

**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/211/2020

DATE: 30/5/2022

BETWEEN:

MR. SAMSON OGHENEKHOGHIE ALABI.....PETITIONER

AND

MRS. HANNAH OGHENEKHOGHIE ALABI.....RESPONDENT

APPEARANCE:

Parties absent.

JUDGMENT

The petitioner filed this Petition on the 27/2/2021 seeking a decree of Dissolution of the marriage between the Petitioner and the Respondent herein.

The grounds predicating the Petition are as follows:-

- i. Since the marriage the Respondent has behaved in ways that the Petitioner cannot reasonably be expected to continue with the marriage.
- ii. Constructive desertion by the Respondent.
- iii. Willful refusal to consummate the marriage.

The Petition which was settled by DR. S. A. IENLAYE (LEGAL PRACTITIONER) for the Petitioner in the firm of Solomon Agbonhulu & Associates, Wisdom Chambers, is supported by the Petitioner's verifying Affidavit and some annexures including a photocopy of the parties marriage certificate.

The Respondent despite being duly served with the notice of Petition and several hearing notices throughout these proceedings, has not filed an answer to the Petition and has not challenged this Petition in any manner.

The Petitioner during trial, adopted his witness statement on Oath on the 27/09/2021, and equally tendered 3 Exhibits which were admitted in evidence and marked as follows:-

1. Photocopy of the parties marriage Certificate dated 11/7/2014 marked Exhibit A.
2. The social welfare Department of AMAC letter of complaint dated 21/1/2022 marked Exhibit B.
3. A letter of complaint to FIDA, Abuja dated 16th day of February, 2020 marked Exhibit C.

In the Petitioner's final written address, a sole issue for determination was formulated to wit:

"Whether from the facts and circumstances of this Petition together with the evidence on record the Petitioner is not entitled to the relief/order sought in this case?"

Learned Counsel proceeded to argue the issue with particular reference to the provisions of Section 15 (1) (2) (d), (e) and (f) of the Matrimonial Causes Act Cap M7, LFN 2004, to argue that the above are the relevant provisions Applicable in this case which have been sufficiently proved going by the evidence led through the Petitioner herein.

Counsel referred the Court to the cases of **L.T. COL. SHEHU IBRAHIM (RTD) V MERCY IBRAHIM (2007) 1 NWLR (PT. 1015) 383 @ 402, para G-H; DR. AKINREMI ORITSEMETIN NANNA V MRS. EKEPHOSE MARYANNE NANNA (2006) 3 NWLR (PT. 966) 1 @ PAGE 25, paras, A-G and pg. 30, paras. A-B.**

That in the instant case the Petitioner has established that this marriage has broken down irretrievably as the Petitioner has established two grounds under Section 15 (2) of the Matrimonial Causes Act (Supra) for the marriage to be dissolved, i.e living apart and desertion.

The Court is urged to dissolve the marriage.

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 marriage, shall hold that marriage to have broken down irretrievably if and only if the Petitioner satisfies the Court of at least one or more of the grounds enumerated under Section 152 (a) (h) thereof.

In his written statement on Oath, the Petitioner avers among other things particularly in paragraphs 2 (vi) x, xi, xii, xiii, xiv, xv, xviii, xx, xxiii, xxiv, xxv, xxviii, 6, 8, 10, 11, 12, 13, 14, and 15 as follows:-

- "vi. In consequence of the extinction of love and affection on the part of the Respondent coupled with the frequent and constant abuse and violence towards me, cohabitation ceased in November, 2017.***
- x. The Respondent humiliates, hits, embarrasses, pushes and causes injuries to me whenever she likes and even caused me grievous bodily harm at the slightest argument.***
- xi. Sometime in December, my friends and my family visited me in Abuja. I, in company of my estranged wife together with my visiting friend and family went out to spend quality time together. As I drove back home after the relaxation, argument ensued between the Respondent and I and she hit me severally with bottle water on my head to extent that I lost control of the vehicle and vied off into the bush.***
- xii. After surviving the scare occasioned by the Respondent's insensitivity and on getting home, the Respondent took a kitchen knife to stab me but my visiting friend came to my rescue.***

