

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE M. S. IDRIS

COURT: 28

Date:- 9TH JUNE, 2022

BETWEEN:

FCT/HC/PET/178/2020

FAITH IMUETIYAN ASUQUO

.....

PETITIONER

AND

MARTINS ESO ASUQUO

.....

RESPONDENT

JUDGMENT

This petition is brought against the Respondent, **Mr. Martins Eso Asuquo**, by the Petitioner **Mrs. Faith Imeutiyan Asuquo** for a decree of dissolution of their marriage entered into on 16th April, 2005 at the Marriage Registry, Amac, Abuja, on the ground that the marriage has broken down irretrievably. The grounds of the petition are as follows:-

- a. The Marriage has broken down irretrievably.
- b. Unreasonable behavior of the Respondent.
- c. That since the marriage the Respondent has behaved in such a way that the Petitioner find it intolerable to live with the Respondent.
- d. Lack of love.
- e. Threat to Life.
- f. The Respondent has failed in his responsibilities as a Father.

The record of this Court shows that Petitioner obtained an order for substituted service of the Petition on the Respondent on the 8th of June 2020 to serve the Notice of Petition and all other processes of Court in this suit on the Respondent through substituted means by pasting same at the last known place of business of the Respondent to wit: at the gate of Abuja Municipality Area Council (AMAC) Area 10, Abuja. The Respondent subsequently filed an Answer to the Petition on the 7th of August, 2020.

The Petitioner at the hearing of the Petition was the sole witness and adopted his statement on Oath dated 12th February, 2020. The Petitioner tendered 1 Exhibit to wit:

1. A copy of Marriage Certificate from Marriage Registry, Amac, Abuja.

The case of the Petitioner in summary is that she contracted a marriage with the Respondent at the Marriage Registry Amac, Abuja on 16/4/05. That the said marriage between the Petitioner and the Respondent has broken down irretrievably relying on the below grounds:-

- a. Unreasonable behavior of the Respondent.
- b. That since the marriage the Respondent has behaved in such a way that the Petitioner find it intolerable to live with the Respondent.
- c. Lack of love.
- d. Threat to Life.
- e. The Respondent has failed in his responsibilities as a Father.

There is evidence before this Court to show that the Originating processes and hearing notices were served on the Respondent. The Respondent in defending this petition filed an Answer to the Petition dated 7/8/2020 wherein the Respondent admitted all material facts as contained in the Petitioner's petition. The matter was adjourned for hearing and the Petitioner testified herself and tendered one document which was admitted in evidence and marked accordingly. The Respondent did not testify nor

call any witness during the hearing. The matter was adjourned for adoption of final addresses which the Petitioner has filed and served but the Respondent's Counsel waived their right to filing their address urging the Court to rely on the submissions of the Petitioner and grant the prayers as contained therein. Counsel to the Petitioner raised a sole issue for determination in its final address thus:-

"Whether the Petitioner is entitled to the sole request for an order of dissolution of marriage".

Learned Counsel submits that the Petitioner's marriage with the Respondent has broken down irretrievably and the Court can order a decree of dissolution accordingly.

Counsel to the Petitioner stated that the Respondent has not placed any evidence before the Court and that the mere filing of Answer to the petition cannot constitute evidence before the Court. Counsel posited that it is simple law that where the case of the Plaintiff was not challenged or contradicted, it ought therefore to be accepted, as there is nothing on the other side of the balance. Counsel cited the case of ***CBN & 6 ORS V AITE OKOJIE (2015) SC. 127/2004.***

In conclusion, Counsel submitted praying the Court to hold that the Petitioner has furnished credible evidence before this Honourable Court in proof of her claim for a decree of dissolution of marriage.

Counsel to the Respondent having waived their right to file their final address is deemed to have adopted in totality the submissions of Counsel to the Petitioner.

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 (PT 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 (PT 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 above, there is ample prove that the marriage between the Petitioner and the Respondent has broken down irretrievably. This marriage should therefore in the interest of both parties be dissolved in order to release the petitioner from the oath of marriage, having satisfied the requirement of the Matrimonial Causes Act, 2004.

I would also add that the Respondent was given full opportunity to defend this petition nonetheless same chose not to do anything.

It is on this note it becomes imperative on the Court to look at the provisions of section 15 (1) matrimonial causes Act for the purpose of clarity in this judgment.

A petition under the Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably.

15 (2) the Court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if the petition satisfies the Court of one or more of the following facts.

- a) That the Respondent has willfully and persistently refused to consummate the marriage.
- b) That since the marriage the Respondent has committed adultery and the petition finds it intolerable to live with the Respondent.
- c) That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent.
- d) That the Respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.
- 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.
- f) That the parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition.
- g) That the other party to the marriage has, for a period a not less than 1 years failed to comply with a decree or restitution of conjugal rights made under this act.
- h) That the other party to the marriage has been absent from the petition for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead
- i) For the purpose of sub section (2) (e) (f) of this section the parties to a marriage shall be treated as living apart unless they are living with each other in the same house hold.

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

Consequently, it is hereby ordered as follows:-

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated on 16/04/05 between the Petitioner ***FAITH IMUETIYAN ASUQUO*** and the Respondent, **MARTINS ESO ASUQUO** at the Marriage Registry, Abuja Municipal Area Council, Abuja, Nigeria.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three months from the date of this order, unless sufficient cause is shown to the Court why the decree nisi should not be made absolute.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

D.C Okpara:- For the Petition