

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/105/2018
DATE: 27/9/2022

BETWEEN:

PROFESSOR IKECHI E. K. MBA.....PETITIONER

AND

DR. (MRS) EBELE TINA MBA (NEE AJAEGBU).....RESPONDENT

APPEARANCES:

Nonye Enwezo Esq for the Petitioner
Respondent absent and unrepresented.

JUDGMENT

The Petitioner filed this Petition on the 5th day of February, 2018 seeking for the following Orders/Reliefs:-

“(1). A decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably from the parties having lived apart for a continuous period of more than three (3) years.”

The Petitioner subsequently amended the Petition filed on 24th February, 2021 seeking for same reliefs as above. The Petition which was settled by Anozie Obinnaya Obi Esq Legal Practitioner for the Petitioner, is supported by a 5 paragraphed affidavit sworn to on the 24th February, 2021.

On the other hand, the Respondent upon being served with the Notice of Petition, filed an Answer to Petition for the dissolution of marriage on 10th of December, 2018.

Also, the Petitioner filed a reply to the Answer for dissolution of marriage on 21st day of May, 2019.

At the trial on 24th day of February, 2021 the Petitioner testified as Pw1, adopted his Witness Statement on Oath dated and filed 24th day of February, 2021 and tendered in evidence the following documents:

1. A copy of marriage certificate marked as Exhibit A.
2. A certified true copy of the Order striking out a previous suit between the Petitioner and Respondent marked as Exhibit B.

Pw1 was accordingly cross-examined by the Respondent's Counsel and the Petitioner closed his case.

The matter was thereafter adjourned to the 13th of April, 2021. The matter came up for defence on the 7th of July, 2021 but the Respondent's Counsel informed the Court that she was not ready. The matter came up on the 28th of October, 2022 but the Counsel to the Respondent brought a motion to withdraw its legal representation of the Respondent. The motion was granted on the 8th of November, 2022 and the matter was once again adjourned to the 1st of February, 2022 for defence. The Respondent was absent and unrepresented on that day. The Petitioner brought a Motion Ex-parte to serve a hearing notice on the Respondent at her place of work and it was granted. The matter came up for defence on the 26th of May, 2022 and the Respondent was unrepresented and absent despite being served with a Hearing Notice. She was foreclosed and therefore did not lead any evidence.

Consequently, the matter was adjourned to 4th day of July, 2022 for adoption of final Written Addresses.

Addressing the Court on 4th day of July 2022, learned Counsel to the Petitioner Anozie Obi (Mni) Esq, adopted their final Written Address dated

the 6th day of June, 2022 and filed 7th day of June, 2022 and urged the Court to hold in favour of the Petitioner.

In the said Written Address, learned Petitioner's Counsel formulated a lone issue for determine to wit:-

“Whether in the light of the pleadings and evidence led in the case, the Petitioner is not entitled to the Order of Dissolution of marriage sought.”

In arguing the issue, learned Counsel stated that the ground upon which this Petition was premised is that the marriage has broken down irretrievably.

Counsel referred the Court to paragraph 5(1) 6 of the Amended Petition for the dissolution of marriage and stated that the Respondent admitted by her pleading that cohabitation ceased in 2011. To this extent, Counsel submitted that the law is trite that whatever is admitted needs not be proved. Reliance was placed on the cases of ***AKPAK V UBN PLC (2009) LPELR-4992 (CA); NWABUOKU V OTTI (1961) 1 ANLR 487; OBI OBEMBE V WEMABOD ESTATES LTD (1977) 5 SC 115 at 648.***

Consequently, Counsel urged the Court to grant the Petition upon the admission of the Respondent that parties had lived apart for a period of more than three years immediately preceding the presentation of the Petition. Reference was made to Section 15(2) of the Matrimonial Causes Act Cap M7 Laws of the Federation 2004.

To this extent, it is the contention of the learned Counsel that the Petitioner effectively discharged the burden of proof placed on him by Sections 133 and 134 of the Evidence Act 2011 to prove that parties had lived apart for at least three years immediately preceding the presentation of the Petition. Counsel referred the Court to paragraphs 6, 7 and 8 of the Pw1 Statement on Oath.

Also cited in support are the cases of ***F.A.T.B LIMITED V MARTNERSHIP INVESTMENT CO. LIMITED (2004) FWLR (Pt.192) 167 at 197SC; MATOH V ADMIRAL ENVIRONMENT CARE (2015) LPELR-25905 (CA); AFRICAN PETROLEUM PLC V SOYEMI (2008) ALL FWLR (Pt.397) P. 117.***

In the circumstance, the learned Petitioner's Counsel submitted that the burden of proof has shifted to the Respondent to lead evidence to the contrary which the Respondent failed to do and the Petitioner's evidence stood unchallenged. Therefore, Counsel urged the Court to resolve the Petition in favour of the Petitioner.

