

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 20 GUDU - ABUJA
DELIVERED ON TUESDAY THE 31ST DAY OF MAY 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE.R. OSHO-ADEBIYI

SUIT NO.FCT/HC/PET/485/2019

BETWEEN:

MRS. OLUFUNMILAYO BAMIDELE ILAMAH -----PETITIONER
AND

MR. AYEGBENI HENRY ILAMAH-----RESPONDENT

JUDGMENT

The Petitioner on the 23rd of November, 2021 filed a petition against the Respondent praying for the following reliefs:

- a. A Decree for the dissolution of the marriage between the Petitioner and the Respondent held on the 13th day of February, 2018 on ground that the marriage has broken down irretrievably the Respondent having deserted the Petitioner and the parties to the marriage having lived apart for more than one year before petition.
- b. And for such further order or orders as the Honourable Court may deem fit to make in the circumstances and in the overall interest of Justice.

Also filed along with the petition is a verifying affidavit, certificate of reconciliation, and Petitioner's witness statement on oath. Petitioner opened her case on the 17th day of May, 2022 and adopted her witness statement on oath wherein she deposed to the following facts; that the Petitioner was previously married to the Respondent while both were in the United Kingdom sometime in August, 1996, which marriage was dissolved before their present marriage. That the marriage is blessed with two (2) children, which are: Imogen Zainab Ilamah, born on the 6th of September, 1997 and Amaris Ebunoluwa Ilamah Henry, born on the 5th of January, 2005. That as soon as they formalized their relationship, the Respondent again began to show his true colours. He will collect money from her and then stay away

from home for days and weeks and when he eventually returns he will sleep on the couch in the sitting room and refuse to sleep in their matrimonial bed. That sometimes when the Respondent collects money from her on the pretext that he is travelling for business, he will be sighted in Guest Houses in Abuja by some of her friends and on several occasions by their daughter, and when she confronts him the next time he comes to the house he will become extremely angry. That the Respondent is not only staying away from home, but does not provide for the upkeep of the family, including feeding, payment of house rent and the school fees of the children, and that sometime in February, 2020 the Respondent finally left her, their daughters and their matrimonial home in Abuja and relocated back to Lagos without informing her. That the Respondent has a brother in Abuja whose name is Abubakar Christopher Innih and whose address is located at Plot 2029, Zone B Extension, Afe Babalola Street, Apo Resettlement, APO, Abuja, where the Respondent usually stays whenever he comes to Abuja. That it has now become very clear to her that the Respondent is not interested in their marriage, but in her resources and finances which the Respondent often cajole and intimidates her to give to him whenever he runs out of means of survival. That she is tired of her purported marriage with the Respondent which has become a bondage to her as she lives daily under the trauma of exploitation, desertion, neglect and abandonment of herself and our two daughters by the Respondent. That she is solely responsible for the upkeep and education of their two daughters, the 1st who recently graduated with a Master's degree from a University in the United Kingdom and the 2nd is currently studying for her A Levels in the United Kingdom. In proof of her case, the Petitioner tendered one Exhibit, which is:

1. Marriage Certificate No. 243 dated 13th February, 2018 as Exhibit A

The Respondent was served with the petition and his counsel only filed a memorandum of appearance but did not file a response to the Petition. At the hearing Respondent's counsel Simon John cross examined the Petitioner as follows; -

Question: Look at paragraph 5 "That I was previously married to

The Respondent while we were both in the United Kingdom sometime in August, 1996, which marriage was dissolved before our present marriage”.

Answer: That is correct. That marriage was contracted in the U.K and it was dissolved but we got married all over again.

Question: You said Respondent persuaded you to sell your properties and asked to send the money to him for investment which you did. Do you have anything to prove same.

Answer: No, I don't

Question: Do you have document proving that you resigned your job in U.K

Answer: I don't.

Question: In paragraph 20 you said the Respondent collects money from you and travel for business just for him to be found in guest houses in Abuja. I presume you didn't see him?

Answer: The older daughter saw him and some friends also saw him.

After cross examination Respondent counsel waived his right to final written address. Petitioner's counsel Femi Matthew then applied to address the court orally as his final written address. Counsel submitted that since there is no evidence before the court challenging the reliefs sought by the Petitioner, they urged the Court to enter judgment for the Petitioner as per the reliefs sought.

The law is trite that where the evidence of the Petitioner is deemed unchallenged the Court is bound to act on it. See the case of **OJENIRAN v. OJENIRA (2018) LPELR-45697(CA)**. The Supreme Court in the case of **CAMEROON AIRLINES V. OTUTUIZO (2011) LPELR 82-(SC) Per Rhode- Vivour J.S.C** held,

“It is well settled that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the Court ought to act positively on the unchallenged evidence before it”

The evidence of the Petitioner in this case is not challenged or contradicted by the Respondent. The effect is that the evidence of the Petitioner will be taken as accepted or established. The issue for

determination in this case is “**whether Petitioner has successfully proved his case for dissolution of marriage**”

The fact that a marriage has broken down irretrievably is the sole ground for the presentation of a divorce petition, and the Court cannot make such findings unless one or more facts specified under **Section 15(2) of the Matrimonial Causes Act**, is or are proved, it states: -

"The court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts –

(a) that the respondent has wilfully and persistently refused to consummate the marriage;

(b) that since the marriage the Respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(c) that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(d) that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;

(e) 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;

(f) that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition;

(g) that the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;

(h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

Having examined the evidence of the Petitioner, it is my view that the main ground upon which the Petitioner's petition would fall under is stated in **Section 15(2)(d) of the Matrimonial Causes Act**, which provides that a marriage may be dissolved if the Respondent has deserted the Petitioner for a continuous period of at least a year, immediately preceding the presentation of the petition. There must be physical separation and the intention to remain separated for a party to rely on this provision. In the case of **ANIOKE V. ANIOKE (2011) LPELR-3774 (CA) Per Oredola JCA** held,

“Thus, to establish the allegation of desertion, a petitioner must establish: (a) Physical separation. (b) avowed or manifest intention to remain separated on a permanent basis. Absence of consent from the other spouse. Absence of any good, just cause or justification.....”

In the instant case, the facts in support of the evidence adduced, which is unchallenged and as such deemed admitted, is that the Respondent deserted the matrimonial home since February, 2020 when he relocated to Lagos without informing the Petitioner, this culminates into physical separation and now stays with his brother who leaves in Abuja whenever he comes to Abuja. This also interprets that the Respondent has shown a manifest intention to remain separated. Also, during cross examination the issue of desertion was not challenged nor contradicted as can be seen above. I am therefore satisfied that the Petitioner has adduced credible evidence in support of the fact that the Respondent deserted their matrimonial home for a continuous period of more than one year immediately preceding the presentation of this petition and the Respondent does not object to a decree being granted.

The marriage in my view has irretrievably broken down by virtue of the provisions of **Section 15(2)(d) of the Matrimonial Causes Act 2004**

and I so hold, therefore the marriage celebrated between the Petitioner and the Respondent is hereby dissolved.

Consequently, it is hereby ordered as follows:

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **MRS. OLUFUNMILAYO BAMIDELE ILAMAH** and the Respondent **MR. AYEBENI HENRY ILAMAH**, at the Abuja Municipal Area Council Marriage Registry, Abuja on the 13th of February, 2018.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.

PARTIES: Absent

APPEARANCE: Femi Matthew appearing for the Petitioner.
Respondent is not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
31/05/2022