

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/PET/341/2020

DATE: 20/9/2022

BETWEEN:

EZEH VICTOR UCHECHUKWU.....PETITIONER

AND

1. EZEH CHINENYE.....RESPONDENT

2. KAYODE BAMIDELE.....CO-RESPONDENT

APPEARANCES:

O. C. Chukwuma Esq for the Petitioner
Petitioner in Court.

Respondent absent and unrepresented

JUDGMENT

The Petitioner filed this Petition on the 18th day of July, 2020, seeking the following Orders/Reliefs:-

“(A). A DECREE of dissolution of marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably.

“(B). Custody of the two children of the marriage.”

But subsequently amended the petition filed on 23th October 2021 seeking same reliefs as above. The Petition which was settled by F.O.C Uzogwu Esq, legal practitioner for the Petitioner, is supported by the Petitioner's 4 paragraphed Affidavit sworn to on the 10th day of July, 2020.

Upon being served with the Notice of Petition, the 1st Respondent/Cross Petitioner filed an Answer to the Petition and Cross- Petition on 30th June 2021.

In response, the Petitioner filed an Answer to the Cross- Petition on 13th October, 2021. The Respondent and Co-Respondent were duly served with the Notice of Petition.

At trial, the Petitioner testified as Pw1 and tendered the original marriage certificate of the parties. Same was admitted in evidence and marked as Exhibit A.

In his testimony before the Court, Pw1 informed the Court that he got married to the 1st Respondent, on June 8th, 2008 at the AMAC Registry Abuja.

However, Pw1 stated that initially the married couple were living happily, but he later heard complaints that his wife, the 1st Respondent was double dating. He said he complained about this to their church leaders who advised her by using the Bible.

He said that he opened a boutique for his wife. But, that on several occasions when he goes there to visit her, her car will be parked there but she will not be around and when he calls her on the phone, she will not answer.

Pw1 informed the Court that the marriage produced two children a boy and a girl, Unachi Jefta Eze and Chimamanda Pearl Eze, and they are currently living with his mother.

According to Pw1 on the 17th of December, 2019 when his car broked down, he decided to take it to the mechanics for repair. That same day at around 6, O'clock he took a taxi to go and pick the car, when he suddenly spotted his wife (the Respondent) entering into a parked taxi and leaving

her own car parked. Pw1 said, he decided to follow her in his taxi. He informed the Court that when he followed his wife and they reached Kaduna roundabout, he saw his wife entering the house of one Barrister Kayode Bamidele, a man.

According to the witness, he decided to continue following his wife and the said Barrister Kayode Bamidele (the Co-Respondent) until they diverted to the last gate in Kubwa and entered a Hotel. He said within a short time, they came out and drove out and he followed them. That when the taxi driver started complaining he didn't want to follow them again, Pw1 said he snapped the picture of the hotel in Kubwa, got off the taxi, took Okada to follow them, but missed their whereabouts. He said he immediately called the Respondent about 10 times but she refused to pick his calls as usual. So, he decided to report the matter to Church members and told them what he saw. He said they asked him where he was but he couldn't talk because he said "my belle don turn to water."

So, Pw1 said that the Church members met him later at their home and they all decided to wait for the Respondent who later arrived there at about 9, O'clock.

Pw1 said initially when he confronted the Respondent about what happened, she denied but later when he narrated the scenario to her he said she accepted in the presence of two elders of the Church one Mr. Kelechi Eke and Mr. Bright Dingba, and his Pw1's sister one Miss. Joy Eze.

According to Pw1, he decided to report the matter to his brother-in-law, a Commissioner of Police who informed him that he is not the first Complainant against the Co-Respondent Mr. Bamidele, neither will he be the last, and advised him to refer the matter to the Parish Priest. That the Parish Priest agreed he knew Mr. Kayode Bamidele and offered to talk to him.

Pw1 said that, the Co-Respondent met him, his sister, the Parish Priest, his friend one Mr. Celestine and Mr. Dingba and actually confessed to them that he had slept with Pw1's wife, the Respondent and even asked Pw1 to forgive him.

According to Pw1 he said the Co-Respondent actually knew him and lived in their neighbourhood. That, even though he knew the Respondent was

Pw1's wife he still had the guts to sleep with her. Pw1 said he decided to end the marriage because of the incident.

He prayed the Court to dissolve the marriage and grant him custody of the two children of the marriage.

On her own part, the Respondent although represented in Court and even appeared in person, initially filed a Notice of Preliminary Objection which was later withdrawn and struck out upon application by the learned Respondent's Counsel on 14th October, 2021.

