

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 23rd OF SEPTEMBER, 2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

SUIT NO : FCT/HC/PET/600/20

BETWEEN

MIRIAM BISOLA BADMUS SHAWON.....PETITIONER

AND

ABRAHAM AONDOHEMBA SHAWON.....RESPONDENT

JUDGEMENT

By notice of petition dated 3rd December, 2020 and filed on the same day, the Petitioner herein commenced the suit against the Respondent.

In the petition the petitioner seeks the following relief:

- a. A decree of dissolution of marriage on the ground that the marriage has broken down irretrievably as the respondent has since the marriage:
 - i. Behaved in such a manner that the petitioner cannot be reasonably expected to live with the respondent and
 - ii. Lived apart from petitioner for a continuous period of 4 years preceding the presentation of this petition.
 - iii. The respondent wilfully deserted the petitioner and the only child of the marriage.
- b. An order directing that the custody of the only child in the marriage to remain with the petitioner.
- c. An order that the respondent to pay the school fees of the only child of the marriage, such amount required by her school.
- d. An order directing the respondent to make a monthly payment of the sum of twenty thousand naira only (N20,000) to the petitioner for the upkeep of the two children of the marriage which includes feeding, clothing and medications.

The petition is supported by a 5 paragraph affidavit deposed to by Miriam Bisola Badmus Shawon, the Petitioner.

The Respondent was served the court processes and was present though not represented by counsel in the course of hearing. He did not file anything in opposition to the petition.

The matter went on trial and the Petitioner testified as PW1 and was cross examined by respondent. A certified true copy of Marriage Certificate dated 5th December, 2015 was tendered and admitted in evidence as Exhibit A.

The Respondent was in court and was not against the divorce and other claims of the petitioner.

I have considered the Petitioner's case before the court and oral submission of the Petitioner's counsel. I am of the view that the issues for determination is:

- 1. Whether the petitioner has successfully established that the marriage which is subject matter of this Petition has broken down irretrievably*
- 2. Whether the petitioner is entitled to her claims.*

In the Petitioner's witness statement on oath the Petitioner averred that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.

It is trite that for every petition for dissolution of marriage to succeed, the petitioner must plead and prove that the marriage has broken down irretrievably by evidence of facts contained in **section 15(2) (a) to (h) of the Matrimonial Causes Act.**

The evidence of the Petitioner was unchallenged and uncontradicted, thus same ought to be admitted and acted upon by this court.

It is trite law that dissolution of marriage contracted pursuant to our Marriage Law is guided by the Matrimonial Causes Act, 1970. Under the said law, a petition 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. See

MRS. HELEN ANIOKE v. MR. BEN CHARLES ANIOKE (2011) LPELR-3774(CA) (Pp. 34 paras. B) where his lordship Per AKEJU ,J.C.A reasoned as follows:

"Under the Matrimonial Causes Act, a party to a marriage who seeks the dissolution of the marriage can obtain a decree to that effect only where

it proves that a marriage has broken down irretrievably. This is the provision of Section 15 (2) of the Matrimonial Causes Act that:

"A Petition under this decree 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."

Section 15(2)(f) of the Matrimonial Causes Act sets out in detail the facts for dissolution of a marriage where parties have lived apart for three years. It provides thus:

(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.

The law is that a Petitioner for the dissolution of a marriage must prove one of the facts contained in **Section 15(2) of the Matrimonial Causes Act** before such a petition can succeed. Where the Petitioner fails to prove that, the petition for the dissolution of a marriage will be dismissed notwithstanding the fact that the divorce is desired by both parties. – see the case of **AKINBUWA V. AKINBUWA (1998) 7 NWLR PT. 559 P. 661 AT P. 669 PARAS. D-E**. See also **IBRAHIM V. IBRAHIM (SUPRA) AT PP. 7 – 9 PARAS. F – E** and **ORERE V. ORERE (2017) LPELR-42160(CA) AT PP. 12 – 13 PARAS. B – F**.

The grounds upon which the Petitioner has brought her petition is copiously stated on the face of the petition. It is stated there that the marriage between the Petitioner and the Respondent has broken down irretrievably because they lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.

One of the facts which if proved, would convince the court that the marriage has broken down irretrievably is where the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition. See

Section 15(2)(f) of the Matrimonial Causes Act. See also

IBRAHIM V. IBRAHIM (2007) ALL FWLR (PT. 346) 474 AT 491 PARA. G (CA) OR (2006) LPELR- 7670 P 7-9 PARA F-E where the court reasoned as follows:

“Generally, dissolution of marriage contracted pursuant to our marriage law is guided by Matrimonial Causes Act, Cap. 220. Under the said law, a petition 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. See Section 15 of Matrimonial Causes Act. The law also provides for the facts, one or more of which a petitioner must establish before a Court shall hold that a marriage has broken down irretrievably....”

In the instant case, the Petitioner’s oral testimony that she was married to the respondent on 5th December, 2015 under the Marriage Act was neither discredited under cross-examination nor challenged by contrary evidence. The fact is further supported by documentary evidence (Exhibit A) which is the Certified True Copy of the marriage certificate in respect of marriage between the Petitioner and the Respondent. By virtue of section 86 of the Matrimonial Causes Act, proof of marriages shall be by production of either the original or certified copy of marriage certificate.

The unchallenged and credible fact before this Court is further that the Petitioner and the Respondent ceased cohabitation sometime in April, 2016 when the Petitioner moved back to her marital home after she gave birth.

As observed, records show that the petition was presented on the 3rd December, 2020. The petitioner stated that cohabitation ceased sometime in April, 2016 after the birth of their child. Thus the petitioner’s case has been successfully shown to be in line with subsection (2)(f) of section 15 of the Matrimonial Causes Act, which is that the parties to the marriage must have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.

From the facts before this Court therefore, the Petitioner has proved 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. The Petitioner has thus established the fact under **Section 15(2)(f) of the Matrimonial Causes Act**. The Petitioner has therefore convinced this Court that the marriage

between herself and the Respondent contracted on 5th December, 2015 has broken down irretrievably. See:

**OGUNTOYINBO v. OGUNTOYINBO (2017) LPELR-42174(CA) PP 8-14
PARAS E-A**

This court in the circumstance has no option but to grant the relief for dissolution of Marriage sought by the petitioner.

Consequently, it is hereby ordered:

- a. That the marriage had and solemnized on the 5th day of December, 2015 at Federal Marriage Registry, Abuja between the petitioner MIRIAM BISOLA BADMUS SHAWON and the respondent ABRAHAM AONDOHEMBA SHAWON shall be and is hereby dissolved on grounds that the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.
- b. That the custody of the only child in the marriage is to remain with the petitioner.
- c. That the respondent shall pay the school fees of the only child of the marriage, in such amount required by her school.
- d. And The respondent is further ordered to make a monthly payment of the sum of twenty thousand naira only (N20,000) to the petitioner for the upkeep of the child of the marriage which includes feeding, clothing and medications.

Decree Nisi will issue forthwith and shall be made absolute after three months from the date hereof if there be no cause to the contrary.

Signed

Honourable Judge

Representation

B. F Ogundare for Petitioner