

**IN THE HIGH COURT OF JUSTICE**  
**IN THE FEDERAL CAPITAL TERRITORY, ABUJA**  
**HOLDEN AT ZONE 2, ABUJA**  
**ON MONDAY, 10<sup>th</sup> DAY OF MAY, 2022**  
**BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME**

**SUIT NO.FCT/HC/PET/537/2021**

**BETWEEN:**

**ONYANTA JOY ENDELEY**

**PETITIONER**

**AND**

**HERBERT DIPIRI ENDELEY**

**RESPONDENT**

**JUDGMENT**

The Petitioner, Onyanta Joy Endeley, commenced divorce proceedings against her husband, Herbert Dipiri Endeley, the Respondent, by a Petition filed on the 17<sup>th</sup> day of December 2021, seeking the following reliefs:

- a. A decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably and the Petitioner cannot reasonably be expected to live with the Respondent.

The case of the Petitioner in brief is that since the marriage, the Respondent has behaved in such a way that she cannot reasonably be expected to live with the Respondent. The Respondent is vicious and a habitual drunkard. The Respondent has an uncontrollable habit of nagging, harassment, maltreatment, cruelty, hostility and being disrespectful to her. That throughout the cohabitation, the Respondent conducted himself with grave lack of consideration for her and ensured that the atmosphere in their home was that of constant hostility and tension, a situation that caused her mental anguish and has affected her blood pressure. That during the period of their cohabitation, it was discovered that the

Respondent has a low sperm count and not capable of impregnating her. She took the Respondent to the Hospital to seek medical solutions to the issue of his impotency but the Respondent willfully and persistently refused to take medications as he had vowed never to stop taking alcohol.

That the Respondent on various occasions, abused, lashed and called her all manner of names and also said to her that he was no longer interested in the marital relationship between him and her. In further demonstration of his lack of interest in the marriage, he stopped her from entering their matrimonial home in Calabar and ceased communication with her.

That the Respondent failed and refused to perform his marital responsibilities to her since January, 2020 and has not provided any support or upkeep for her since January, 2020,

That she has paid and continues to pay for her upkeep and rent of the house/apartment at Plot 1221, Off Chelsea Chibuzor Street, Gishiri, Katampe Extension, Abuja from 2020 till date.

That the Respondent is in the habit of soliciting for loans from money lenders and uses it to gamble and drink alcohol and has failed to pay back. Money lenders have on many occasions called and threatened her to pay up the Respondent's debt or they will publish the family name in the newspaper.

That she has made several entreaties to the Respondent to change his ways and actions but all her efforts have proved abortive.

That she has continued to suffer emotional and psychological abuse from the Respondent.

That the Respondent has acted in a wicked and selfish manner to her. The Respondent has behaved in such a way that she cannot reasonably be expected to continue the marriage with the Respondent.

The respondent to this suit did not file a reply to the petition. On the day of hearing, Counsel to the Respondent informed the court as follows;

“My client is not opposing the petition”

During trial, the petitioner tendered the certificate of marriage, which was admitted in evidence as Exhibit 1.

The respondent’s counsel having stated that he was not cross-examining the petitioner was therefore foreclosed from cross-examining her.

The pertinent question I consider germane to this suit is, **‘has the claimant established her case to entitle her to judgment?’**

Section 15(1) of the Matrimonial Causes Act set out only one ground for divorce or dissolution of marriage. By the said Section 15(1) of the Matrimonial Causes Act, either party to the marriage may petition for divorce “Upon the ground that the marriage has broken down irretrievably”. Section 15(2) states as follows: The court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner 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 petitioner 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 three years immediately preceding the presentation of the petition;
- (g) that the other party to the marriage has, for a period of not less than one year 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 petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.
- (i) In the instant suit, the petitioner aversthat since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

The petitioner's petition is in line with section 15(2)(c) of the Matrimonial Causes Act M7 Laws of the Federation of Nigeria 2004.

It is a well established principle in law that he who asserts must prove, see *Amah v Amah* (2016) LPELR-41087(CA) where it was stated thus: "The law is trite that under our adversarial system of jurisprudence and the law of evidence by sections 131(1) and (2), 132 and 133(1) Evidence Act, 2011 in particular; the burden of proving a particular fact is upon the party who asserts it and who would fail if no evidence is called on either side regard being had to the presumptions which might arise from the pleadings of the parties. It is also the law that the onus is not static as same oscillates back and forth on the pleadings until it rests on the party against whom judgment would be given if no further evidence were adduced before the court.

In the suit at hand, the assertions of the petitioner were not challenged by the Respondent, rather the respondent through his counsel stated categorically that he was not opposed to the Petitioner's petition nor her prayers.

The law is trite on uncontroverted evidence; it was held thus in ***Stanley K.C Okonkwo v Anthony Ezeonu & Ors (2017) LPELR-42785(CA)***, "The law is settled that the onus is on the

*plaintiff to prove his case with cogent and credible evidence. Where a defendant fails to file a defence or lead evidence to rebut or challenge the evidence led by the plaintiff, the onus on the plaintiff is discharged on a minimal proof". ..... "The law is trite that where the affidavit of a party remains uncontroverted or unchallenged, the facts deposed to in the affidavit are deemed admitted by the adversary who had the opportunity but failed to file a counter affidavit to controvert the facts." Per Bolaji-Yusuff, JCA (P.7, paras. C-F)*

I am satisfied that the Petitioner has been able to prove her case to entitle her to judgment in this suit; her depositions having remained uncontroverted and unchallenged.

The Petitioner and Respondent being in agreement in respect of this petition, I hereby make the following declarations and orders:

1. It is hereby declared that the Marriage celebrated between Mr HERBERT DIPIRI ENDELEY and Mrs ONYANTA JOY at the Calabar marriage registry on the 24<sup>th</sup> day of May, 2016 has broken down irretrievably and a Decree Nisi is made.
2. The Decree Nisi made herein shall become absolute at the expiration of 3 months from the date hereof.

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**HON. JUSTICE NJIDEKA K. NWOSU-IHEME  
[JUDGE]**

**Appearance of Counsel:**

1. K. A. AJUNWA for the petitioner
2. Respondent absent and unrepresented