

IN THE HIGH COURT OF JUSTICE
IN THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT ZONE 2, ABUJA
ON FRIDAY, 16TH DECEMBER, 2022
BEFORE HON. JUSTICE NJIDEKA K. NWSU-IHEME

SUIT NO.FCT/HC/PET/97/2022

BETWEEN:

LINDA ONYOJO UZOMA

PETITIONER

AND

ALEXANDER UCHE UZOMA

RESPONDENT

JUDGMENT

The Petitioner, Linda Onyojo Uzoma, commenced divorce proceedings against her husband, Alexander Uche Uzoma, the Respondent, by a Petition filed on the 10th February, 2022, seeking the following relief:

- a. A decree of dissolution of the marriage contracted on 7th January, 2010 between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably as a result of desertion, cruelty, denial of conjugal rights, inhuman and degrading treatment.

The case of the Petitioner in brief is that since the marriage, the Petitioner and the Respondent had lived together at No. 15B, Raji Fashola Street, Dantata Estate by Train Station, Kubwa, Abuja until sometime in August, 2018 when the Respondent in the absence of the Petitioner packed all his belongings and disappeared leaving the Petitioner abandoned till date and without any knowledge of his whereabouts.

While the marriage was ongoing, there was no smooth communication between the parties because Respondent would speak harshly to the

petitioner and was always irritated at the slightest provocation, would embarrass and humiliate her in public was cruel and would beat the Petitioner at the slightest provocation. The marriage was devoid of companionship and love.

That it is more than 3 years since the Respondent absconded and deserted the house.

The Respondent to this suit was duly served with the petition by substituted means vide pasting at the last known address of the Respondent. But the Respondent did not file a reply to the petition or any process in opposition. He was also served with several hearing notices yet he did not appear in court.

The matter proceeded to hearing. In proof of her case, the Petitioner testified as PW1 and only one witness. The substance of the unchallenged evidence is that she got married to the Respondent on the 7th of January, 2017 at the Christ Embassy, Kano in accordance to the Marriage Act and tendered a copy of the Marriage Certificate which was admitted in evidence as Exhibit A.

PW1 stated that after the marriage in 2017 they cohabited as husband and wife. They lived together until sometime in August 2018 when the Respondent, in her absence packed all his belongings and disappeared into thin air, leaving her desolate and abandoned till date. That within the marriage the defendant was cruel and beat the Petitioner at the slightest provocation and there was no love and companionship in the marriage. There was no child of the marriage.

On the application of the Counsel to the Petitioner, the right of the Respondent to cross examine PW1 and defend the action was foreclosed and the Court adjourned for judgement.

The pertinent question I consider germane to this suit is, **'has the petitioner established her case to entitle her to judgment?'**

Section 15(1) of the Matrimonial Causes Act set out only one ground for divorce or dissolution of marriage. By the said Section 15(1) of the

Matrimonial Causes Act, either party to the marriage may petition for divorce "Upon the ground that the marriage has broken down irretrievably". Section 15(2) states as follows: The court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts-

- (a) that the respondent has willfully and persistently refused to consummate the marriage;
- (b) that since the marriage the Respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (c) that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (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;**
- (g) that the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;
- (h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.
- (i) In the instant suit, the petitioner avers that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

The Petitioner's petition is in line with section 15(2)(f) of the Matrimonial Causes Act M7 Laws of the Federation of Nigeria 2004.

It is a well established principle in law that he who asserts must prove, see **AMAH V AMAH (2016) LPELR-41087(CA)** where it was stated thus: "The law is trite that under our adversarial system of jurisprudence and the law of evidence by sections 131(1) and (2), 132 and 133(1) Evidence Act, 2011 in particular; the burden of proving a particular fact is upon the party who asserts it and who would fail if no evidence is called on either side regard being had to the presumptions which might arise from the pleadings of the parties. It is also the law that the onus is not static as same oscillates back and forth on the pleadings until it rests on the party against whom judgment would be given if no further evidence were adduced before the court.

In the suit at hand, the assertions of the Petitioner were not challenged by the Respondent.

The law is trite on uncontroverted evidence; it was held thus in ***Stanley K.C Okonkwo v Anthony Ezeonu & Ors (2017) LPELR-42785(CA)***, "*The law is settled that the onus is on the plaintiff to prove his case with cogent and credible evidence. Where a defendant fails to file a defence or lead evidence to rebut or challenge the evidence led by the plaintiff, the onus on the plaintiff is discharged on a minimal proof*". "*The law is trite that where the affidavit of a party remains uncontroverted or unchallenged, the facts deposed to in the affidavit are deemed admitted by the adversary who had the opportunity but failed to file a counter affidavit to controvert the facts.*" Per Bolaji-Yusuff, JCA (P.7, paras. C-F)

I am satisfied that the Petitioner has been able to prove her case to entitle her to judgment in this suit; her depositions having remained uncontroverted and unchallenged.

I hereby make the following declaration and orders:

1. It is hereby declared that the Marriage celebrated between Linda Onyojo Uzoma, and Alexander Uche Uzoma at the Christ

Embassy, Kano on the 7th January, 2010 has broken down irretrievably and a Decree Nisi is made.

2. The Decree Nisi made herein shall become absolute at the expiration of 90 days from the date hereof.

HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]

Appearance of Counsel:

1. Petitioner present
2. Respondent absent and unrepresented