

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONUKALU, GODSPOWEREBAHOR&ORS

COURT NO: 6

SUIT NO: FCT/HC/PET/489/2020

BETWEEN:

MR. MICHAEL UGURU SAMUEL OKORAFOR.....PETITIONER

VS

MRS. EZINNE IRENE MICHAEL OKORAFOR.....RESPONDENT

JUDGMENT

By a Notice of Petition dated 8/10/2020 and filed same day, by the Petitioner Mr. Michael Uguru Samuel Okorafor, seeking the reliefs set out in the Paragraph 11 of the Petition as;

A Decree of Dissolution of Marriage on the ground that the marriage has broken down irretrievably as the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

The facts relied on by the Petitioner as constituting grounds for the Petition are those facts contained in Section 15(2) (C) of the Matrimonial Causes Act as gleaned from the pleadings and evidence of the Petitioner.

The Petition and other processes were served on the Respondent on 19/2/2021. On the other hand Respondent did not file an Answer to the

Petitioner, was absent throughout hearing and was not represented by Counsel. The Respondent rather wrote a letter addressed to the Registrar of Court informing the court that she will not be contesting the Petition. The Petition thus proceeded as undefended.

Petitioner testified as PW1 and told the court that the parties got married at Owerri Municipal Council Marriage Registry, Owerri, in January 2017 and were issued a Marriage Certificate which was tendered and admitted in evidence. PW1 informed the court also that it was agreed between the parties that the Respondent will join the Petitioner three (3) months after the marriage, but due to the circumstances surrounding the Visa status of the Petitioner at the time, the Respondent's Visa application was not successful. After a couple of years Petitioner decided to get Respondent admission into school to enable Respondent apply for fresh Visa. Petitioner paid the sum of £3,500.00 as deposit for the process but before then Respondent had started to insult and embarrass the Petitioner and this affected the mental health of the Petitioner. Respondent became aggressive and violent. PW1 narrated a particular incident of the Respondent being arrested on account of her violent act in school and requested that Petitioner send the sum of ₦50,000.00 for her bail.

Petitioner tried to tell the Respondent that what she was wrong but Respondent replied that Petitioner had not seen anything, that she would do it over and over again and ask if Petitioner thought that he married an angel. And that is how she will be giving him trouble until Petitioner take her to United Kingdom (UK).

PW1 stated;

“This time around she became much more abusive calling me all sort of names, fool at 40yrs, coward, useless man etc, that if I fail to take her to U.K that she will not regret any action taken that she has other suitors in marriage. She said that it is because of the money and goods I send every month that would prevent her from moving on with other men. Every year she kept threatening with divorce if I fail to take her to U.K”

PW1 stated further that he came back and called a family meeting to address the situation as the violent conduct of the Respondent became frightening as he became scared. At the meeting Respondent would not apologize but insisted on leaving the marriage. All efforts made by the Petitioner’s family to intervene failed and Respondent continued to threaten the Petitioner to give her divorce and all of these have affected the mental health of the Petitioner. Petitioner informed the court that he wants the court to grant the reliefs sought.

In the course of the evidence of PW1 the marriage certificate dated 24/1/2017 issued by Owerri Municipal Council, Owerri under the Marriage Act, accompanied by a Certificate of Registration of Marriage and affidavit on application for certificate in favour of the Petitioner and Respondent of the said marriage held on 24/1/2017 was tendered and admitted in evidence collectively as Exhibit “A1-A3”.

At the close of Petitioner’s evidence C.E. Enwere Esq. for the Petitioner told the court that Respondent has by a letter stated that she is not contesting

the divorce proceeding and will not appear in court, Respondent has never appeared nor represented by Counsel despite service of Hearing Notices, therefore urge court to enter Judgment on the ground. The court granted the request of Petitioner's Counsel and thereafter adjourned for Filing and Adoption of Final Written Address.

Addressing the court on 4/7/2022 C.E. Enwere Esq. adopted the Final Written Address dated 23/6/2022 and filed same day as oral submission in support of the Petition. In the said Address, Petitioner's Counsel formulated a sole issue for determination that is;

“Whether the Petitioner has proved that the marriage between the Petitioner and the Respondent have been broken down irretrievably, by proving facts to show that the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent”

And submits that Petitioner led evidence that the parties got married on 24/1/2017 and lived together in Imo State also led evidence in satisfaction of Section 15(2) (C) of the Matrimonial Causes Act. Submits further that the Respondent's act of verbal and in essence mentally abusing the Petitioner falls firmly within the purview of unreasonable behaviour. Refer to Section 15 (2) (C) of the Matrimonial Causes Act as well as the cases of Ibrahim Vs Ibrahim (2013) 2 SMC 122, UzokweVsUzokwe (2016) LPELR – 40945 (CA), DamulakVsDamulak (2004) NWLR (PT. 874) 151 NnanaVsNnana (2005) LCN/ 1758 (CA).