To this end, Counsel referred the Court to the cases of **JODA V JODA (2000) 1 LHCR (Pt.6) 128; IBE LAMBERTS V IBE LAMBERTS (2001) LHCR (Pt. 13) 48; ANOKA V ANOKA (1973) ECCLR** as well as 210 of FAMILY LAW IN NIGERIA 3RD Edition by E.I. Nwogugu and submitted that this Honourable Court should grant the Petitioner's relief sought.

On the other hand, the Respondent as stated earlier, filed an answer to the Petition, her Counsel cross-examined the Pw1 but neglected to enter defence despite several adjournments to that effect.

Having said this, it is germane to begin by stating that the ground upon which this Petition was predicated is that the marriage between the Petitioner and the Respondent which was celebrated at St. Michael Catholic Church, Asata Enugu on the 8th of August, 1987 has broken down irretrievably, the Petitioner and the Respondent have lived apart for a continuous period of over three years since January, 2011.

In the light of this, the law is settled as encapsulated in Section 15(2) of the Matrimonial Causes Act Cap LFN 2004 that a Court hearing a Petition for dissolution of marriage shall hold that the marriage to have broken down irretrievably, if and only if the Petitioner satisfied the Court of at least one of the grounds listed in Section 15(2) (a-h) thereto.

This position of law was given judicial pronouncement by Court of Appeal in the case 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 **DAMULAK V. DAMULAK (2004) 8 NWLR (Pt. 874) P.151; BAKARE V BAKARE (2010) LPELR-41344 (CA).**

In the instance case, the Petitioner in his testimony as contained in the Statement on Oath particularly paragraphs 6, 7 and 8 deposed which for ease of reference, I will reproduce same hereunder, it reads thus:-

***“Paragraph 6 reads thus: That the cohabitation between the Respondent and I ceased in January 2011 and we have lived apart for a continuous period of more than 3 years.*”**

***Paragraph 7 reads thus: That as a result of our living apart for a continuous period of more than 3 years I sincerely believe that our marriage has broken down irretrievably.*”**

Paragraph 8 reads thus: that it will be in the best interest of both parties that this marriage be dissolved.”

In this respect, I refer to Section 15(2)(f) of the Matrimonial Causes Act Cap M7 LFN 2004 which provides thus:

“....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.”

It should be noted that the evidence of Pw1 is unchallenged and/or uncontroverted as the Respondent though filed an answer to the Petition but did not enter defence or lead any evidence to challenge that of Pw1. To this extend, the law is settled that where evidence is uncontroverted, unchallenged and credible the Court will be left with no option than to accept same. This position of law was re-echoed by the Supreme Court in the case of **NASIR V C.S.C KANO STATE (2010) 10 NWLR (Pt.1190) 253 at 267, Paras C – F** where it was held thus:-

***“Evidence that is relevant to the matter in controversy and has not been challenged or debunked remains good and credible*”**

evidence that may be used in the just determination of a dispute.”

Similarly, it was held in the case of ***NEWBREED ORGANIZATION LTD V ESHOMOSELE (2006) 2 SC (Pt.1) page 136 at 150 that:-***

“The position of the law is that where an adversary fails to adduce evidence to put on the other side of the imaginary scale of justice, a minimum evidence adduced by the other side would suffice to prove its case...”

Furthermore, I have carefully perused the Answer to Petition for the dissolution of the marriage filed by the Respondent, the Respondent admitted the depositions in paragraphs 6, 7 and 8 of the Petition. To that extent, it is trite law that admitted facts need no further proof.

In support of this, I refer to the case of ***OLUMAKINDE BENSON V THE STATE (2018) LPELR-48458 (CA) PP. 42, Paras C per AKINBAMI, J.C.A, where it was held:***

“It is already settled law that any admitted fact or fact not in dispute, or not specifically denied need no further proof and will be deemed established...”

See also the case of ***YARE V NATIONAL SALARIES WAGES AND INCOME COMMISSION (2013) VOL.54 (Pt.1) NSCQR 235 at 250, Para A, and Section 123 Evidence Act 2011.***

In the light of the above, it is my considered opinion that from the totality of evidence adduced by the Pw1 which is unchallenged and uncontroverted, the Petitioner has successfully proved his case on the preponderance of evidence as required by law. I so hold. To that extent therefore, this Honourable Court is satisfied that the marriage between the Petitioner and the Respondent has broken down irretrievably.

In sum, this Honourable Court hereby grant a decree Nisi dissolving the marriage between the Petitioner **Professor Ikechi K. Mba** and the Respondent **Dr. (Mrs) Ebele Tina Mba (Nee Ajaegbu)** celebrated at St.

Michael Catholic Church, Asata Enugu on the 8th of August, 1987. The decree shall become absolute if nothing intervenes within a period of three months from this date.

Signed:

***Hon. Justice S. U. Bature
27/9/2022.***