

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 3RD FEBRUARY, 2022

FCT/HC/PET/032/2021

BETWEEN:-

NNENNA HELEN OBIANUKA JAMES-----

PETITIONER

AND

IZUCHUKWU BENJAMIN JAMES-----

RESPONDENT

JUDGMENT

This notice of petition was brought before this Court with No. PET/032/2021 dated and filed on the 27th January, 2021 wherein the petitioner is praying for the follows:-

1. The decree of the dissolution of the marriage between himself and the Respondent on the grounds that the marriage has broken down irretrievably.
2. Monthly maintenance cost of N100,000.00 only against the Respondent.

And any other such reliefs this Court may deem fit to make in the circumstances.

Attached to the notice is a 6 paragraphs affidavit written witness statement on oath and 2 annexures the relevant facts of the case as deposed to by the petitioner herself in her written witness statement on oath is as follows:-

1. That both parties got married under the Igbo native law and custom on the 20th May, 2010 and married at the Abuja Municipal Area Council (AMAC) Marriage Registry FCT on the 14th June, 2013.
2. That at the time of the traditional marriage the petitioner was a law student at a University in Ghana while the Respondent lived and carried on business in Dubai United Arab Emirate.
3. That before the completion of her law degree shortly after the partys traditional marriage the Petitioner got pregnant and both parties agreed to terminate same.
4. That the Petitioner got pregnant again in 2011 but unfortunately lost the pregnancy after 8 weeks.
5. That afterword the Respondent started exhibiting hostility and harsh attitude towards the petitioner emotional and psychological abuse.
6. That the Respondent was unsupportive to the petitioner, physically, emotionally and psychologically towards her journey to conceive.

7. That the Petitioner had polycystic ovarian Syndrome (PCOS) as a result of hormonal imbalance and the respondent had cited her health condition during their verbal altercation thereby debasing petitioner's woman hood.
 8. That Petitioner moved out of their matrimonial home but returned after 3 months in October, 2016 thereafter the Respondent started exhibiting disheartening behavior like heavy smoking, heavy drinking, coming home at odd hours and a high level of aggression towards the Petitioner.
 9. That the Petitioner attributed the Respondents behavior to his dwindling finance so the petitioner's father supported them with N2,000,000.00 and bought goods worth N6,000,000.00 for the purpose of business in fabrics at the Wuse Market.
 10. That the petitioner quit her job then at the law firm in order to support the Respondent in business.
 11. That the respondent continued displaying attitude, utter neglect of the petitioner that she entertained suicidal thoughts.
- That in April, 2019 Petitioner moved out her personal belonging out of the respondent's house and has never been in close contact or communication since then. That petitioner's family returned the bride price paid by the respondent family on the 6th of August, 2020. Petitioner given her final testimony before the

Court prayed to tender the marriage certificate dated 4th June, 2013 and her change of name in evidence. She also prayed the Court to adopt her written statement on oath as her evidence before the Court.

Counsel on behalf of the petitioner waived their right of filing their written address there was no cross examination of PW1 throughout the trial. The Respondent failed, refused or neglected to put up a defence despite the fact that he was served with hearing notice by substituted means but refused to appear in Court throughout the trial. Having reproduced substantially the evidence of the petitioner aforesaid. It is pertinent to state that failure to deliver a notice of intention to defend or reply in respect to the petition filed against the Respondent show that the Respondent has no defence to the petition filed against him. It is settled law the facts admitted need no further proof. See ***AKAHALE & SON LTD VS NDIC (2017), LPELR 41984 SC OGBESHE NDAIC (2017) LPELR 41984 SC OGBESHE VS IDAM (2013) LPELR 20330 CA.***

In the instant case since the Respondent has failed to file an answer or a cross petition the petitioner is considered by the Court to have lead evidence as for her witness statement on oath adopted by the Petitioner in this case.

In my considered opinion going by the failure of the Respondent in this case to file an answer to the petition against him the petitioner is ordinarily entitled to all the reliefs sought in the petition undoubtedly, the provision of section 294 (1) of the 1999 Constitution envisaged that there would be final address after the conclusion of evidence in the trial of a case to be made by the parties or their Counsel to the Court before it shall deliver its decision as prescribed therein. Being the ground norm the provision expectedly did not provide the details of whether the trial Court has to order or call for such address from the address shall be in. However the provision appears to confer a right on the parties to a case to make a final address after conclusion of the evidence. In the case before the Court was required to deliver its decision in the case. Since it is personal right and so a benefit conferred or vested in the parties, it can legally and effectively be waived by any or all of the parties to the case like all other personal private and domestic right conferred by statute the parties cannot be forced to exercise the right to address a Court after the conclusion of evidence if they did not deliver or are not likely to do so and it is not part of the Court judicial duty to inquire in to the reason of a party for the exercise of his discretion not to utilize the right under the provision see ***EBIGBE***

VS NNPC (1999) 5 NWLR (Pt34) 649, GITTO CONSTRUCTION GENERAL NIG. LTD & ANOR VS ETUKA & ANOR (2013) LPELR 20817 CA and MOBIL PRODUCING NIG. LTD VA LASEPA (2002) 18 NWLR. In the cause of this trial the Respondent was correctly notified of the existence of the matter but failed to file anything despite the several adjournment on the instant of the Respondent. The Court is left with no option than to allow the parties to proceed and proof her case. As can be seen from the record of the Court. The petitioner having adopted her witness statement on oath she went further and elaborately exhausted her case by unchallengeable evidence to the satisfactorily of the Court based on the principle of balance of probability. In the cause of the trial the petitioner told the Court how the marriage was conducted. The copy of the marriage certificate issued at Abuja Municipal Area Council (AMAC) Marriage Registry dated the 4th June, 2013 was received in evidence and marked as exhibit 1. I had at the beginning of the judgment stated the claim/prayer of the petitioner. Similarly I had also stated that the Respondent despite the service of the petition same did not file any reply answer to the petition nor adduce evidence in order to challenge the evidence adduced by the petitioner in her adopted witness statement on oath and the trial

Court is in such circumstances entitle to or is **at liberty to act on the petitioner's unchallenged evidence.** See **TANAWEWA NIG. LTD VS ARZE (2005) 4 NWLR (pt 119) 593 -636 C.F, OMOREGBE VS LAWANI (1980) 3-7 SC 708 AGAGU VS DAWODU (1998) NWLR (pt 160) 161 at 170** from the above general principle of law I am fully satisfied that the petitioner have prove or establish her case based on the balance of probability. The sole relief prayed for is hereby granted. The marriage between the petitioner and the Respondent is hereby dissolved.

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)
3/02/2022**

Appearance

L.H Abati:- Holding the brief of Abdulkarim A. Ibrahim for the
Petitioner.

**Sign
Judge
3/2/2022**