

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 7TH DAY OF APRIL, 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO: FCT /HC/PET/192/2020

OGALE-OKWUENU THERESA OYIBO -----PETITIONER

AND

OKWUENU AZUBUIKE EMMANUEL-----RESPONDENT

JUDGMENT

By an amended Petition filed 15th day of March, 2021 the Petitioner filed a Petition against the Respondent praying for a decree of dissolution of the marriage between her and the Respondent contracted and celebrated at the Federal Marriage Registry, Lagos State on the 28th day of June, 2013. Petitioner specifically, prayed for the following:

1. A Decree of Dissolution of the marriage between Petitioner and the Respondent on the ground that the Respondent has willfully deserted the Petitioner without just cause for a continuous period of one year immediately preceding the presentation this Petition and that the marriage between him and the Respondent be dissolved forthwith on the further ground that the marriage has broken down irretrievably.
2. An Order granting custody of the 2 children of the Marriage; Zaria Okwuenu and Ziva Okwuenu to the Petitioner.
3. An Order directing the Respondent to pay maintenance in the sum of N50, 000.00 (Fifty Thousand Naira) monthly as contribution to the upkeep of the children and pay the school fees termly as it arises and invoice sent until they become legally independent as provided by the Laws of Nigeria.

Filed along with the Petition are the verifying affidavit and the certificate relating to reconciliation.

Trial in this case commenced with the Petitioner testifying as the sole witness on oath. From the evidence of the Petitioner, parties lawfully got married at the Federal Marriage Registry, Lagos State on the 28th day of June, 2013. That the marriage between parties did produce two (2) children by name;

- i. ZARIA NKEMDILIM OKWUENU (F) born on the 15th of March, 2014
- ii. ZIVA AMARACHI OKWUENU (F) born on the 2nd of August, 2017.

That the children are presently with her. That in March 2018, the Petitioner, the Respondent and their daughters travelled to the United States of America for a 2 weeks holiday. That when it was time to come back to Nigeria, the Respondent suggested that he will stay behind to purchase a car he wanted to buy at auction because he was planning to use it for UBER. That after they came back, he kept giving excuses, till date he is still in the United States of America. That subsequently she discovered that the Respondent has done a fraudulent divorce proceeding in Lagos and had used it to get married to another person in the United States of America. That her lawyer wrote to Lagos High Court and discovered that the document did not emanate from Lagos High Court. That the Respondent has blocked her on social media particularly Instagram and Facebook. That the Respondent posted a new family on Facebook and Instagram. That the said lady was pregnant with the Respondent's child hence she filed this Petition praying for an order of dissolution of marriage.

In proof, Petitioner tendered three (3) documents in evidence as follows:

- i. Certificate of marriage No 3592/2013 conducted between parties at Federal Marriage Registry on 28/06/2013 admitted as Exhibit A.

- ii. Request for verification report in suit No: LD/4202WD/2017 between parties dated 6/12/2019 from Lagos State Judiciary signed by Mrs. Omolade Awope admitted as Exhibit B.
- iii. Two (2) pages picture of Respondent and two (2) women and another of a new born admitted as Exhibit C.

At the Close of the Petitioner's case, the Court adjourned for cross examination and Defence. The Respondent, despite being served with the processes and the hearing notices, failed to appear nor was represented by Counsel. The Respondent was therefore on application of the Petitioner's Counsel, foreclosed from cross examination and defence. The Petitioner's Counsel filed and adopted their final written address wherein Counsel raised a sole issue for determination; thus, "Whether from the facts and circumstances of this case this honourable court should grant the reliefs sought by the petitioner".

Arguing the sole issue, Counsel submitted that the marriage between the parties has broken down irretrievably having regards to the facts placed before this Honourable Court by the Petitioner. Counsel submitted that the uncontroverted evidence before this honourable court established that the Respondent has deserted the petitioner for a continuous period of at least one year preceding the presentation of this petition (infact over 2 years). That the Respondent despite being served with all the processes in this matter has failed to file an answer nor did Respondent appear in court or represented by counsel. Thus, the Petitioner's evidence remains uncontroverted as no evidence was led to rebut her testimony. Counsel further submitted that it is trite law that facts contained in pleadings which are neither denied nor controverted by the other party are deemed admitted and need no further proof. Counsel also submitted that the failure of the Respondent to controvert the averments in the Petitioner's Petition is that he has admitted that the marriage between him and the Petitioner has broken down irretrievably and that it would be in the best interest of the children of the marriage if custody of the children of the marriage is granted to the Petitioner. That he is also deemed to have admitted that

he is liable to pay maintenance to the Petitioner for the upkeep of the Petitioner and the children of the marriage and for the education of the children of the marriage. In conclusion, counsel urged the court to act on the unchallenged evidence of the Petitioner and enter Judgment in this suit in favour of the Petitioner as per the reliefs sought vide her Notice of Petition. Counsel relied on the following authorities:

