

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA

SUIT NO: PET/239/2019

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

MRS. GRACE NGUAVESE TERFA-ADIGAM.....PETITIONER

AND

MR. TERFA ADIGAM.....RESPONDENT

JUDGMENT

The petitioner filed this petition for decree of dissolution of marriage dated the 7th day of May 2019 and sought for the decree of dissolution of the marriage between the petitioner and the respondent conducted at the Marriage Registry, Makurdi, Benue State on the 7th day of March, 2007 on grounds that the marriage has broken down irretrievably.

It is stated by the petitioner that she then a spinster was lawfully married to the respondent, then a bachelor at the Marriage Registry, Makurdi, Benue State on the 7th March, 2007 according to Marriage Act, and the surname of the petitioner immediately before the marriage was Shindi.

It is stated that the petitioner was born at Jos, Plateau State on the 8th day of October, 1974 and the respondent was born at Vandeikya, Benue State on the 21st day of April, 1973.

That the petitioner is within the meaning of this Act domicile in Nigeria as was born and brought up in Jos, Plateau State Nigeria and did her Primary, Secondary and Tertiary Education in Plateau State, Nigeria, and also had her tertiary education in Bauchi and Kaduna State, and that her parents are Nigerians, and she lives and works in Nigeria.

It is averred that immediately after the marriage the couple lived at the House beside Midway Inn Hotel, Otukpo

Road, Makurdi, Benue State and immediately after their Honey-moon, the respondent was sent to the Nigerian Immigration Training School, Kano, Kano State and the petitioner visited him several times while he was there. On completion of his course, the respondent was deployed to Calabar, Cross River State and the petitioner joined him in Calabar sometime in March, 2008 where they lived together until the respondent was transferred to Lagos State in July, 2014. That the petitioner and the respondent lived together in Lagos at No. 30, Olakunle Sellesi, Ajio Estate, Lagos, Lagos State, until the petitioner became aware of the respondent's adulterous acts.

That both parties lived peacefully for only few years, in fact the petitioner first noticed the adulterous acts of the respondent in the second year of their marriage, and this was with a married woman and this was confirmed from the text messages the said married woman exchanged with the respondent, and that the petitioner immediately confronted the respondent and he apologised and promised to amend his ways and this promise later turned out to be a lie as that was just the beginning of the respondent's journey into adulterous acts.

It is stated that while in Lagos with the respondent, things got to a head as the respondent became neck deep in his adulterous acts, he had their totally lost it, the adulterous affairs become more frequent which the petitioner could no longer countenance. So she had to move out of the matrimonial home to save her life from mental, emotional and psychological abuses on 19th July, 2016, and she came to Abuja to live with her sister and had remained in Abuja up to the filing of this suit.

It is stated that while the petitioner and the respondent were living together in Lagos, the petitioner discovered that

the respondent was deeply involved in adulterous relationships with both married and single women, the respondent made several promises to stop his adulterous acts but did not keep any of the promises but rather got deeper into them to the extent that the petitioner reasonably suspected her life was in danger, and on the 19th of July, 2016, the petitioner, who could no longer stand the respondent's mental, emotional and psychological abuses and the physical danger the respondent's adultery posed to her life and fled her matrimonial home. It is stated that there are no children of the marriage. That since the marriage there has not been any proceeding in any court between the petitioner and the respondent and the ground for a decree of dissolution of the marriage is that the marriage has broken down irretrievably, that since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent and that the later behaved in a such a way the petitioner cannot reasonably be expected to live with the respondent, that the petitioner have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the respondent does not object to a decree being granted.

It is stated that the petitioner has not condoned or connived on any of the grounds specified above and she is not guilty of collusion, and that attempt have been made at reconciling the petitioner and the respondent, but it has been so difficult.

The petitioner filed her witness statement on oath.

The respondent also filed an answer to the petition, and in it and more particularly paragraphs 6 and 7, the respondent stated that the petitioner, since the marriage, has behaved in such a way that the respondent cannot

reasonably be expected to live with the petitioner as she always accused him with unfounded allegation of adulterous relationships, and that the respondent pleads that the petitioner and the respondent have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition, and therefore prayed the court for a decree of dissolution of the marriage.

In the course of the hearing, the petitioner adopted her witness statement on oath and tendered some documents, that is to say, the Marriage Certificate and some photographs evidencing that the respondent got married to another woman during the subsistence of the marriage between the two parties which were marked as EXH. "A1" and "A2".

During cross examination, the PW1 was asked whether apart from the dissolution of the marriage, she has no any claim, and to which she answered in the negative. She was also asked whether she has joined anybody as a party in her allegation of adultery, and to which she answered in the negative.

The parties waived their right to proffer final written addresses.

The witness statement on oath of the petitioner is the replica of the facts put in the petition, that while in Abuja, the respondent visited the petitioner thrice and the said visits were marred with insincerity as the respondent exhibited no true signs of remorse, and that the petitioner woke up on Sunday 12th March, 2017 to find out the respondent's sisters have inundated the face book with wedding pictures of the respondent with one Grace Oiza Bello, and this said marriage was contracted under the continuance of the marriage between the two parties, and the later marriage was contracted at Gwagwalada Area Council, Abuja, and

this made her to feel that she can no longer live with the respondent and that the respondent has deserted her for a continuous period of at least two years immediately preceding the presentation of this petition.

Now the question is:

Whether the petitioner has proved that the marriage has broken down irretrievably thereby entitling her to a decree of dissolution of the marriage?

Thus, it is in evidence that there is a valid marriage between the petitioner and the respondent which was contracted on the 7th March, 2007 at the Marriage Registry Makurdi, and that they have cohabited, and the marriage is childless, and that the respondent has committed adultery with some women, it is also in evidence that the petitioner left the matrimonial home since the 19th July, 2016.

These pieces of evidence have not been controverted by any evidence as the respondent has not proffered any evidence in disproving the assertion of the petitioner. The pieces of evidence are not challenged during cross-examination, and therefore, the court has no option than to deem that the respondent have accepted the pleadings and evidence of case of the plaintiff "lock, stock and barrel". See the case of **New Breed Org. Ltd V. Erhomosele (2006) All FWLR (pt 307) p. 1079 at 1118; paras. C-E**. In the instant case, I have no option than to accept the evidence of the petitioner, and it is hereby accepted.

Thus, section 15 (2) (c) and (e) of the Matrimonial Causes Act Cap. M7 LFN, 2004 provides:

"(2) The Court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have been broken down irretrievably if, but only if,

the petitioner satisfies the court of one or more of the following facts:

(c) That since the marriage the respondent has behaved in such a way that the petitioner finds it intolerable to live with the respondent;

(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.”

Thus, in order to establish the fact that the marriage had broken down irretrievably under section 15 (2) (e) of the Matrimonial Causes Act, the petitioner is expected to prove the following constituent elements:

- a. 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**
- b. That the respondent does not object to the decree being granted.**

See the case of **Ibrahim V. Ibrahim (2007) All FWLR (pt 346) p. 478 at 492; paras. A-B**. In the instant case, and with respect to the constituent element in paragraph (a) above, it is evident that the petitioner has left the matrimonial home since the 19th July, 2016, and the petition was filed the 7th day of May, 2019, which barely three years preceding the presentation of this petition, and to my mind, one of the constituent element has been satisfied.

On the constituent element in paragraph (b) to the effect that the petitioner has to satisfy the court that the respondent did not object to the decree being granted, I make reference to the answer filed by the respondent in

which he too, in paragraph 8, whereupon he prayed to the court for a decree of dissolution of the marriage.

By this, it has been satisfied that the petitioner also has satisfied the constituent element in paragraph (b) as held in the above case.

In the circumstances, I hold the view that the ground that the petitioner and the respondent have lived apart for a continuous period of two years has been satisfied.

Coming to the second ground that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent as she accused him of adulterous acts, and to this, I have to look at the evidence of the petitioner with a view to see whether allegation of adultery has been established against the respondent. See the case of **Alabi V. Alabi (2008) All FWLR (pt. 418) p. 251 at 282; paras. E-G** to the effect that the onus is on a party who alleged the commission of adultery against other parties in a matrimonial case to prove to the reasonable satisfaction of the court that the alleged person has committed adultery, in doing so, the standard of proof is no longer as was approximated to that required in criminal cases, rather the standard of proof is no more than as required in Civil cases.

In the evidence of the petitioner, even though not so challenged during cross-examination, the petitioner did not state the circumstances in which she found the respondent committing adultery. In essence she did not tell the court whether she has seen, or she was told that the respondent was seen committing adultery, and no any witness has been called to prove such allegation. I hold the view that the evidence of the petitioner on the issue of commission of adultery is unsatisfactory, and it is hereby not accepted; as the requirement under section 15 (2) (c) is not met.

In the circumstances, I am more convinced that the petitioner has satisfied the requirement under section 15(2) (e) of the Matrimonial Causes Act Cap. M7 LFN, 2004 that the marriage has broken down irretrievably and is therefore entitled for judgment.

A decree nisi of a dissolution of marriage between the petitioner and the respondent is hereby granted accordingly.

Hon. Judge
Signed
14/6/2022

Appearances:

Dr. Christopher Eichie Esq appeared for the petitioner.
CT-PL: This judgment supposed to have been delivered on the 7th of June, 2022 and by today is in excess of about four days, have you suffered any miscarriage if it is delivered today the 14th day of June, 2022. The 90 days having expired on the 10th June, 2022?

PC-CT: Not at all.

Hon. Judge
Signed
14/6/2022

Josiah A. Ojenya Esq appeared for the respondent.
RC-CT: I am sorry for coming late.
CT-RC: The judgment supposed to have been delivered on the 7th day of June, 2022 and the 90 days expired on the 10th of June, 2022, and it is now in excess of four days, have you suffered any miscarriage as a result of the delay?

RC-CT: No.

Hon. Judge
Signed
14/6/2022

