

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT: 28**

**Date:-/5/2022**

**FCT/HC/PET/11/2022**

**BETWEEN**

**BANKONG – OBI JAKKY ..... PETITIONER**

**AND**

**OCHAGU OGBECHE ..... RESPONDENT**

**JUDGMENT**

This petition is brought against the Respondent, Ochagu Ogbeche by the Petitioner Bankong – Obi Jakky Precious for a decree of dissolution of their marriage entered into on the 5<sup>th</sup> of May, 2011 at the Marriage Registry, Abuja Municipal Area Council, Abuja , on the ground that the marriage has broken down irretrievably. The ground of the petition is:-

a. The Marriage has broken down irretrievably.

The record of this Court shows that Counsel for the Petitioner on 17<sup>th</sup> May, 2011 led the Petitioner to give evidence in chief. The Respondent was represented by a Counsel O.D Afoyebi during the trial. The Petitioner at the hearing of the Petition was the sole witness and adopted her statement on Oath dated 12<sup>th</sup> January, 2022. The Petitioner tendered 1 Exhibit to wit:-

1. A copy of Marriage Certificate from Marriage Registry, Abuja Municipal Area Council, Abuja.

The case of the Petitioner in summary is that she contracted a marriage with the Respondent at the Marriage Registry Abuja Municipal Area Council, Abuja on the 5<sup>th</sup> of May, 2011. That since the marriage, the Petitioner and the Respondent have lived apart for a continuous period of over two (2) years immediately preceding the presentation of this Petition.

There is evidence before this Court to show that the Originating processes and hearing notices were served on the Respondent. The Respondent counsel did not in any way object to the dissolution of the marriage.

*" The petitioner' Counsel waived his right of filing final written address equally the Respondent Counsel also did the same"*

Learned Counsel submitted that the evidence given by the Petitioner in support of her petition reveals that the petitioner no longer lives with the Respondent. Counsel further submitted that the law behind Section 15(2) (d) and (e) of the Matrimonial Causes Act is that as far as living apart is concerned, the law is not interested in the right or wrong or the guilt or innocence of the parties once the parties have lived apart within the time frame prescribed or recognized under the provisions of Section 15 of the Matrimonial Causes Act, the Court is bound to grant a decree of dissolution of marriage automatically. Counsel cited the case of ***DR. JOSHUA OMOTUNDE V MRS OMOTUNDE (2001) 9NWLR (Pt. 718, 252).***

Counsel further submitted relying on the case of ***AMAYO V ERINWINGBOVO (2006)11 NWLR (Pt. 992)*** that "the position of the law as regards unchallenged evidence is for any such evidence that is neither attacked or discredited and is relevant to the issues joined ought to be relied upon by a judge". Counsel similarly drew the attention of this Court to the case of ***ASAFI FOODS FACTORY LIMITED V ALRAINE NIGERIAN LIMITED & ORS (2002) 5SC (Pt.1)1*** where the Supreme Court held that "Where evidence given by a party to a proceeding was not challenged by the other side that has the opportunity to do so, it is always

open to the Court seized of the matter to act of such unchallenged evidence before it. Finally Counsel submitted that since the Respondent has since refused to oppose the petition for dissolution and by virtue of the Petitioner and Respondent living apart for a continuous period of two (2) years, the marriage has broken down irretrievably urging the Court to grant the reliefs sought by the Petitioner, this was done through the Counsel to the Respondent.

I have carefully studied this petition filed before this Court seeking to dissolve the lawful marriage conducted by parties to this petition. The dissolution of marriage contracted pursuant to our marriage law is guided by **Matrimonial Causes Act, Cap 22, Laws of the Federation 2004** and under the said law, a petition by a party to a marriage for decree of dissolution of marriage (as in this case), one or more facts of which the petitioner must establish before this Court shall be that the marriage has broken down irretrievably. See ***IBRAHIM V IBRAHIM (2006) LPELR-7670 (CA). In EKREBE V EKREBE (1999) 3 NWLR (PART 596) 514 at 517;*** Mohammed JCA held that for a divorce petition to succeed, the petitioner must plead one of the facts contained in **SECTION 15(2),(A)-(H) of the Matrimonial Causes Act**, and if the petitioner fails to prove any of the facts stated in law, the petition must be dismissed.

I have equally examined all the papers filed in this Court, and properly scrutinized the unchallenged testimony of the PW1 and the position of the law is always that for any evidence that is neither attacked nor discredited, and is relevant to the issue, it ought to be relied upon by a judge. This is a Supreme Court holding in the case of ***AMAYO V ERINWIN ABOVO (2006) 11 NWLR (PART 992) at page 699.*** It is trite law that where evidence given by another party to a proceeding has not been challenged by the other party who had the opportunity to do so, it is always open to the Court seized of the matter to act on such unchallenged evidence before it.

In view of all this above, since there is ample proof that the parties have lived apart for a period beyond 2 years as well as other grounds making up this petition. This marriage should therefore in my opinion be dissolved in order to release the petitioner from the oath of marriage, having satisfied the requirement of the Matrimonial Causes Act, 2004.

Therefore, flowing from the above, this Court hereby grants the prayer sought by the Petitioner for a decree of dissolution of her marriage to the Respondent accordingly. I so hold and I dissolve the marriage.

It is also imperative to add in this judgment that Dissolution of marriage is otherwise known as divorce especially in ordinary man language. A party asking for a decree of dissolution of marriage is seeking for intervention of the Court in a marriage that is not working is seeking the intervention of the Court in a marriage that is not working. It presupposes that there is a marriage in existence under the Act there is only one ground upon which an application for dissolution of marriage may be brought before the Court. The ground is contained in section 15(1) of the Act this can be seen above in this judgment. In order not to leave the issue of what amounts to irretrievable breakdown of a marriage to conjecture, sub (2) itemized a list of facts which the Court must satisfy itself about. It should be noted that it is the position of the law seems to be well settled that where a petition for divorces or dissolution of marriage fails to indicate that the marriage has broken down irretrievably, the petition will fail see ***EKEREBE VS EKEROBE (1999) 3 NWLR (PT 569) 514.*** The petition for dissolution of marriage omitted the phrase the marriage has broken down irretrievably as required by section 15 (1) of the Matrimonial Causes Act. The Court held that irretrievable breakdown is the only ground upon which a petition for dissolution may be predicated. The Court held further that the fact that the petition alleged cruelty.

Desertion and adultery would not save the petition as those were only parts of the relevant facts to be considered by the Court. As analyzed to this judgment. I have gone through the petition and the evidence adduced

by the petitioner in the cause of this trial I have conclude and enter judgment as can been above.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

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