

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

DATE:- 1ST NOVEMBER,2022

COURT: 28

FCT/HC/PET/144/2022

BETWEEN

AUGUSTINE STANLEY EYEBAGHAREN PETITIONER

AND

FRUITFUL IDONGESIT SANDY RESPONDENT

JUDGMENT

By a notice of Petition filed on the 26th January ,2022 and subsequently amended by Order of this Honourable Court on 10th June, 2022, the Petitioner filed this suit against the Respondent seeking the following reliefs:-

- a. A Decree for the Dissolution of Marriage between the Petitioner and the Respondent.
- b. An Order granting the custody of the child of the Marriage, Miss Michelli Mimi Eyebagharen to the Petitioner.

- c. An Order that the Petitioner shall be responsible for the education of the child of the Marriage, according to his ability until she attains academic level of her choice.
- d. An Order granting the Respondent access and visitation right to the child of the Marriage as well as having the child on request at least once during holidays.
- e. An Order of injunction restraining the Respondent from exclusively taking decisions concerning the child of the marriage, education, future endeavors or vocations without the input and consent of the Petitioner first sought and obtained.
- f. And for such Orders as this Honourable Court may deem fit to make in the circumstances of this case.

The grounds upon which the Petitioner is seeking for the dissolution of the marriage is that the marriage between parties has broken down irretrievably in that the Respondent has lived apart from the Petitioner for a continuous period of twelve (12) years and months preceding the presentation of this Petition and that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to stay with the Respondent.

The Petitioner filed his accompanying documents and his written statement on oath, which the Petitioner adopted as his evidence in proof of his case. From the evidence of the Petitioner, it is the case of the Petitioner that the Petitioner and Respondent got married to the respondent under the act, at the marriage registry on the 11th of November 2006 in Abuja Municipal Area Council (AMAC), and that shortly after the birth of the child of the

marriage in 2007 by name; Miss Michelle Eyegbagharen, the Respondent started acting in a way that shows the Respondent has lost interest in the marriage. That as a result of this, the conjugal relationship between the Petitioner and the Respondent deteriorated and consummation became weak, that the misunderstanding between the Respondent and the Petitioner grew from bad to worse, the Respondent moved out from the matrimonial house from 2nd of June 2009 till date. The Petitioner tendered the Marriage Certificate dated 11th November 2006 which the Court admitted in evidence as Exhibit 1.

The record of this Court shows that attempts were made on countless occasions to serve Hearing Notices on the Respondent but the Respondent from available material facts refused to enter appearance and file an Answer to the Petitioner's Petition after being served with the Petition and accompanying processes.

At the close of the Petitioner's case, the Respondent was called upon to cross-examine and subsequently open her defence, she neglected and was subsequently foreclosed upon the Petitioner's application, this Court thereafter adjourned the case for final addresses.

The Petitioner's Counsel filed his written address and raised a sole issue for determination to wit;

"Whether the Petitioner has on a preponderance of evidence established/satisfied the Legal requirements for the grant of the Petition".

Summarizing Counsel's address, the Petitioner's Counsel submitted that the Petitioner has on preponderance of evidence established the legal

requirements for the grant of the petition. Counsel submits that the Petitioner has by unchallenged and uncontroverted evidence, shown that the marriage between the parties has broken down irretrievably, the Respondent having lived apart from the Petitioner for more than twelve (12) years and months shows clearly that the marriage has broken down irretrievably and parties have no desire to continue with the relationship. Counsel contends that this fact alone without more can ground a decree of dissolution of marriage. Counsel urged the Court to grant the reliefs sought as the Petitioner has by uncontroverted evidence, discharged the burden of proof to be entitled to the reliefs sought.

I have examined the processes filed by the Petitioner together with the evidence adduced and the written address filed by the Petitioner's Counsel. The issue to be resolved is ***"Whether the Petitioner has proved his case to be entitled to the reliefs sought"***.

The dissolution of marriage contracted pursuant to our marriage law is guided by **Matrimonial Causes Act, Cap 22, Laws of the Federation 2004** and under the said law, a petition by a party to a marriage for decree of dissolution of marriage (as in this case), one or more facts of which the petitioner must establish before this Court shall be that the marriage has broken down irretrievably. See ***IBRAHIM V IBRAHIM (2006) LPELR- 7670 (CA). In EKREBE V EKREBE (1999) 3 NWLR (PT 596) 514 at 517;*** Mohammed JCA held that for a divorce petition to succeed, the petitioner must plead one of the facts contained in **SECTION 15(2),(A)-(H) of the Matrimonial Causes Act**, and if the petitioner fails to prove any of the facts stated in law, the petition must be dismissed.

I have equally examined all the papers filed in this Court, and properly scrutinized the unchallenged testimony of the PW1 and the position of the law is always that for any evidence that is neither attacked nor discredited, and is relevant to the issue, it ought to be relied upon by a judge. This is a Supreme Court holding in the case of **AMAYO V ERINWIN ABOVO (2006) 11 NWLR (PT 992) at page 699**. It is trite law that where evidence given by another party to a proceeding has not been challenged by the other party who had the opportunity to do so, it is always open to the Court seized of the matter to act on such unchallenged evidence before it.

The Petitioner during examination, claimed that the Marriage Certificate, evidencing the celebration of a statutory marriage between him and the Respondent, is with the Respondent. This has not been controverted by the Respondent who filed no reply. I am therefore left with no option other than to believe that a statutory marriage exists between the parties.

In my considered view, by virtue of the provisions of **Section 15(2) (d),(e),(f) of the Matrimonial Causes Act**, which provides as follows:-

“(d) that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition; (e) 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; (f) 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;”

The Petitioner has firmly established that the Respondent deserted the Petitioner, that parties lived apart for a continuous period of more than

three years immediately preceding the presentation of the petition and the Respondent does not object to the decree being granted.

In view of all above, there is ample prove that the Respondent deserted the Petitioner since June 2009 when she left the matrimonial home calculatively for a period of twelve (12) years and months preceding the presentation of this Petition, all efforts from the testimony of the Petitioner before this Honourable Court to the reconcile with the Respondent to return to the matrimonial home or make the marriage work did not succeed. This also interprets that the Respondent has shown a manifest intention to remain separated. The marriage between the Petitioner and the Respondent to my mind and from available evidence before this Court has broken down irretrievably. This marriage should therefore in the interest of both parties be dissolved in order to release the petitioner from the oath of marriage, having satisfied the requirement of the Matrimonial Causes Act, 2004.

Therefore, flowing from the above, this Court hereby grants the prayers sought by the Petitioner for a decree of dissolution of his marriage to the Respondent accordingly. I so hold and I dissolve the marriage.

Consequently, it is hereby ordered as follows:-

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated on the 11th day of November 2006, between the Petitioner **AUGUSTINE STANLEY EYEBAGHAREN** and the Respondent, **FRUITFUL IDONGESIT SANDY** at Glorious Light Gospel Church, Area 10, Garki-Abuja.
2. An Order granting the custody of the child of the Marriage, Miss Michelli Mimi Eyebagharen to the Petitioner.

3. An Order that the Petitioner shall be responsible for the education of the child of the Marriage, according to his ability until she attains academic level of her choice.
4. An Order granting the Respondent access and visitation right to the child of the Marriage as well as having the child on request.
5. I hereby pronounce that the decree nisi shall become absolute upon the expiration of two months from the date of this order, unless sufficient cause is shown to the Court why the decree nisi should not be made absolute.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Ifeoma I. Okeke:- For the Petitioner