- A. **Hamman Vs, Hamman (1989) 5 NWLR (PT. 119) 6.**
- B. **NANNA VS. NANNA (2006) 3 NWLR (PT. 966) 1**
- C. **Section 15(2)(a)-(h) of the Matrimonial Causes Act**
- D. **ORIANZI V. ATTORNEY-GENERAL OF RIVERS STATE [2017] 6 N.W.L.R. (PT. 1561) 224 AT 266 — 267 paras. H — A.**
- E. **INTERNATIONAL BANK OF WEST AFRICA LIMITED V. IMANO (NIGERIA) LIMITED (2001) F.W.L.R. (PT. 44) P. 421 AT 443 paras. E — F.**

The principle of law is well settled that, where a party served with the Court processes, refuses to file a response or come to Court to defend the suit, such a party cannot be heard to complain that he was deprived the right of fair hearing. In this case, the petitioner's depositions are without reply from the Respondent. The evidence of the Petitioner is therefore not challenged or contradicted by the Respondent. The effect is that the evidence of the Petitioner will be taken as accepted or established. See the case of **OLOFU v. ITODO (2010) LPELR-2585(SC)**. The Court hearing a Decree for the dissolution of marriage would grant same if the Petitioner has proved that the marriage has broken down irretrievably as provided in **Section 15 of the Matrimonial Causes Act and Olabiwonu Vs. Olabiwonu (2014) LPELR – 24065**. Therefore, by the provisions of **Section 15 (2) (a-h) of the Matrimonial Causes Act**, the Petitioner at the hearing must satisfy the Court of one or more of the facts stated therein by evidence of the allegations put forward by the petition. See **Omotunde Vs. Omotunde (2000) LPELR – 10194**.

In this instant case, the Petitioner relied on **Section 15 (2) (d)** of the **Matrimonial Causes Act** which provides thus;

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

And from the evidence adduced before me, it is not challenged or controverted that the parties have lived apart since 2018. I am therefore satisfied by the evidence of the petitioner, which is not controverted, that the Respondent deserted the Petitioner and the children since 2018 and the parties have lived apart for over one year preceding the filing of this Petition. It is therefore my firm view that the unchallenged evidence of the Petitioner has satisfied the provisions of **Section 15(2) (d) of the Matrimonial Causes Act 2004**, that the marriage has broken down irretrievably in that the Respondent has deserted the Petitioner which is proof that the marriage has broken down irretrievably.

On the claim for custody of the two children of the marriage, the court is guided by the Provision of **Section 71 of the Matrimonial Causes Act**, wherein provided that the paramount consideration is the welfare of the child. In proof of this claim Petitioner led evidence that the marriage is blessed with two sons (**Zaria Nkemdilim Okwuenu born on the 15/3/14 and Ziva Amarachi Okwuenu born on 2/8/17**). That she had always been the one picking up the family's bill and is ready, willing and able to continue to look after the two children of the marriage. The Respondent did not challenge this evidence. And in the opinion of the court the welfare of the children of the marriage would be better if left in the custody of the Petitioner. I therefore resolve the issue of custody of the children of the marriage in favour of the Petitioner.

On the issue of maintenance for monthly upkeep of the children of the marriage, it is trite law that the court has the power to make an order of maintenance of a party to the marriage and children of the marriage,

but that exercise shall be subject to laid down guidelines set in the case of **Adejumo Vs Adejumo (2010) LPELR – 3602 (CA)** and the provision of **Section 70 (1) of the Matrimonial Causes Act** which reads:-

“Subject to this Section, the court may in proceedings for an order of maintenance of a party to a marriage, or children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regards to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances”

In this instance case, the Petitioner did not give any evidence as means, earning capacity of the Respondent, but merely asking for N50,000.00. This fact was never controverted by the Respondent. The Petitioner in this case, did not furnish this court with evidence in line with the guidelines in **Adejumo Vs Adejumo (Supra)**. This leaves this court to exercise its discretion in the matter, in so doing, it must be noted that at Common Law, a man has a duty to maintain his wife and children. In the circumstance, therefore, and in exercise of that discretion and noting the fact that the Respondent has failed to react to this piece of evidence. I award the sum of N50,000.00 (Fifty Thousand Naira) monthly as maintenance for the upkeep of the child of the marriage.

The Petitioner, having discharged the burden placed on her to prove the petition, I find merit in her claim, and I hereby dissolve the marriage between the Petitioner and the Respondent.

Consequently, it is hereby ordered as follows:-

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **OGALE-OKWUENU THERESA OYIBO** and the Respondent, **OKWUENU AZUBUIKE EMMANUEL**, celebrated at the Federal Marriage Registry, Lagos State, on the 28th day of June, 2013.

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.
3. I hereby grant custody of the children of the marriage (**Zaria Nkemdilim Okwuenu and Ziva Amarachi Okwuenu**) to the Respondent until they each attain the age of maturity at 18 years old; however, the Respondent shall be granted access to visit the children at the Petitioner's residence after due consultation with the Petitioner.
4. I hereby Order that both parties shall be responsible for the education of the children of the marriage on a 70/30 basis. Respondent to pay 70% of the school fees while Petitioner to shoulder 30% of the school fees of the children.
5. Petitioner is hereby ordered to pay to the Respondent the sum of N50,000.00 monthly for the maintenance and upkeep of the children of the marriage.

Parties:Absent

Appearances:B. I. Engel appearing for the Petitioner. Respondent is not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
07/04/2022