

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

**ON THURSDAY, 14<sup>TH</sup> DAY OF JULY, 2022**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/PET/349/2021**

**BETWEEN**

**MRS. ESTHER NKIRUKA ADEBAYO                    ---                    PETITIONER**

**AND**

**MR. ADEBAYO GABRIEL IDOWU                    ---                    RESPONDENT**

**JUDGMENT**

The petitioner filed her Notice of Petition for dissolution of marriage on 14/9/2021. The petitioner seeks the following reliefs:

- a) A decree of dissolution of the marriage between the petitioner and the respondent on the ground that the marriage has broken down irretrievably in that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him or be his wife any longer.
- b) An order granting custody of the only child of the marriage named Beauty Adebayo to the petitioner.

In proof of the petition, the petitioner testified as the PW1. She adopted her statement on oath filed on 14/9/2021 and tendered Exhibits 1, 2 & 3. The respondent did not attend Court in spite of the hearing notices served on him.

The evidence of the petitioner is that as a spinster, she became lawfully married to the respondent, then a bachelor, and the marriage was celebrated at Federal Marriage Registry, FCT, Abuja on 28/3/2012; a certificate of marriage [Exhibit 1] was issued to them. Immediately after celebration of the marriage, she moved into the matrimonial home with the respondent which produced one child named Beauty Adebayo. Sometime in 2013, the respondent started coming home late and drunk. She tried to talk to him. She also reported him to family and the church to advise him, but he did not heed the advice.

The respondent's brother, Mr. Sunday Idowu, started threatening her because she complained to them about the attitude of the respondent. As a result, she filed a complaint at the Nyanya Division of the Nigeria Police on 13/9/2014; the complaint is Exhibit 2.

The respondent started beating her as a result of his drunken attitude and she reported to family and the church but this did not stop the beating and drinking. On 11/12/2013, he was forced to write an undertaking that he will not beat her anymore and that he will carry out his responsibilities as a

husband. The undertaking dated 11/12/2013 is Exhibit 3. His behaviour did not stop; he continued with the drinking and beating.

Sometime in September 2014, she returned from work and noticed that the respondent was gone. She tried to reach him on phone and even called family and friends but no one had any valuable information about his whereabouts. She looked for the respondent for several years but he was nowhere to be found until recently [6 years after] when she saw him in a shopping mall and he appeared to have moved on with his life. She and their daughter have not set their eyes on the respondent since he left the matrimonial home sometime in 2014 until recently.

The petitioner further testified that she has been the person taking care of their daughter since 2014 till date. The behaviour of the respondent towards her and their daughter has caused her untold hardship and psychological trauma. She finds it intolerable and unbearable to continue to remain his wife on paper. They have lived apart for a continuous period of 6 years immediately preceding the presentation of this petition.

On 6/7/2022, the respondent wrote a letter to the Court titled: *Letter of Consent for Dissolution of Marriage Relationship*. The letter reads:

*Please the above subject matter refers.*

*I hereby wish to give consent for the dissolution of the marriage relationship between myself and Mrs. Esther NkirukaChukwuka as requested by her.*

*We have since been separated since the 10<sup>th</sup> day of September, 2014. We have lived apart for a continuous period of about eight [8] years immediately preceding the presentation of the petition and I do not object to a decree being granted.*

*Moreover, my present engagement will not allow me to appear at the hearing as scheduled.*

In the petitioner's written address filed on 13/7/2022, Arongs Best Esq., learned counsel for the petitioner, cited the cases of **Okoye &Ors. v. Nwankwo [2014] LPELR-23172 [SC]** and **Nduul v. Wayo&Ors. [2018] LPELR-4515 [SC]** to support the principle that the burden of proof is on the person who asserts a fact. He submitted that the petitioner has discharged the burden of proof on her and is therefore entitled to the reliefs sought in the petition. He pointed out that the respondent did not appear in Court to cross examine the petitioner despite service of hearing notices on him. The effect is that the testimony of the petitioner remains unchallenged and the Court can act on it.

Now, section15[1] & [2][c] & [f] of the Matrimonial Causes Act provide:

*[1] A petition under this 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.*

*[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 petitioner satisfies the court of one or more of the following facts:*

*[c] that since the marriage the respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with the respondent.*

*[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.*

From the above provisions, the Court shall hold that the marriage between the petitioner and respondent has broken down irretrievably once the petitioner satisfies it of one of the facts in section 15[2][a]-[h] of the Matrimonial Causes Act. The unchallenged evidence of the petitioner is that she and the respondent have lived apart since September 2014 till 19/9/2021 when she filed the petition. In his letter of consent, the respondent confirmed that he and the petitioner have lived apart since 10/9/2014. This means that they have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition.

The Court is also of the view that the petitioner has adduced evidence to prove that since the marriage, the respondent has behaved in such a way that she cannot reasonably be expected to live with him. The petitioner gave

evidence that the respondent started coming home drunk and was beating her. The Court is of the view that cruelty or violence is a fact upon which the Court can hold that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him.

From the foregoing, the decision of the Court is that the petitioner has satisfied it of the facts in section 15[2][c] & [f] of the Matrimonial Causes Act. Thus, the Court holds that the marriage between the petitioner and the respondent has broken down irretrievably. Relief 1 is granted.

In relief 2, the petitioner seeks an order granting custody of the child of the marriage, Beauty Adebayo, to her. Section 71[1] of the Matrimonial Causes Act provides:

*In proceedings with respect to custody, guardianship, welfare, advancement or education of children of a marriage, the court shall regard the interests of those children as the paramount consideration; and subject thereto, the court may make such order in respect of those matters as it thinks proper.*

The position of the law is that in deciding which of the parties is to have custody of the child of the marriage, the interest of the child is the paramount consideration. The unchallenged evidence of the petitioner is that she has been taking care of the child since 2014 till date. I hold that this relief has merit. In granting this order, the Court has taken into consideration the fact

that the said child is entitled to stay where she chooses upon attaining the age of 18 years.

In conclusion, the petition succeeds. Th Court grants the following orders:

1. A decree *nisi* for the dissolution of the marriage between the petitioner and the respondent celebrated at AMAC Marriage Registry, Abuja on 28/3/2012. The decree *nisi* shall become absolute after three [3] months from today.
2. The petitioner shall have custody of the child of the marriage namely, Beauty Adebayo until she attains the age of 18 years. For the avoidance of doubt, Beauty Adebayo shall be at liberty to decide where to stay upon attaining the age of 18 years.

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HON. JUSTICE S. C. ORIJ  
[JUDGE]

*Appearance of Counsel:*

Arongs Best Esq. for the petitioner.

