

**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/038/2017

DATE: 24TH NOVEMBER, 2022

BETWEEN:

GRACE LISU UTULUPETITIONER

AND

CHARLES NDUIBUISI UTULU.....RESPONDENT

APPEARANCE:

A. S. ElukpoEsq for the Petitioner.

Petitioner is in Court.

JUDGMENT

The Petitioner filed this Petition on the 6th day of December 2017 seeking for the following orders/reliefs:-

1. A Decree of dissolution of marriage between the Petitioner and Respondent which was celebrated at the Festac Town Registry, Lagos State on the 9th March, 2006.
2. Custody of Miss Matilda Daye born on the 27/03/2006.

3. Custody of Miss Anastacia Halima born on the 17/01/2010.
4. An order that the marriage has broken down irretrievably in that since the marriage the respondent has behaved in such a way that the Petitioner cannot be expected to live with him.
5. An order of Court directing the Respondent to contribute ₦60,000 (Sixty Thousand Naira only) monthly for both children of the marriage.
6. An order of Court directing the Respondent to contribute ₦170,000 (One Hundred and Seventy Thousand Naira only) per term-towards the children's Education to be reviewed at every stage of the children's education level.
7. An order that the respondent behaviours is so intolerable that the Petitioner cannot be expected to live with the Respondent.
8. And any order or further order or orders as this Honourable Court may deem fit in the circumstances of this Petition.

The Petition which was settled by Agiwon s. Elukpo Esq, legal practitioner to the Petitioner is supported by a 23 paragraphed affidavit sworn to on the 1st March, 2019.

On the otherhand, the matter first came up on the 30th November, 2020, Counsel to the Petitioner informed the Court that the matter is a transferred matter in which he applied for a date for hearing and the matter was thereafter adjourned to 16th February, 2021. The matter came up for hearing on the 16th February, 2021 petitioner's Counsel informed the Court that they were unable to serve hearing notice on the Respondent. And the matter was again adjourned to 10th May, 2021 for hearing. At the

next adjourned date which was slated for hearing counsel apologized to the Court about the absence of the Petitioner and the fact that service was not effected on the respondent. Matter was further adjourned to 22nd November, 2021 for hearing. The matter came up for hearing on 22nd November, 2021, counsel informed the Court that the Respondent was duly served and sought the leave of the Court to proceed and the leave was granted.

At the trial, the Petitioner testified as PW1, adopted her affidavit evidence dated and filed on the 1st day of March 2019, and tendered in Evidence the following documents:-

1. An original marriage certificate marked as Exhibit A.
2. Two birth certificates in respect of Matilda Daye and Anastacia Halima marked as Exhibits B1 and B2.
3. Series of emails comprising 8 pages documents marked as Exhibits C- C7.

The matter was adjourned for Cross-Examination of PW1 and ordered hearing notice to be served on the Respondent. At the resumed date for Cross-Examination, petitioner and his Counsel were in Court but the Respondent was absent. Counsel then applied for Cross-Examination to be foreclosed and the Court grant the Application foreclosing the Respondent from Cross-Examining. PW1 was discharged by the Court and matter was further adjourned to 6th December, 2021 for defence.

At the resumed date slated for defence, parties were absent and unrepresented, matter was adjourned to 8th February, 2022 for defence. The matter came up for defence, Petitioner was in Court but respondent

was absent and unrepresented matter was further adjourned to 7th March 2022 for defence and ordered that the Respondent to be served.

Furthermore, the matter came up for defence on 07/03/2022, Petitioner and his Counsel were in Court but the Respondent was absent and unrepresented even though he has been served with hearing notice. Counsel urge the Court to foreclose their defence and order parties to file their written addresses Court grant the Application as prayed thereby foreclosing the Respondent's defence.

Consequently, the matter was further adjourned to 28th April, 2022 for adoption of final written addresses.

Addressing the Court on the 29th day of September, 2022 learned Counsel to the Petitioner, A. S ElukpoEsq, adopted their final written address dated 14th day of April, 2022 and filed same date 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 determination to wit:-

"Whether the Respondent has proffered satisfactory evidence to entitle her to a grant of an Order dissolving her marriage as sought by the Petitioner in her Petition."

