

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL 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/299/2020**

**BETWEEN:**

**LT. COL. ABDULQUDUS OLASUPO SEBIOTIMO.....PETITIONER  
VS**

**MRS. BIMPE MUSTAPHA SEBIOTIMO.....RESPONDENT**

**JUDGMENT**

By a Notice of Petition filed on 22/6/2020, upon the grant of Leave to the Petitioner to present a Petition for the dissolution of the marriage conducted less than two years vide Order of Court made on 10/6/20, the Petitioner Lt. Col. Abdulqudus Olasupo Sebiotimo, seeks the court the prayer contained in Paragraph 16 of the Petition as;

- (i) A Decree of Dissolution of the marriage between the Petitioner and the Respondent contracted on 26<sup>th</sup> October 2019 on the ground that this marriage has broken down irretrievably.

The facts relied on by the Petitioner as constituting the grounds for the Petition as stated in Paragraph 12 of the Petition are;

- (a) Since the marriage the Respondent has exhibited and demonstrated irresponsible behaviour in which the Petitioner cannot reasonably be expected to live with the Respondent.
- (b) The Petitioner now finds it intolerable to live with and continue in marriage with the Respondent.
- (c) The Respondent's irresponsible behaviour has deflated the love the Petitioner has for the Respondent beyond restoration.

The Petition and other processes were served on the Respondent on 26/6/2020, however, Respondent did not file an Answer was absent throughout hearing of the Petition and was not represented by Counsel despite repeated service of Hearing Notices. The Petition thus proceeded as undefended.

On 8/2/2021, the Petitioner testified as PW1 and adopted the depositions in his Witness Statement n Oath filed on 2/12/2020 as oral evidence in proof of the Petition. In the course of the Examination-In-Chief of the PW1, the following documents were received in evidence.

- (1) Certified True Copy of Marriage Certificate evidencing marriage celebrated at the Marriage Registry Kaduna North between the Petitioner and the Respondent on 26/10/2019 admitted as Exhibit "A".
- (2) A bundle of print-out of documents contained in a Whatsapp chats between the Petitioner and Respondent and the Certificate

of Compliance in line with Section 84 of the Evidence Act 2011 admitted as Exhibit "B1-B2" collectively.

The case was adjourned to 17/3/2021 for Cross-Examination of PW1. On the said adjourned date, the Respondent was absent in court and was not represented by Counsel and upon the application of Petitioner's Counsel the court ordered the foreclosure of the right of the Respondent to cross-examine PW1 and adjourned to 20/5/2021 for the Respondent to Open her Defence.

The case came up for the Respondent to open her Defence on 12/10/2022, again the Respondent was absent in court and was not represented by Counsel, the court therefore ordered the foreclosure of the right of the Respondent from defending the Petition, upon the application of Petitioner's Counsel and the court called on the Petitioner through his Counsel to file their Final Written Address.

Addressing the court on 24/1/2022, M. I. Balogun Esq. of Counsel adopted the Final Written Address dated 12/1/2022 and filed same day as their oral submission in support of the Petition. A sole issue was formulated for determination in the said Address, that is;

"Whether the Petitioner has proved his case to the satisfaction of the Honourable Court to warrant the grant of the Decree of the Dissolution of the marriage between the Petitioner and the Respondent"

Submits that since the Respondent did not react to the Petition despite service of court processes and Hearing Notices, court should treat the

evidence of the Petitioner as unchallenged and deemed to have proved the ground for the dissolution of the marriage between the Petitioner and the Respondent. Refer to Adamawa State Ministry of Land & Survey Vs Salisu (2021) 2 NWLR (PT. 1759) 1 @ 29-30 Paras H – D.

Submits that the marriage has broken down irretrievably on the ground of irresponsible/intolerable behaviour of the Respondent and what determines irresponsible/intolerable behaviour of the Respondent depends on the circumstance of each case. Refer to Section 15 (2) C of the Matrimonial Causes Act; the cases of Ibrahim Vs Ibrahim (2007) 1 NWLR (PT. 1015) 383 and Damulak Vs Damulak (2004) 8 NWLR (PT. 874) 151 @ 166 Para A – B.

Submit that the Petitioner has proved the ground relied on for the Petition and urge court to so hold.

Petitioner's Counsel finally urge court to put into consideration the status and age of the Petitioner and also the attitude of the Respondent throughout the proceedings of this court. Refer to Bibilari Vs Bibilari (2011) 13 NWLR (PT. 1264) 227 Para E – F and 228 Para B – C.

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

“Whether the Petitioner has proved the grounds alleged in seeking for the decree of dissolution of marriage and therefore entitled to the relief sought”

Firstly, the Respondent was duly served with the processes, but failed to file an Answer to the Petition, was absent throughout hearing and was not represented, by Counsel. The implication of this is that the evidence of the PW1 – Petitioner in proof of the Petition 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 the case of Njoemana Vs Ugboman& Ors (2014) LPELR – 2249 (CA).

However the burden of proof imposed on the Petitioner by Section 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 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 Matrimonial Causes Act categorized under sub-section A-H.

In the instant Petition, the Petitioner relies on Section 15 (2) (c) 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 the above the Petitioner must lead evidence to the reasonable satisfaction of the court of such particular act or conduct of the

Respondent, which would warrant the grant of the relief sought. And such acts or conduct must be weighty and grave in nature to make further cohabitation virtually impossible. See the case of Ibrahim Vs Ibrahim (2007) All FWLR (PT. 346) 474 @ 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 informed the court that ever since the marriage was celebrated, there has not been cohabitation between the Respondent and the Petitioner as husband and wife. Respondent insist that she is not ready to and will not finally cohabit with the Petitioner unless flamboyant wedding care money takes place. Respondent tags the marriage as “Palour Marriage” Petitioner have insisted on not waving any flamboyant wedding. PW1 further told the court that;

“The Respondent is always cantankerous and defensive each time I express my discomfort over the non-availability of the Respondent in my home and their proposed wedding ceremony. The Respondent and her foster mother are using the proposed flamboyant wedding ceremony as a clog to inhibit me from enjoying the Physical Psychological and emotional attention of the Respondent”

PW1 further told the court that the absence of the Respondent in their home has caused serious emotional and Psychological trauma to him to the extent that it affects his performance and efficiency in the discharge of his official duties, and has negatively affected his health.

PW1 finally stated that;

“The non-availability of the Respondent in my home has caused exceptional hardship and unbearable discomfort to me to the extent that my associates and relatives have labeled me as an impotent that cannot consummate the marriage”

From the evidence of the Petitioner which remained unchallenged, the court finds that the behaviour or conduct of the Respondent as stated by PW1 – the Petitioner are grave and weighty to make further cohabitation impossible and this court having found the said evidence satisfactory therefore holds that the marriage has broken down irretrievably.

From all of these and having proven to the reasonable satisfaction of court the ground relied on for the dissolution of marriage, this Petition succeeds and judgment is accordingly entered in favour of the Petitioner as follows;

- (1) The marriage celebrated at the Kaduna North Local Government Marriage Registry Kaduna State on 26<sup>th</sup> October 2019 between Lt. Col. Abdulqudus Olasupo Sebiotimo - the Petitioner and Mrs. Bimpe Mustapha Sebiotimo – the Respondent has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between them.
- (2) This order shall become absolute after three (3) months from the date of Judgment.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

11/4/2022

**APPEARANCE:**

M. I. BALOGUN FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT.