

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE OF 24TH NOVEMBER, 2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

SUIT NO : FCT/HC/PET/36/16

BETWEEN

MR. HILLIARD ETAGBO ETA.....PETITIONER

AND

MRS. MARY EKPERE ETA.....RESPONDENT

JUDGEMENT

This Petition was originally filed on the 23rd day of November 2016 and subsequently amended on the 30th day of June 2017.

By the amended petition dated 30th June, 2017 and filed on the same day, the Petitioner herein commenced the suit against the Respondent.

In the Petition 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.*
- b. An order of Perpetual Injunction, restraining the Respondent from further insulting, harassing or embarrassing the Petitioner and his family.*

The Petition is supported by a 10 paragraph Affidavit Evidence which the Petitioner adopted as his Witness Statement on oath, dated the 30th day of June 2017 and deposed to by Mr. Hilliard Etagbo Eta, the Petitioner and other accompanying processes.

The Respondent in this matter was served the Court processes but she neither appeared nor was represented by counsel at the proceedings.

The Respondent also did not file an answer or anything in opposition to the Petition.

The matter went on trial and the Petitioner testified as PW1.

A Marriage Certificate dated 18th July, 2014 was tendered and admitted in evidence as Exhibit A.

The Petitioner after his testimony prayed the court to dissolve his marriage and that he intends to abandon the second relief which was for perpetual injunction.

It is worthy to note, that this Petition is unchallenged and the evidence of the Petitioner being uncontroverted thus same ought to be acted upon. The said evidence however must be satisfactory. See the case of **DIKE &ORS V. ADUBA & ANOR (2016) LPELR-41035 CA (Pp 39-40 PARA D) see also the case of OMOTUNDE V .OMOTUNDE (2001) 9 NWLR (PT 718) 252,284.**

Having considered the Petitioner's case before this court and the oral submission of the Petitioner's counsel, I am of the view that the sole issue for determination is:

“Whether the petitioner has successfully established that the marriage which is the subject matter of this petition has broken down irretrievably ”

The Petitioner adopted his Affidavit Evidence as his oral testimony in which he testified that, himself and the Respondent celebrated a statutory marriage evidenced by a marriage certificate (Exhibit A).

Section 86 of the Matrimonial causes Act provides that, proof of Marriage shall be by production of either the original or certified copy of the Marriage Certificate. In this wise therefore, the Petitioner has proved that he is married to the Respondent.

The Petitioner canvassed that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition.

It is trite law that for a petition of 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.**

In the case of GABRIEL OLORUNFEMI PIUS V. BOSEDE PIUS OLORUNFEMI (2020) LPELR-49579 CA (PP 9-10 PARA E-A) the court of Appeal held that:

“I have also restated the legal position that a petition under this Act by a party to a marriage for a decree of dissolution of marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably under Section 15 (2) of the Act. The Court hearing a petition for a decree of dissolution of marriage shall hold that the marriage to have broken down irretrievably if but only if the petitioner satisfied the Court that one or more of the situations set out in Section 15 (2) (a) - (h) of the Act - has occurred”.

See also the cases of **IBRAHIM V. IBRAHIM (2006) LPELR-7670(CA) (PP- 7-9 PARA G-E) and EKANEM V. EKANEM & ANOR (2012) LPELR- 14275 CA (PP 8-10 PARA A-D)**

The facts upon which the Petitioner has brought this Petition as stated on the face of this Petition is that, the Respondent and himself only spent two months together after their Marriage on the 18th Of July 2014 and have been living separately ever since. The Petitioner states that they have lived apart for a period of two years preceding the presentation of this Petition. The law is that, the Marriage maybe dissolved where parties to the Marriage have lived apart for a continuous period of at least 2years immediately preceding the

presentation of the Petition and where the Respondent does not object to a decree being granted. This fact if proved will convince the Court that the Marriage has broken down irretrievably. **See section 15 (2) (e) of the Matrimonial Causes Act.**

In the case of IBRAHIM V. IBRAHIM (2006) LPELR-7670 (CA) PP 23-24 (PARA G-F) the Court of Appeal held that

“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 satisfied the Court that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted.”

*Ordinarily, for the purpose of **Subsection 2(e) of Section 15** above, the parties to a marriage shall be treated as living apart unless they are living with each other in the same household. See; **Section 15(3), Matrimonial Causes Act .***

*In order to establish the fact in **Subsection 2(e) above of Section 15 of the Matrimonial Causes Act** the petitioner is expected to prove the following constituent elements-*

(i) that the parties to the marriage have lived apart;

(ii) for a continuous period of at least two years immediately preceding the presentation of the petition; and

(iii) that the respondent does not object to the decree being granted”.

See also the case of **EZIAKU V. EZIAKU (2018) LPELR 46373 CA.**

It is an established fact that the Petitioner married the Respondent on the 18th day of July 2014. Another undisputed fact is that, parties have lived apart for a period of 2(two) years preceding the presentation of this Petition. Petitioner averred that, after their Marriage on 18th of July 2014, they spent two months together before he moved out of the house sometimes in September 2014. This Petition was initially instituted on the 23rd of November 2016 making it a little more than two years of living apart before the institution of this petition.

From the established facts before the Court, parties have lived apart for a period of two years immediately preceding the presentation of this Petition.

The Respondent, having been served with the Court processes has neither filed an answer nor has she appeared in opposition to this petition. Therefore, it is deemed that the Respondent is not objecting to the grant of the Petition for Dissolution of Marriage.

In conclusion, I find that the marriage contracted between the Petitioner and the respondent on the 18th day of July 2014 has broken down irretrievably and the sole issue for determination is resolved in favour of the Petitioner.

Consequently therefore, the marriage had and solemnized on the 18th of July 2014 at the Marriage Registry of AMAC, between the Petitioner, Mr Hilliard Etagbo Eta, and the Respondent, Mrs Mary Ekpere Eta is hereby dissolved on the ground that, the marriage has broken down irretrievably.

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

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Honourable Justice M. E Anenih

APPEARANCES

Odion Peter Odia Esq and Chukwuka Twese Esq for the Petitioner

Respondents unrepresented