

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY
HOLDEN AT ABUJA
ON THURSDAY 14TH DAY OF JULY 2022
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 8 MATAMA – ABUJA**

SUIT NO: PET/402/2021

BETWEEN:

AFOLABI MUTIU JOLAOSO PETITIONER

AND

TEWOGBOLA OLUWATOYOSI
JOLAOSO RESPONDENT

JUDGMENT

Marriage between the Petitioner and Respondent was solemnized at the ***Federal Marriage Registry, Lagos, on 13th January, 2005.*** The marriage is blessed with two children.

However, the Petitioner presented the instant Petition before this Court on 07/10/2021, on the ground that the marriage has broken down irretrievably in that both parties of the marriage had lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the Petition.

Specifically, the Petitioner prayed this Court for the reliefs set out as follows:

- 1. An order of Decree Nisi for the dissolution of the marriage between the Petitioner and the Respondent on the ground that the marriage has for a period of over 3 years.***
- 2. Joint Custody and maintenance of the said 2 Children of the marriage as proposed in paragraph A, B, C, and D.***

The Respondent was never present throughout the proceedings; she was neither represented by counsel nor file any processes.

The Petitioner testified in line with facts pleaded in the Petition. He tendered in evidence as **Exhibit P1**, certified true copy of marriage certificate issued to him and the Respondent upon the solemnization of the marriage between them at the *Federal Marriage Registry, Lagos, on 13th January, 2005*. The Petitioner testified, crucially, that cohabitation between her and the Respondent ceased sometime in January, 2013.

The Petitioner further testified that her marriage to the Respondent is blessed with two children, namely **Oluwatumininu Jolaoso (female)**, born on **22/10/2006**; and **Afolabi T Jolaoso (male)**, born on **09/07/2008**.

The Petitioner also testified that since cohabitation seized between the Petitioner and Respondent, the two children had continued to live with the Respondent and that he, the Petitioner, has been responsible for their education, upkeep and welfare.

As earlier mentioned, the Respondent did not show up or file any processes.

Firstly, the fact of marriage of the two parties in accordance with the provisions of **s. 24** of the **Marriage Act** is not in dispute. The Petitioner clearly established this fact by tendering in evidence as **Exhibit P1**, copy of the Certificate of Marriage issued to the parties upon the celebration of the said marriage at the *Federal Marriage Registry, Lagos*, on **13 January, 2005**.

By the provision of **section 15(1)** of the **Matrimonial Causes Act**, there is only one ground upon which a

party may present a Petition for dissolution of marriage; which is that the marriage has broken down irretrievably. See Hamman Vs. Hamman [1989] 5 NWLR (Pt. 119) 6; Anagbado Vs. Anagbado [1992] 1 NWLR (Pt. 216) 207.

The provision of **section 15(2)(a) - (h)** of the **Act** further sets out the various facts upon which the Court could hold that a marriage has broken down irretrievably. A Petitioner need only to establish any one of those facts as set out in **section 15(2) (a) - (h)** of the **MCA**, in order to prove that the marriage has broken down irretrievably. See also Nanna Vs. Nanna [2006] 3 NWLR (Pt. 966) 1.

Counsel to the Petitioner further submitted that the uncontroverted evidence of the Petitioner on record establishes the Petitioners case that marriage between the parties have broken down irretrievably,

parties haven't lived apart for a period of over three years immediately preceding the presentation of this petition.

Learned counsel therefore urged the Court, on that ground, to dissolve the marriage.

From the evidence on record, the petitioner established that both the Petitioner and Respondent lived together at No. 43 Da Silva Street, Oko Oba, Agege, Lagos between 2005 and 2007, after which the parties moved to the United States and cohabited at No. 20 Einstein Loop, Brinx New York, until 2013.

The Petitioner has also established that both himself and the Respondent ceased cohabitation since **January, 2013**, and have lived apart since then. The Petitioner has therefore satisfied the provisions of **s. 15(2)(f) of MCA**, as he has established that both

himself and the Respondent have lived apart for a period exceeding three years.

On the basis of the evidence on record therefore, the Court hereby holds that the Petitioner has satisfactorily established that the marriage between her and the Respondent had broken down irretrievably, in that parties had lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the instant Petition.

With respect to the issue of custody of the children of the marriage, the uncontroverted evidence before the Court is that, while the Children live with the Respondent, the Petitioner has been financially and morally responsible for their education, upkeep and welfare since the Petitioner and Respondent began to live apart.

The provisions of s. 71 of the **Matrimonial Causes Act** gives the Court wide discretionary powers to make orders as it thinks appropriate, with respect to the custody of the children, as the circumstances of every case dictate. The paramount consideration however, being the interests of the children, particularly as relating to their welfare, education and advancement.

The principles governing grant of custody of a child in matrimonial causes have been well laid out in a long line of judicial authorities from time immemorial. See Lafun vs. Lafun [1967] NMLR 401; Afonja Vs. Afonja [1971] UILR 105; Williams Vs. Williams [1987] 2 NWLR (Pt. 54) 66; Odogwu Vs. Odogwu [1992] 2 NWLR (Pt. 225) 539; Alabi Vs. Alabi [2007] 9 NWLR (Pt. 1039) 297.


In the instant petition and on the basis of the unchallenged evidence on record, the Court is satisfied that both parties are entitled to joint custody of the children. The two children of the marriage shall continue to live with the Respondent while the Petitioner shall be responsible for the education, welfare, upkeep advancement of the children.

In the final analysis, I have been mindful of the injunction that Courts, where the circumstances are appropriate, should grant a Petitioner's decree for dissolution of marriage as painlessly as possible. In the present case, this is a solemn duty that this Court must, of necessity, carry out. Having therefore come to the regrettable but inevitable conclusion that the marriage between the Petitioner and the Respondent has broken down irretrievably, I hereby grant decree *nisi*, dissolving the marriage celebrated

between the Petitioner and the Respondent, in accordance with the **Marriage Act**, at the **Federal Marriage Registry, Lagos, on 13th January, 2005**. Provided that, pursuant to the provision of s. **58(1)(a)(i)** of the **Matrimonial Causes Act**, the decree *nisi* made hereby shall become absolute after **three (3) months** from today.

I further grant to the Petitioner and Respondent, jointcustody of the two children of the marriage, namely, **OluwatumininuJolaoso(female)**, born on **22/10/2006**; and **Afolabi T Jolaoso(male)**, born on **9/07/2008**, until they reach the age of adulthood; with the Respondent having physical custody of the children while the Petitioner will continue to be responsible for their feeding, education, medical care and their general upkeep, until they attain adulthood.

There shall be no orders as to maintenance and costs.


OLUKAYODE A. ADENIYI
(Presiding Judge)
14/07/2022

Legal representation:

Femi Adedeji, Esq. –for the Petitioner