In arguing the issue, counsel submitted that co-habitation has ceased between the parties. It is the contention of the Petitioner's Counsel that the Respondent was never ready for this marriage and that the Petitioner as a wife was never given a room to express herself and has done all a wife could do for her marriage to work but no avail.

Counsel referred the Court to paragraph 7 to 20 of the Petitioner's deposition of 1/3/2019.

In another submission, Counsel stated that the evidence before the Court was unchallenged that the Respondent is no longer interested in the marriage. Reliance was made to the case of **OIKHERHEV ININANFERO (1997) 7 NWLR (PT. 512) RATIO NO. 10 at PAGE 23.**

Consequently, Counsel submitted that it is obvious that both parties can no longer cohabit based on the irreconcilable differences between them as the marriage has broken down irretrievably. Reference was made to Section 15(1) of the matrimonial causes Act.

To this end, Counsel urged the Court to grant the Application of the petitioner having cited facts that will warrant the grant of the dissolution.

On the other hand, the respondent as stated earlier failed to file an answer to the Petition, neither him nor his Counsel cross examined the Petitioner as well as 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 the Registry in Festac Town, Lagos State on the 9th March 2006 has broken down irretrievably, the Petitioner and Respondent have ceased to have conjugal right with each other for the past three years (3) and three months (3) immediately preceding the presentation of the Petition and also the Petitioner and the Respondent have live apart of a continues period of over Two years since September 2015.

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

This Position of the law was given judicial pronouncement by the Court of Appeal in **AKINBUWA VS AKINBUWA (1998) 7 NWLR (PART 559) page 662 at p 669 paras D-E Per Rowland JCA** where the Court held as follows:-

"A Petitioner for the dissolution of marriage must prove one of the facts contained in Section 15(2) a-e of the Matrimonial Cause Act before such Petition can succeed. Where the Petitioner fails to prove that, the Petition for the dissolution of marriage will be dismissed notwithstanding the fact that the divorce is desired by both parties."

See also the **IKE V IKE NWLR (2018) LPERL-44782 (CA) DAMULAK VS DAMULAK (2004) 8 NWLR (PT. 874) P.151.**

In the instant case, the Petitioner in her testimony as contained in the affidavit evidence particularly paragraphs 9, 10 and 11 deposed and for ease of reference, I shall reproduce same hereunder, it reads thus:-

"(9) That since my marriage to the Respondent, the Respondent has behaved in such a way that I cannot reasonably be expected to live with the respondent any further.

(10) That in September, 2015 the cohabitation between myself and the Respondent ceased.

(11) That I and the Respondent have ceased to have conjugal right with each other for the past 3 years and 3 moths."

From the records, this Petition was filed on 6/12/2017, and from the above depositions it is clear therefore that the parties herein have lived apart for a period of at least two years immediately, preceding presentation of this petition, and the Respondent does not object to a decree being granted since this Petition is unchallenged. See Section 15(2) (e)

"That the parties in 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."

At this juncture It should be pointed out that the evidence of PW1 is unchallenged and/or uncontroverted as the Respondent neither filed an answer to the Petition, nor entered defence or lead any evidence to challenge that of PW1. To this extent, the law is settled that where evidence adduced before the Court is 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 **RABE VS F. R. N (2019) 4 NWLR (PT. 1662) PER RHODE-UNOUR J.S.C** at page 329 para A where it was held thus:-

"Where evidence is unchallenged, the unchallenged and unrebutted facts are to be taken as true."

Similarly it was held in the case of **S. P. D. C. N LTD VS ESOWE (2008) 4 NWLR (PT. 1078) PER GUMEL JCA at PG 88 PARA E-F** that:-

"An uncontradicted or unchallenged evidence must be used against the party who ought to have contradicted or challenged the evidence but failed to do so."

In the light of the above, it is my considered opinion that from the totality of evidence adduced by 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 and.

In sum, this Honourable Court hereby grant a decree Nisi dissolving the marriage between the Petitioner Grace LisuUtulu and the Respondent Charles Nduibuisi Utulu celebrated at the Registry in Festac Town Lagos State. On the 9th of March 2006. The decree shall become absolute if nothing intervenes within a period of three months from this date.

The Court also grants all the reliefs sought on the face of the Petition.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

24/11/2022.