- xiii. When my friend left the scene, the Respondent subsequently hit me with an electric pressing iron on my eye lid which led to my bleeding profusely.***
- xiv I experienced excruciating pains from this sudden attack by the Respondent aforesaid to the extent that I could not feel any sensation on the left part of my head for a period of 18 months in spite of receiving medical attention at Medicaid on Aminu Kano Crescent, Wuse II, Abuja,***
- xv. The Respondent fights me regularly and in the process destroyed my cell phone, personal Laptop and even destroyed my company project Laptop, camera, external hard disc containing my project data and personal data/information.***
- xviii. The Respondent had continued to allege unabatedly that I am engaged in extra marital affairs with the mother of my daughter albeit unfounded.***
- xx. The Respondent continues to brazenly allege to my irritation that my mother and sister are witches that are responsible for the Respondent's childlessness.***
- xxiii. The Respondent quarrels and fights me for inviting my nephew for a visit with my family claiming that I am exposing her to be poisoned and that her underwears were stolen in the course of the visit.***

- xxiv. The Respondent while living with me occasionally wakes up at 12:00am (midnight) naked and reign curses on me and members of my family.***
- xxv. The Respondent has repeatedly threatened to make me go naked on the street of Abuja by presenting me to her strong spiritualist and also report me to her hired thugs to beat me up.***
- xxviii. These stated attitude or behavior of the Respondent has caused me grievous distress and emotional pains and I do not wish to continue living under the stated excruciating and emotional pains.***
- 6. Sequel to all the above, the Respondent willfully refused to consummate the marriage with me in the last (2) years after the series of miscarriages she experienced.***
- 8. Regular sexual intercourse with the Respondent had ceased since January, 2018 except on very rare occasions whenever the Respondent had the urge.***
- 10. In spite of the parental and pastoral interventions that proved unsuccessful, the Respondent filed a complaint against me on the 21st January, 2020 at the Social Welfare Department of Abuja Municipal Area Council (AMAC), FCT,***
- 11. The intervention of the personnel of the Social Welfare Department AMAC did not yield any positive result***

rather it led to further altercation where the Respondent insulted me with reckless abandon to the consternation of the said personnel consequent upon which the Respondent was asked to apologize to me but the Respondent bluntly refused.

- 12. Sequel to the above, the Social Welfare Department of AMAC urged me and the Respondent to proceed to Court in order to resolve our matrimonial conflict since settlement by their intervention was not feasible.*
- 13. The Respondent further sought the intervention of FIDA, Abuja complaint against me dated 16th February, 2020 which also did not yield any result in reconciling me and the Respondent.*
- 14. Consequently upon the boatched intervention by Social Welfare Department AMAC, Abuja and FIDA, Abuja the Respondent proceeded to our house on 21st February, 2020 whereupon the Respondent packed all her property under police supervision to an unknown destination.*
- 15. The Respondent has repeatedly said it loud and clear to me that she is tired of the marriage."*

Well, I've considered the evidence adduced by the Petitioner in this case, as well as the submissions of Learned Petitioner's Counsel stating that Petitioner has so far established two grounds for dissolution of the marriage i.e living apart and desertion.

Let me first of all consider whether the parties herein have indeed lived apart within the contemplation of Section 15 (2)e of the Matrimonial Causes Act (Supra).

Section 15(2)e of the Matrimonial Causes Act (supra) provides thus:-

That the Parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of the Petition and the Respondent does not object to it.

Section 15 (2) (f) provides:-

"(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."

Now according to the Petitioner in paragraph 2 (vi) of his written statement on Oath, cohabitation between the parties ceased in November 2017.

As stated earlier, this petition was filed on 27/2/2021. Which means that parties have lived apart for a continuous period of three years immediately preceding presentation of this Petition. Therefore, Petitioner has clearly established ground (2) (f) of Section 15 of the Matrimonial Causes Act (Supra). I so hold.

Now, although Learned Counsel had submitted in the address that Petitioner has also proved desertion, I have carefully looked at the Petitioner's written statement on Oath and there's nowhere in which Petitioner clearly stated that the Respondent had deserted him. Petitioner merely averred that cohabitation between the parties had ceased since

November 2017 and Respondent packed out of the Matrimonial home under police supervision. Therefore, desertion has not been proved.

However, having earlier found that the Petitioner has established the ground of parties living apart under Section 15 (2) (f) of the Act (supra) and Petitioner's evidence is unchallenged and uncontroverted, I am satisfied that the marriage herein has broken down irretrievably.

I accordingly grant an order Nisi dissolving the marriage between the Petitioner **MR. SAMSON OGHENEKHOGIE ALABI** and the Respondent **MRS. HANNAH OGHENEKHOGIE ALABI** contracted at the marriage Registry Akoko, Edo Local Government Area, Igarra Edo State, Nigeria on the 11th of July, 2014.

The decree shall become absolute if nothing intervenes within a period of three months from this date.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

30/05/2022.