Finally submits that since the Respondent neither rebutted nor adduced evidence to rebut the evidence of the Petitioner, and also the fact that the Respondent does not object to the decree being sought in the Petition, the Petitioner has fulfilled the requirements of the law therefore urge court to dissolve the marriage.

Having carefully considered the unchallenged evidence of PW1 – the Petitioner, the submission of Counsel and the judicial authorities cited the court finds that only one (1) issue calls for determination;

“Whether the Petitioner has elicited sufficient evidence to support his case to be entitled to the relief sought”

Firstly, the Respondent was duly served with the processes, but failed to file an Answer to the Petition and was absent in court and also informed court via letter that she does not contest the Petition. The implication of this is that the evidence of the Petitioner in proof of his case remains unchallenged and uncontroverted and it is trite that where evidence is neither challenged nor controverted the court should deem the evidence as admitted, correct and act on it see *NjoemanaVsUgboma&Ors (2014) LPELR – 22494 (CA)*.

However, the burden of proof imposed on the Petitioner by Section 131 – 134 of the Evidence Act 2011 and Sections 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act must be discharged for the Petition to succeed.

In the determination of the Petition for dissolution of marriage under Section 15 (1) of the Matrimonial Causes Act, its competent for a marriage to be dissolved once a court is convinced that the marriage has

brokendown irretrievably. And to come to the conclusion, the Petitioner must satisfy the court of the facts laid down in Section 15 (2) of the Act Categorized under Sub-Section (a) – (h).

In the instant case, Petitioner relies on the fact of Section 15 (2) (C) of the Matrimonial Causes Act. The Section 15 (2) (C) reads;

“That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent”

To succeed under the above, the Petitioner must lead evidence to the reasonable satisfaction of the court, of such particular acts or conducts of the Respondent, which would warrant the grant of the relief sought and such acts must be weighty and grave in nature to make further cohabitation virtually impossible. See the case of Ibrahim Vs Ibrahim (2007) FWLR (PT. 346) @ 489 Paras H-B. See also the English case of Katz Vs Katz (1972) All ER 219.

In proof of this ground Petitioner testifying as PW1 narrated a catalogue of acts of the Respondent which he finds intolerable to live with the Respondent. All of these I have summed up above.

All of the acts of the Respondent to the Petitioner summed up earlier are acts of cruelty and cruelty on the part of the Respondent to the Petitioner have been held by the court as satisfactory to establish the facts of Section 15 (2)(C) of the Matrimonial Causes Act. See the case of DamulakVsDamulak (2004) 8 NWLR (PT. 874) 151 @ 154 Ratio 1 and 2. I have earlier stated that the conduct or behaviour of Respondent relied on

for the grant of the relief sought must be grave and weighty to the reasonable satisfaction of the court to enable it come to the conclusion that further cohabitation between the parties is virtually impossible and after a careful consideration of the evidence of PW1 – the Petitioner, which remained unchallenged, I find that the behaviour or conduct of the Respondent as stated by the Petitioner are weighty and grave enough to hold that the ground relied on by the Petitioner for the dissolution of the marriage has been proved to the reasonable satisfaction of the court and therefore hold that the marriage has indeed broken down irretrievably more so as the Respondent has written to the court that she is not contesting the Petition.

From all of these and having considered the evidence of the Petitioner in support of the ground and facts relied on for the dissolution of the marriage, which remained unchallenged and uncontroverted, this court having found them satisfactory and inconformity with the law holds that the union has broken down. The Petition succeeds and Judgment is hereby entered as follows;

- (1) The marriage celebrated between the Petitioner - Mr. Michael Uguru Samuel Okorafor and the Respondent - Mrs. Ezinne Irene Michael Okorafor on 24/1/2017 at the OwerriMunicipal Council Marriage Registry Owerri according to the Marriage Act has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the parties.

(2) The said Order shall become absolute after a period of three (3) months from today.

Signed.

HON. JUSTICE C.O. AGBAZA

Presiding Judge.

4/10/2022

C.E. ENWEREESQ FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT