

**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/89/2017

BETWEEN:

MRS. CYNTHIA JESSE NWOKE.....PETITIONER

VS

BARR. TOM CHARLES NWOKE.....RESPONDENT

JUDGMENT

By a Notice of Petition dated 20/1/2017 and filed same day, the Petitioner herein Mrs. Cynthia Jesse Nwoke seeks the court the relief stated in Paragraph 11 of the Petition as follows;

- (a) A Decree for the Dissolution of Marriage celebrated at Ramat Park Marriage Registry Benin, Edo State on 1st March 2014 between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably. The grounds upon which the Petitioner rely on for the court to dissolve the marriage are premised on those facts and grounds contained in Section 15(2) (a)(c)(e) of the Matrimonial Causes Act as gleaned from the pleadings and evidence of the Petitioner.

The Petition was served on the Respondent, but Respondent did not file his Answer, was absent throughout hearing of the Petition, but was

represented by Arubaleze Ekere Esq. when the court sat on 22/10/2018, who aligned with Petitioner's Counsel submission to the court that the parties are making effort to reach for Settlement on Terms, but never appeared again throughout hearing of the Petition. The case thus proceeded as Undefended.

On 22/10/2019, Petitioner opened her case and testified as PW1 and testified that, the parties got married on 1/3/2014 in Benin City Edo State and after the wedding, the couple arrived the family house of the Respondent for honeymoon which was supposed to be in Bonny Island. When they got to Bonny Island, Respondent told the Petitioner that they were there for fasting and prayers. Respondent did not consummate the marriage. After a period of one week the couple went back to Port-Harcourt and Respondent told the Petitioner he was travelling and would be back, Petitioner spent Four months at the family house of the Respondent and Respondent did not return all through that period.

Petitioner having found that the Respondent was in Abuja in June 2014 moved to join the Respondent in Abuja. Respondent insisted that she return to his family house in Port Harcourt. Respondent became violent because the Petitioner would not want the Respondent to touch her. Petitioner was reluctant about it because Respondent's reason for insisting that she goes back to his family house was that he owed rents, but Petitioner saw the receipts of payment of two (2) years rent on Respondent's table. This confirmed that Respondent was lying. The Agent of the house also confirmed that the Respondent did not owe rent Respondent also informed the Petitioner that he wanted her to leave

because he did not want the Petitioner to die in his house. Before the wedding of the parties, Petitioner had been diagnosed of fibroid and wanted Petitioner to go to his family house so that Respondent mother could take care of the Petitioner better. Petitioner felt neglected and thereafter went back as insisted by the Respondent. Petitioner was in the Respondent's family house for another five (5) Months and Respondent never called nor contacted her and therefore abandoned the Petitioner.

PW1 further informed the court that when her health deteriorated between March and December 2014, she took her leave from the family house to take care of her health and ever since then Respondent has never been in touch with the Petitioner.

PW1 - Petitioner finally told the court that she want the court to dissolve the marriage between the Petitioner and the Respondent.

In the course of her testimony, the Certified True Copy of the Marriage Certificate No. 0801 issued by the Registrar of Marriage Ikpoba Okha Local Government Area, Idogbo – Benin City evidencing marriage between the Petitioner and the Respondent was received in evidence as Exhibit "A".

At the close of her testimony, Petitioner's applied to court to foreclose the right of the Respondent to Cross-examine PW1, having failed to file any process nor put up appearance in court, the court oblige the request of the Petitioner Counsel and ordered the foreclosure of the right of the Respondent to Cross-examine PW1 in view of his failure to take any step to react to the case. The court then ordered the discharge of PW1 and adjourned for filing and Adoption of Final Written Address.

Addressing the court on 9/3/2022, Michael Omosogbon Esq. adopted the Final Written Address dated 25/10/2021 and filed same day and submitted a sole issue for determination that is;

“Whether the Petitioner has proved her case to the standard required under the relevant laws to be entitled to the decree for dissolution of the marriage between the Respondent and the Petitioner”

Submits that the burden of proof is on the Petitioner and Petitioner led unchallenged evidence in support of the grounds relied on for the dissolution of marriage. Refer to Section 131 of the Evidence Act, *Ajikawo Vs Ansaïdo (Nig) Ltd (1991) 2 NWLR (PT. 173) 359*, *Osokoye Vs Onegemo (2018) All FWLR (PT. 942) 424* Section 15 (2) (a) (c) and (f) of the Matrimonial Causes Act.

Submits that for a Petition to succeed Petitioner must prove one of the facts contained in Section 15(2)(a)-(h) of the Matrimonial Causes Act. The evidence of the Petitioner in proof of the facts relied upon for the Petition is unchallenged and where a Respondent failed to challenge the positive evidence of a Petitioner the court can as well act on the same evidence. Refer to *Ajidahun Vs Ajidahun (2002) Vol. SMC 24 @ 37 Paras C – D*, *Jos Met. Dev. Board & Ors Vs Moulds Nigeria Ltd (2020) 5 NWLR (PT. 1717) 243 @ 264 – 265 Paras H – C* and *Bob-Manuel Vs A – G Rivers State (2016) 1 NWLR (PT. 1523) 364 @ 384 – 385 Paras H – A*.

Finally urge court to resolve the sole issue in favour of the Petitioner and grant the prayer 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 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 and at each adjourned date, the Respondent was also served with Hearing Notice, yet failed to file an Answer to the Petition, nor did he put up appearance in court, but represented in court on one sitting. The implication of this is that the testimony of the Petitioner – PW1 is taken as unchallenged and undefended.

It is trite law that where a party is served with court processes, in a matter but 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 *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; 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 the instant case, the grounds upon which the Petitioner rely on for the dissolution of marriage are those facts listed in Section 15 (2) (a) (c) and (f) of the Matrimonial Causes Act as mentioned earlier. The Section 15 (2) (a) reads;

“That the Respondent has willfully and persistently refused to consummate the marriage”

To succeed under this ground, the Petitioner must prove to the satisfaction of court there was a request, direct or implied and the opportunity to comply with the request for consummation exist. See Horton Vs Horton (1947) 2 A E R. 871 @ 874. In proof of this ground PW1 – Petitioner gave the entire history of the marriage from the celebration to their Honeymoon in Bonny Island and their co-habitation in Abuja. And having considered the history of the marriage as required the court to do in the circumstance. See Horton Vs Horton (Supra). In the course of the testimony PW1 stated that on their Honeymoon the marriage was not consummated as Respondent told her they were there for fasting and prayers. And when they cohabited in Abuja Respondent became violent according to PW1.

“I do not want him to touch me” from these pieces of evidence the court is of the firm view that Petitioner never requested for consummation therefore no ground to hold that there was willful refusal to consummate the marriage on the part of the Respondent. Therefore this ground relied upon by the Petitioner for the dissolution of marriage cannot avail the Petitioner. I so hold.

On the Petitioner’s relevance on the facts of 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 this ground, the Petitioner must state the particulars of behaviour, where at all material times, during the marriage she finds not reasonably be expected to live with. In proof of the ground PW1 – Petitioner narrated the acts of Respondent which include deception lacks of willingness to cohabit with Petitioner becoming violent when Petitioner refused his advancement, neglect and lack of care which Petitioner’s health deteriorated between March and December 2014. The question which follows naturally is; whether the evidence of the Petitioner is sufficient to establish this ground relied on? 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 cohabitation virtually impossible coupled with injury or a reasonable apprehension of injury (Physical or mental) to health. The

accumulation of minor acts of ill treatment causing or likely to cause the suffering spouse to break down under strain constitute the offence of cruelty”

See the case of Damulak Vs Damulak (2004) 8 NWLR (PT. 874) 151 @ 154 Ratio 2. And I find that evidence of the Petitioner weighty and grave enough to make further co-habitation impossible. Therefore this ground relied upon by the Petitioner and accordingly held that the marriage between the parties has broken down irretrievably.

On the ground of the fact of Section 15(2) (f) 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”

The evidence of the Petitioner in support of this ground is that;

“.....Whilst I was in the family house my health deteriorated between March – December 2014. I had to take my leave from the family house. I want to take care of my health. And ever since then (sic) the Respondent have never been in touch with me”

By the computation of time from the date of abandoned in December 2014 to the time of filing of this Petition on 20/1/2017 is more than two years of living apart. In the case of Nnana Vs Nnana (2006) 3 NWLR (PT. 966) 1 @ 32 – 33 Para F – A.

“Desertion within the meaning of Section 15(2)(e) of the Act must be one where any of the spouses abandons and forsakes without any justification, thus renouncing his or her responsibilities and evading its duties”

Also there must be clear intention on the part of one or both spouses not to return to the other and the treatment of the marriage as having come to an end. See *Famubode Vs Famubode* (1997) 1 CCHCJ P. 71 cited in *Family Law in Nigeria* by E – I Nwogugu Pg. 188. This court having found that the parties have lived apart for more than two years and the Respondent having sent his Counsel to represent him ones, which signifies that he does not object to the decree of dissolution of marriage, when facts remained unchallenged and uncontroverted as credible and supportive of the Petitioner’s case and hold that the marriage has indeed broken down irretrievably.

From all of these, and having proven to the reasonable satisfaction of the court of fact relied upon for the dissolution of the marriage, this Petition succeeds, accordingly Judgment is entered in favour of the Petitioner as follows.

- (1) The Marriage celebrated at the Marriage Registry, Ikpoba Okha Local Government Area Idogbo Benin City accordingly to the Marriage Act on 1/3/2014 between the Petitioner Mrs. Cynthia Jesse Nwoke and the Respondent Mr. Tom Charles Nwoke 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 this Judgment

HON. JUSTICE C. O. AGBAZA

Presiding Judge

14/6/2022

APPEARANCE:

MICHAEL OMOSEGBON ESQ. FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT.