

M IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA
ON THE 30TH OF SEPTEMBER,2022
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E.ANENIH
PRESIDING JUDGE.

PETITION NO: PET/184/2021

BETWEEN

OYINDAMOLA KIKELOMO MARILYN OLUMUYIWA – PETITIONER

AND

ANUOLUWAPO ALEXANDER OLUMUYIWA – RESPONDENT

JUDGEMENT

By notice of Petition dated the 21st day of June 2021 and filed on the same date, the Petitioner herein commenced this suit against the Respondent.

The Petitioner seeks the following reliefs:

1. A Decree of Dissolution of the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably.
2. A Decree of Dissolution of the marriage on the ground that the Petitioner cannot reasonably be expected to live with the behavior of the Respondent and his hostility.
3. That the Petitioner be granted such relief as may be just in the circumstances of the case

The Petition is supported by an 18 paragraph verifying affidavit deposed to by Oyindamola kikelomo Marilyn Olumuyiwa, the Petitioner and other accompanying processes.

The records of this court show that the Respondent was served with court processes but did not appear neither was he represented by a

counsel during the proceeding. The Respondent did not also file a response or anything in opposition to the petition.

The matter went to trial where the Petitioner testified as PW1.

A marriage certificate dated 12th of January 2019 was tendered by her, admitted in evidence and marked as Exhibit A. Counsel to Petitioner adopted his final written address urging the court to dissolve the marriage between the Respondent and the Petitioner as prayed by the Petitioner.

Having considered the Petitioner's case before this Court, as well as the submissions of learned counsel, I shall consider the instant petition under the sole issue formulated by the petitioner's counsel to wit;

“Whether by the state of pleadings and evidence before this court, the Petitioner is entitled to a decree of dissolution of her marriage on the ground that the marriage has irretrievably broken down”

The Petitioner adopted her witness statement on oath as her oral testimony in which she testified that, she 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 the Petitioner has proved that she is married to the Respondent.

She further sufficiently asserts that both the Respondent and herself cohabited at Beyaz Bahcem Sitesi Block A3 Alsancak, North Cyprus between 31st of January, 2019 to the 30th of April 2019. She averred that the Respondent became hot tempered and violent towards her and as a result of the constant domestic violence she became sick and required medical attention. That on getting to the hospital the Respondent connived with the Turkish doctor to administer drugs

meant for cancer patients to her. She further states that as a result of her deteriorating health she decided to return to Nigeria for medical care and stress free recovery. That on her arrival to Nigeria, every attempt to reach the Respondent has failed and even when the Respondent returned to Nigeria in 2020, he has made no attempt to locate her but rather he hides from her. That all attempts to reconcile the parties have since proved abortive and that the marriage has broken down irretrievably.

The law is that, the ground upon which a court may hear a Petition for the Decree of Dissolution of a marriage is that the marriage has broken down irretrievably. See **Section 15(1) & (2) of the Matrimonial Causes Act, 1970** and for a petition for dissolution of marriage to succeed, one of the facts stated in **Section 15(2) (a) to (h) of the Matrimonial Causes Act**, must be proved.

In the case of **EKANEM V. EKANEM & ANOR (2012) LPELR-14275 CA (PP 8-10) PARA A-D**, the Court of Appeal held that, petition for a decree of dissolution of marriage may be presented by either party to the marriage upon the ground that the marriage has broken down irretrievably and the Court will so hold if and only if one of the facts stated in section **15(2)(a) to (h) of the Matrimonial Causes Act** is proved. See also the cases of, **EZIAKU V. EZIAKU (2018) LPELR 46373 CA** and **GABRIEL OLORUNFEMI PIUS V. BOSEDE PIUS OLORUNFEMI (2020) LPELR-49579 CA (Pp 9-10 PARA D)**.

The facts upon which the Petitioner has brought the instant Petition as stated on the face of this petition is that, the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition and that the Respondent has also behaved in such a way that the Petitioner cannot reasonably be expected to live with him. These two facts if proved would convince the court that the marriage has broken down

irretrievably. See Section 15(2) (c) & (d) of the Matrimonial Causes Act.

In the case of **NWANKWO V. NWANKWO (2014) LPELR-24396 CA (PP 24) (PARA E, C – F)** the court held as follows:

“The court hearing a Petition for a decree of dissolution of marriage shall hold that the marriage has broken down irretrievably if but only if the Petitioner satisfies one or more of the facts stated in **section 15(2)(a) to (h) of the Matrimonial Causes Act. Section 15(2) (d)** states that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition. I find it necessary to point out that desertion is the separation of one spouse from the other with an intention on the part of the deserting spouse to permanently bring cohabitation to an end without reasonable cause and without the consent of the other spouse. To constitute desertion therefore, the Petitioner must give credible evidence to prove the following facts

- A. Defacto or physical separation
- B. manifest intention to remain permanently separated
- C. lack of just cause for withdrawal from cohabitation
- D. absence of consent of deserted spouse

In law there are two types of desertion: simple desertion which occurs when a deserting party abandons the matrimonial home or constructive desertion which is when a spouse remains in a home but has abdicated all matrimonial responsibility and by his conduct expelled the other spouse. To prove desertion the guilty

spouse must have intention to remain permanently separated from the other spouse. In that respect desertion remains a matter of fact and law to be determined by the court hearing the petition”.

See also the case of **OGUNJOBI V. OGUNJOBI (2021) LPELR-52894(CA) Pp 33-34 PARA B.**

It is an established fact that the Petitioner married the Respondent on the 12th day of January 2019. Another unchallenged fact before the court is that the Petitioner left their place of cohabitation because her health was deteriorating and needed to come back to Nigeria to be treated properly and that since the Petitioner came back to Nigeria all efforts to communicate with the Respondent has failed. To make matters worse, since the Respondent’s return to Nigeria in 2020 he hides himself from the Petitioner and has made no attempt to locate her. That it is an undisputed fact that, he does not care about her or her welfare.

From the established facts before the Court, it would be right to say that the behavior of the Respondent is a clear sign that he does not wish to resume cohabitation with the Petitioner and wants to remain permanently separated from her. From April 2019 when parties ceased cohabitation and June 2021 when this petition was filed, a period of two years has elapsed which is far beyond the requirement of one year since desertion. Thus the Petitioner has been able to prove the circumstances under which a marriage will be held to have broken down irretrievably as per **section 15(2) (d) of the Matrimonial Causes Act.**

It is worthy of note that the suit before this court is unchallenged and the evidence before this honorable court uncontroverted and thus same is taken to be admitted by the opposing side. See **DIKE & ORS V. ADUBA & ANOR (2016) LPELR-41035 CA (Pp 39-40) PARA D**

The Petitioner has also alleged that since the marriage the Respondent has behaved in such a way that she cannot reasonably be expected to live with the Respondent

See also the case of EKANEM V. EKANEM & ANOR (2012) LPELR-14275 CA (Pp 8-10) PARA E - C.

An unchallenged fact before the court is that the respondent became hot tempered and violent and as a result of the continuing violence the petitioner became sick and in need of medical attention. The Petitioner has alleged domestic violence and threat to life without stating the specific acts that amounted to these conclusions. She has not given details as to the alleged facts before this court to prove that the respondent behaved in such a manner that she cannot be reasonably expected to live with him. She has not stated 'the how', 'the when' and the manner this alleged facts happened.

In the case of **MARTCHEM INDUSTRIES LTD V. MF KENT WEST (2005) LPELR -1842 SC (Pp13) PARA A**, the Supreme Court held that, it is possible that unchallenged evidence may still be insufficient to sustain a plaintiff's claim and where such happens judgment may not be given.

It is safe to say the Petitioner has not been able to prove the existence of facts under **Section 15 (2) (c) of the Matrimonial Causes Act** being that the evidence given is insufficient to sustain the claim and her entitlement to relief number 2 of the Petition. Relief number 2 of the Petition hereby fails and is accordingly discountenanced.

The requirement of the law is that a Petitioner must prove one or more of the facts stated in **section 15(2) (a) to (h) of the Matrimonial Causes Act**. Therefore, the Petitioner having established the facts under **Section 15(2) (d) of the Matrimonial Causes Act** has been able to convince this Court that the marriage between herself and the Respondent contracted on the 12th day of January, 2019 has broken down irretrievably.

Apparently, both parties have lived apart for a continuous period of over two years and there's no indication that the Respondent objects to a grant of the Decree of dissolution.

In conclusion, I find that the marriage contracted between the Petitioner and the respondent on the 12th day of January 2019 has broken down irretrievably and the sole issue for determination is resolved in favour of the Petitioner. Incidentally also, the orders sought by the Petitioner are contemplated in the sole issue for determination.

Consequently therefore, the marriage had and solemnized on the 12th of January 2019 at the Redeemed Christian Church of God, Israel Assembly, Ikeja, Lagos State, between the Petitioner, Oyindamola Kikelomo Marilyn Olumuyiwa, and the Respondent, Anuoluwapo Alexander Olumuyiwa 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.

Signed

.....

Honorable justice M. E. Anenih

Appearances;

J. E. Echikwonye (Ms) for the Petitioner

Respondent unrepresented