However, pursuant to a mandatory conference, parties reached terms of settlement on custody and maintenance of the children of the marriage filed on 8th December, 2021. Same was duly executed, adopted by the parties and this Honourable Court entered it as part of the judgment of the Court in this Petition on 9th June, 2022.

On the issue of the Petition for dissolution of the marriage, the matter was severally adjourned for cross examination and later for defence. But, on failure of the Respondent to appear and upon application by the learned Counsel to the Petitioner, right of cross-examination as well as defence were foreclosed. The matter was then adjourned for judgment.

Now, under and by virtue of Section 15(2) of the Matrimonial Causes Act, Cap M8 LFN, 2004, a Court hearing a Petition for dissolution of marriage shall hold the marriage to have broken down irretrievably, if and only if, the Petitioner satisfies the Court of at least one of the grounds enumerated under Section 15(2)(a) – (h), therefore.

On this premise, I refer to the cases of **IKE V IKE & ANOR (2018) LPELR-44782 (CA) per EKPE, J. C. A** at pages 10-16, paragraphs C-A where the Court held as follows:-

“For a Petition for the Dissolution of marriage to succeed, the Petitioner has to prove at least one of the ingredients contained in Section 15 (2) of the Matrimonial Causes Act, even if the divorce is desired by both parties”.

See also the cases of **IBRAHIM V IBRAHIM (2007)1 NWLR PT 1015 @ (Pg. 405 Paras F-H); BIBILARI V BIBILARI (2011) LPELR – 4443, (SC) per Galinje JSC, at PP: 33-34.**

Now, in the instant case, we have two Respondents, the 1st Respondent being the wife of the Petitioner, while the 2nd Respondent is Co-Respondent alleged to have had extra-marital affairs with the Respondent herein.

Now, although the Respondent has filed processes in response to this Petition, the Co-Respondent did not file anything in response to the Petition and has never appeared in the matter, nor was he represented throughout the trial.

I have carefully looked at the Respondent's answer to the Cross- Petition. And although the Respondent in her paragraph 6 denied committing adultery with the Co-Respondent or any other man, she did admit in ground 3 of her Cross- Petition that the marriage herein has broken down irretrievably.

Furthermore, since the Respondent had the opportunity of cross-examining Pw1 and failed to do so and also to enter her defence, the implication is that the evidence presented by the Petitioner and the allegation against the Respondent and Co-Respondent of having committed adultery, is unchallenged and uncontroverted.

On the effect of unchallenged and uncontroverted evidence, I refer to the cases of ***EKEREBE V EKEREBE (1999) 3 NWLR (Pt. 596) CA, Pg. 525, A – B; GARBA V ZARIA (2005) ALL FWLR (Pt. 283) 25 (CA) P. 35 -36, G-B as well as the case of OYETAYO V MOSOSO (1997) 10 NWLR (Pt. 526) 627.***

Moreso, adultery is one of the grounds for dissolution of a marriage under Section 15(2)(b) of the Matrimonial Causes Act (supra).

The section provides thus:-

15(2)(b):

“That since the marriage the Respondent has committed adultery and the Petitioner finds it intolerable to live the Respondent.”

According to Pw1 both the Respondent and Co-Respondent had confessed to have committed adultery. Thus, this is one of the criteria of proving adultery i.e by confession and admission of adultery as in the instant case.

I refer to the case of ***IBEABUCHI V IBEABUCHI (2016) LPELR-41268 (CA) per ABIRU JCA @ PP. 32-33, Paras F –C.***

In all, the Court is of the firm view that from the overwhelming evidence adduced by the Petitioner, which is unchallenged and uncontroverted, the Petitioner has successfully proved his case on the preponderance of evidence. Thus, the Court is satisfied that the marriage between the Petitioner and the Respondent has indeed broken down irretrievably.

Parties having settled the issue of custody and maintenance of the children of the marriage as per Terms filed on 8th December, 2021, forming part of the judgment of this Court, this Court, hereby grants a Decree Nisi dissolving the marriage between the Petitioner EZEH VICTOR UCHECHUKWU and the Respondent CHINENYE EZEH celebrated at the AMAC Registry, Abuja, FCT on the 20th day of June, 2008. The decree shall become absolute if nothing intervenes within a period of three months from this date.

The Petitioner/Cross Respondent shall have custody of the two children of the marriage, and shall be responsible for their education, maintenance, medical care and overall upkeep.

The Respondent/Cross Petitioner shall have access to the children at reasonable times agreed upon by the parties pursuant to the terms duly executed and adopted by the parties, forming part of the Judgment of this Court.

Finally, the Petitioner/Cross Respondent shall settle the Respondent/Cross Petitioner as agreed with the sum of **(N1,000,000.00) one Million Naira** only.

Signed:

***Hon. Justice S. U. Bature
20/9/2022.***