

**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/324/2021**

**BETWEEN:**

**MR. STANLEY ODIA EHIOSUN.....PETITIONER**

**VS**

**MRS. WILFRANCE LOMINY.....RESPONDENT**

**JUDGMENT**

By a Notice of Petition dated 1/9/2021 but filed on 2/9/2021, the Petitioner herein Mr. Stanley Odia Ehiosun, seeks the court the reliefs contained in Paragraph 13 of the Petition as follows;

- (1) A decree of dissolution of the marriage contracted on 5<sup>th</sup> June 2018 between the Petitioner and the Respondent.
- (2) And the Omnibus relief.

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

The Petition was served on the Respondent on 14/12/2021, but Respondent did not file her Answer, was absent throughout the hearing of the Petition was represented by Deborah I. Awojiola who cross-examined the witness in the Petition.

On 29/3/2022, Petitioner opened his case and testified as PW1. In the course of the Examination-In-Chief of PW1 – Petitioner, the original Marriage Certificate No. 1019 issued by Abuja Municipal Area Council Registry, Abuja evidencing the celebration of marriage between the Petitioner and the Respondent on 5/6/2018 was admitted in evidence as Exhibit "A".

In his testimony, PW1 told the court that;

"I have come to the court for dissolution of our marriage. Since we got married on 5<sup>th</sup> June 2018, since then I have only set eyes on my wife just once it has not been easy and appears as if I am still single when infact I am married. I saw the Respondent in December 2019, when we tried to communicate on phone we end up quarrelling last year, I told her that I cannot continue, that I am going to file for dissolution of the marriage and she was not opposed to it"

Under cross-examination by Respondent's Counsel, PW1 stated that he saw the Petitioner just once within the period of three (3) years of marriage and had never gone to visit the Respondent due to his work schedule and had explained same to the Respondent. PW1 affirmed that he told the Respondent that he wanted a divorce because he wanted to marry a Nigerian girl.

There was no Re-examination of PW1.

At the close of the evidence of the Petitioner, Respondent's Counsel informed the court that they did not file any process, therefore leaves it at the discretion of the court. And upon an application of Petitioner's Counsel for court to order the foreclosure of the Respondent from giving evidence, the court foreclosed the Respondent from giving evidence and adjourned for Adoption of Final Address.

Addressing the court on 8/6/2022, Deborah I. Awojuola Esq. for Respondent told the court that they are waiving their right to file Final Address. The court subsequently called on the Petitioner through his Counsel to adopt their Final Address.

Addressing the court, Petitioner's Counsel Henry O. Chichi Esq. adopted the Final Written Address dated 11/4/2022 and filed same day and formulated a sole issue for determination that is;

“Whether the Petitioner is not entitled to the reliefs sought having regard to the evidence placed before the court”

Submits that the Petitioner relies on the grounds of Section 15(2) (d) and (e) of the Matrimonial Causes Act. Urge court to consider the Terms of Settlement filed on 28/3/2022 as the law allows the court to look at its records in reaching a decision. Refer to Oyewole Vs Akande (2009) 15 NWLR (PT. 1163) 119 and Uzodinma Vs Izunaso (No. 2) (2011) 17 NWLR (PT. 1275) 30.

Submits further that the evidence of the Petitioner was not controverted by the Respondent and the evidence elicited from PW1 during Cross-examination shows that the marriage has broken down irretrievably. And evidence not controverted is deemed admitted. Refer to *Ozigbu Engineering Company Ltd Vs Philip Iwuamadi* (2009) 16 NWLR (PT. 1166) 44 @ 63 Paras D – F.

Submitted that only a minimal proof is required where only one party calls or adduces evidence since the burden of proof is on a balance of probabilities. Refer to *Ozigbu Engineering Company Ltd Vs Philip Iwuamadi* (Supra) 63 Para C. Also submits that the effect of Respondent not filing a defence to the suit amounts to abandonment. Refer to *Ajikawo Vs Ansaldo Nigeria Ltd* (1991) 2 NWLR (PT. 173) 359 @ 315 and *Dingyadi Vs Wamako & 3 Ors* (2008) 17 NWLR (PT. 1116) 395 @ 405 – 406. Urge court to resolve the sole issue in favour of the Petitioner.

Having carefully considered the unchallenged evidence of the Petitioner – PW1, 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 out a case 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, Respondent failed to file an Answer to the Petition although was represented by her Counsel who informed court that the

Respondent leaves the Petition to the discretion of court, after Cross-examining PW1 – the Petitioner. 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 remained unchallenged and uncontroverted as true and correct and the court can act on it. See CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406.

In a Matrimonial proceeding such as this, it is necessary to bear in mind the fact that although the Matrimonial Causes Act created only on one ground, that is; 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 fact 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 the instant case the grounds upon which the Petitioner rely on for the dissolution of marriage as stated earlier are those facts of Section 15 (2) (d) and (e) of the Matrimonial Causes Act. The Section 15 (2) (d) reads;

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

The principle factor which a party seeking dissolution of marriage under this ground must show are;

- (1) Physical separation.
- (2) Lack of just cause for their withdrawal of cohabitation.
- (3) Intention to remain permanently separated.
- (4) Absence of consent.

All of these must be present for the court to hold that a marriage has broken down irretrievably under this ground. See Family Law in Nigeria I. U. Nwogugu Ibadan 1990 HEBN Publishers.

In proof of this ground Petitioner testifying as PW1 told the court that since the marriage he has only seen the Respondent once and it has not been easy and it now appears that he is still single, whereas he is married and communication with her ends up in quarrel. From the totality of the evidence of PW1 – the Petitioner, I find all the four elements of desertion stated in the conduct of the Respondent, the court can only infer from it that the marriage has indeed broken down irretrievably. This ground relied on for the dissolution of marriage therefore avails the Petitioner.

On the grounds 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”

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) @ 32.

The evidence of PW1 – the Petitioner on this ground is that;

“I saw the Respondent in December 2019, when we tried to communicate on phone, we end up quarrelling, last year I told her that I cannot continue that I am going to file for dissolution and she was not opposed to it”

PW1 had earlier informed court that he had only set eyes on the Respondent once since the marriage on 5<sup>th</sup> June, 2018.

On what may constitute “Living Apart” the court in the case of Nnana Vs Nnana (Supra) held 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 its duties”

The evidence of the Petitioner is to the effect that the parties have lived apart since June 5<sup>th</sup> 2018 and this Petition was filed on 2/9/2021, a

computation time reveals that the parties have lived apart for a period of more than two years preceding the presentation of this Petition. Again, the evidence of PW1, the evidence elicited from the PW1 during cross-examination as well as the Terms of Settlement filed by the parties on 13/12/21 reveals that the Respondent does not oppose to a decree being granted, therefore the factors for proving this ground relied on for the Petition has been established and the court holds that the marriage between the parties have broken down irretrievably.

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 which remained unchallenged and uncontroverted, this court having found them satisfactory and in conformity with the law particularly Section 15(2) (d) and (e) of the Matrimonial Causes Act, the court holds that the union has broken down irretrievably and deserves a judicial burial.

Consequently the Petition succeeds. Judgment is entered in favour of the Petitioner as follows;

- (1) The marriage celebrated between the Petitioner – Mr. Stanley Odia Ehiosun and the Respondent – Mrs. Wilfrance Lominy on 5<sup>th</sup> June 2018 at Abuja Municipal Area Council Registry Abuja under 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.



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

Presiding Judge.

20/6/2022

**APPEARANCE:**

HENRY O. CHICHI ESQ WITH TOLULOPE D. OTUBANJO ESQ FOR THE  
PETITIONER

DEBORAH I. AWOJUOLA ESQ FOR THE RESPONDENT