

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 24
CASE NUMBER:	SUIT NO. FCT/HC/PET/585/2020
DATE:	25/5/2022

BETWEEN:

DR. EDEKIN DAVID OLAJIDE UNUIGBOKHAI.....PETITIONER

AND

JANUE UNUIGBOKHAI.....RESPONDENT

APPEARANCES:

Maduka Oluwafemi Esq for the Petitioner.

JUDGMENT

The Petitioner filed this Petition on the 26th day of November, 2020, seeking a sole relief namely:

“(a). A Decree of Dissolution of the marriage on the ground that the marriage has broken down irretrievably.”

The Petition which was settled by Festus Ibude Esq of Oyokunyi Asuquo & Co, firm representing the Petitioner, is supported by the Petitioner’s Verifying Affidavit. Some annexures as well as the Witness Statement on Oath of the Petitioner.

The Respondent was duly served with the Notice of Petition as well as hearing notices for each proceeding in this case. But, has not challenged the Petition by filing an answer or any other process in response.

Nevertheless, Respondent was present in Court and equally represented by Mrs. Roseline Obiako Esq on 28th February, 2022 as well as on 5th April, 2022 when Petitioner gave evidence. The Petitioner adopted his Witness Statement on Oath and tendered one Exhibit, i.e a photocopy of the parties Marriage Certificate which was admitted in evidence and marked Exhibit A. The Petitioner urged the Court to dissolve his marriage to the Respondent.

Meanwhile, Mrs. Roseline Obiako Esq, learned Respondent's Counsel informed the Court that they did not have questions for the Petitioner, but shall be relying on the Petitioner's case.

Final Written Addresses were dispensed with on both sides.

Now, under and by virtue of Section 15(2) of the Matrimonial Causes Act Cap M7, LFN, 2004, a Court hearing a Petition for dissolution of a marriage, shall hold the marriage to have broken down irretrievably, if and only if, the Petitioner satisfies the Court of at least one of the grounds highlighted under Section 15(2)(a) - (h) thereof.

On this premise, I refer to the case of ***BIBILARI V BIBILARI (2011) LPELR – 4443, (SC) per Galinje JSC, at PP: 33-34; IKE V IKE & ANOR (2018) LPELR-44782 (CA) per EKPE, J. C. A*** at pages 10-16, paragraphs C-A, where the Court held as follows:-

“For a Petition for the Dissolution of marriage to succeed, the Petitioner has to prove at least one of the ingredients contained in Section 15 (2) of the Matrimonial Causes Act, even if the divorce is desired by both parties”.

See also the cases of ***IBRAHIM V IBRAHIM (2007)1 NWLR PT 1015 @ (Pg. 405 Paras F-H); AKINBUWA V AKINBUWA (1998) 7 NWLR (PT. 559) 661.***

Now, in the instant case, the facts grounding this Petition are as contained in paragraph 8 of the Notice of Petition are as follows: -

- (i). That the Respondent has willfully and persistently refused to consummate the marriage since 1st of December, 2019 till date.

- (ii). After one month of marriage the Respondent willfully and persistently refused to have any sexual relationship with the Petitioner even after several entreaties and efforts by the Petitioner.
- (iii). The Petitioner and Respondent have lived separate and apart since 3rd of March, 2020.
- (iv). The Respondent has deserted the Petitioner since 3rd of March, 2020 and despite all the efforts by the Petitioner and other family members, the Respondent refused to return to the matrimonial home.
- (v). The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue the marriage with the Respondent.
- (vi). The Respondent has failed and refused to perform her marital responsibilities since 3rd March, 2020.
- (vii). The Petitioner has made several entreaties to the Respondent to return back to the marriage but all his efforts have proved abortive.
- (viii). The marriage did not produce any children.

All the above facts are clearly captured in the Petitioner's Witness Statement on Oath. In particular Petitioner avers in paragraphs 6 and 11 of the Witness Statement on Oath as follows: -

“Paragraph 6: That since the marriage, the Respondent willfully and persistently refused to consummate the marriage as she insisted that she would not want to have a child for me despite several entreaties and efforts by me.

Paragraph 11: That the Respondent has behaved in such a way that I cannot reasonably be expected to continue the marriage with the Respondent.”

Now, Section 15(2)(a) of the Matrimonial Causes Act (supra) provides:-

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

Now, refusal to consummate a marriage is one of the grounds enumerated under Section 15(2) of the Act.

In the circumstances therefore, since the Respondent has not challenged the Petition, all the evidence adduced by the Petitioner remains unchallenged and uncontroverted and it is deemed admitted.

On the effect of unchallenged and uncontroverted evidence, I refer to the cases of ***OREDOLA OKEYA TRADING COMPANY AND ANOR V BANK OF CREDIT AND COMMERCE INTERNATIONAL & ANOR (2014) LPELR-22011 (SC) P.2, Paras B – G.; EZEMBA V IBENEME AND ORS (2004) LPELR-1205 (SC) Pg. 20 Paras d –F.***

In the final analysis, therefore, I find that the Petitioner has successfully proved ground (a) under Section 15(2) of the Matrimonial Causes Act (supra). I equally hold therefore, that in the instant case, the marriage between the Petitioner and the Respondent has broken down irretrievably.

Consequently, I hereby grant an Order Nisi dissolving the marriage between the Petitioner **DR. EDEKIN DAVID OLAJIDE UNUIGBOKHAI** and the Respondent **JANET UNUIGBOKHAI**, celebrated at the Jos North Marriage Registry, Plateau State in Nigeria on the 28th of October, 2019. The decree shall become absolute if nothing intervenes within a period of three months from this date.

Signed:

***Hon. Justice S. U. Bature
25/5/2022.***