and was absent in court the implication of this is that the evidence of the Petitioner in proof of her case remains unchallenged and uncontroverted. And it is trite that where evidence is neither challenged nor controverted, the court should deem the evidence as admitted, correct and act on it. See *Njoemana Vs Ugboma & Ors* (2014) LPELR – 22494 (CA).

However, the burden of proof imposed on the Petitioner by Sections 131 – 134 of the Evidence Act 2011 and Section 15(1) and 15(2) (a)-(h) of the Matrimonial Causes Act must be discharged for the Petition to succeed.

In the determination of the Petition for the 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 convinced that the marriage has broken down irretrievably. And to come to that conclusion the Petitioner must satisfy the court of any of the facts laid down in Section 15 (2) of the Act categorized under Sub-Section (g) – (h).

In the instant case, Petitioner relies on the fact of Section 15 (2) (c) and (e) of the Matrimonial Causes Act. The Section 15 (2) (e) 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 the above, the Petitioner must lead evidence to the reasonable satisfaction of the court, of such particular acts or conduct of the Respondent which would warrant the grant of the relief sought. And such acts must be weighty and grave in nature to make further cohabitation virtually impossible. See the case of Ibrahim Vs Ibrahim (2007) FWLR (PT. 346) @ 489 Paras H – B. See also the English Case of Katz Vs Katz (1972) All ER 219.

In proof of this ground Petitioner testifying as PW1 stated in his Witness Statement that;

“The Respondent has showed so much cruelty and has never paid attention to the emotional need of the Petitioner instead the Respondent is quarrelsome, drink alcohol habitually, the Respondent

is very insulting and never respects the person of either the Petitioner or his parents/family

“The Respondent is very aggressive and violent thus leading to series of physical abuse/confrontation both in the house and at public places”

She stated further that;

“The most appalling aspect of the Respondent’s cruelty was sometime around 2014 when the Respondent opened the door of a moving car while on transit and almost succeeded in pushing out the Petitioner but was rescued by the Petitioner’s younger brother”

“That the Respondent’s continuous act of cruelty, physical abuse, violence and denigration of my person has left me in constant fear for my life and heartbroken ever since this marriage was contracted”

All of these acts of the Respondent to the Petitioner are acts 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 behaviour of 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 cohabitation between the parties is virtually impossible. And after a careful consideration of the evidence of PW1 – the Petitioner, which remained unchallenged I find that the behaviour of 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 court and therefore hold that the marriage has indeed broken irretrievably.

On the ground of Section 15 (2) (e) of the Matrimonial Causes Act, 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”

In prove of the above ground the Petitioner’s evidence in Paragraph 1 (i) and (P) of her Witness Statement is that;

Since the Respondent left his matrimonial home sometime around September 2017, he only called the Petitioner once to speak with his daughter and also asked to be allowed to see his daughter in January 2020 but never kept to the appointment. That the Respondent has always opted (for reasons best knows to him) to live apart from the Petitioner and his family. Consequently in September 2017 he moved out of their matrimonial home and has not returned home till date.

By the computation of time from the period the Respondent moved out of their home in September 2017 to the time of filing this Petition on 12/2/2020 is more than two (2) years of living apart. In the case of Nnana Vs Nnana (2006) 3 NWLR (PT. 966) 1 @ 10 the court held that “it is not enough to show that the parties have lived apart for a continuous period of

two years, the desertion within the meaning of Section 15 (2) (e) (f) of the Matrimonial Causes Act must be one where any of the parties abandons and forsaken, without any justification, thus renouncing his or her responsibility and evading its duties”

This court having found that the parties here indeed lived apart for a period of over 2 year and which facts remained unchallenged and uncontroverted and which the court also finds credible and supportive of the Petitioner’s case holds that the marriage has broken down irretrievably.

On the ancillary claims, for custody of the only child of the marriage, education as well as the upkeep. The grant or otherwise of these claims is guided by the Provisions of Section 71 (1) of the Matrimonial Causes Act and the principles stated in the case of *Damulak Vs Damulak* (Supra) 157 @ 156 which places the welfare of the children as the paramount consideration in the determination of the relief of this nature in a matrimonial proceeding and which consideration is at the discretion of court.

In proof of these relief, Petitioner told the court in Paragraph of her Witness Statement that;

“The Petitioner has being solely caring for the child of the marriage without any contribution from the Respondent throughout the duration of this marriage”

From the unchallenged pieces of evidence and all authorities cited the court is of the considered view that the welfare and interest of the child of the marriage will better served if she remain in the custody of the

Petitioner. Petitioner claims the sum of ₦500,000.00 (Five Hundred Thousand Naira) annually to cater for the upkeep of the only child of the marriage, but failed to lead evidence on the earning capacity of the Respondent. However it is the duty of a father to provide for the upkeep of the child of the marriage, it is on the premise the court shall exercise its discretion in the award of the sum for the upkeep of the child of the marriage.

On the reliefs IV and V which bothers on rent, Petitioner failed to lead evidence on the amount being for rent and is therefore deemed as abandoned.

On the claim for cost Petitioner failed to show good cause why she is entitled to cost and cost is not awarded on the whims of the court therefore the relief cannot avail the Petitioner.

From all of these and having considered the evidence of the Petitioner in support of the grounds and facts relied on for the dissolution of the marriage and the ancillary reliefs the said evidence which remained unchallenged and uncontroverted this court having found them satisfactory and inconformity with the law, particularly Sections 15 (2) (C) (e) and 71 (1) of the Matrimonial Causes Act, holds that the union has broken down. The Petition succeeds in parts and judgment is hereby entered as follows;

- (1) The Marriage Celebrated between the Petitioner Lauretta Nkechinyere Echebiri and the Respondent Vincent Uchenna Okeke on 21/6/2013 at the Bwari Area Council Marriage Registry Bwari according to the marriage Act was 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.
- (3) Custody of the only child (minor) of the marriage – Emmanuella Amarchukwu Chidera Okeke Female born on 9th May 2015 is hereby granted to the Petitioner.
- (4) Respondent is hereby directed to provide maintenance and train the only child of the marriage (Emmanuella Amarachukwu Chidera Okeke) in schools and bears the cost of her education up to University level i.e. 1st degree.
- (5) Respondent is hereby ordered to provide the sum of ₦500,000.00 (Five Hundred Thousand Naira) annually to cater for the upkeep of the only child of the marriage.

Reliefs iv, v and vii of the Petitioner fails and is hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

12/4/2022

APPEARANCE:

DAVID AMANA FOR PETITIONER

NO REPRESENTATION FOR THE RESPONDENT