

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 45 SITTING IN WUSE ZONE 2 – ABUJA

BEFORE HIS LORDSHIP HONJUSTICE ELEOJO ENENCHE

DELIVERED ON 24TH JANUARY 2023

SUIT NO. FCT/HC/PET/436/22

BETWEEN

IFEAOMA VIVIAN OKOYE PETITIONER

AND

AUGUSTINE OSITA OKOYE..... RESPONDENT

JUDGEMENT

ThePetitioner claims against the Respondent as endorsed on the Notice of Petition dated 9th August, 2022 as follows:

An order for a decree of dissolution of marriage between her and the Respondent on the grounds that the marriage has broken down irretrievably and that the parties to this petition have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the Respondent does not object to the decree being granted.

The Petitioner's case was founded on the following grounds:

- a) That the Respondent has behaved in such manner that the Petitioner cannot reasonably be expected to live with the Respondent.
- b) That the Respondent has deserted the Petitioner for a continuous period of at least one year preceding the presentation of this petition.
- c) That the parties to this petition have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the Respondent does not object to the decree being granted.
- d) That the marriage has broken down irretrievably due to irreconcilable differences.

Counsel to the Petitioner applied for the assignment of this case to a Virtual Proceeding-Enabled court to avail the Petitioner who is resident in Lagos State participate fully in the Court proceedings and same was granted, thus, the Petitioner was never present physically in court but joined proceedings virtually via the Google Meet platform.

Counsel to the Petitioner applied and was granted leave to serve the processes in this suit on the Respondent via substituted means i.e., by serving through his WhatsApp line. It is apt to mention that this petition is undefended as Respondent acknowledged receipt of proceedings served on him via his WhatsApp line and via the same means, upon service, stated his disinterest in the petition, he wrote and I quote, “...*I advise that you do not waste your time and energy sending documents to me, you should approach any necessary legitimate body that can grant her what she wants. I do not have time for any contestation, as I am too busy for irrelevance. The body should grant her her wish, there is absolutely no objection from me.*”

Proof of service and Respondent's reply is evidenced in the annexures attached to the Affidavits of Service /Compliance deposed to by Amauche Onyedum dated 29th November 2022 and 6th December and marked as **Exhibits IVO1** and **IVO2** respectively.

In proof of her case, the Petitioner testified in person as PW1 and the only witness. The substance of her evidence is that she

got married to the Respondent at Saint Charles Lwanga Catholic Church Ikeja military cantonment, Lagos state on the 21st October, 2000. A copy of the marriage certificate dated 21st October, 2000 was attached to the petition.

PW1 stated that after the marriage, they cohabited at:

- i) MOQ 53(1000 quarters) Ikeja military cantonment Lagos.
- ii) MOQ 20 Ikeja military cantonment.
- iii) MOQ 44 Ikeja military cantonment.

She also stated that the marriage is blessed with three (3) children namely:

- a) Olisaeloka Augustine Okoye, born 2nd March 2001
- b) Obinna Peter Okoye, born 16th March, 2003
- c) Chiamaka Vivian Okoye, born 4th November 2004

The petitioner stated that she is seeking for dissolution of the marriage because ever since the marriage, including during her child bearing years, she was put under an imprisoning condition and the intolerable control of the Respondent. She alleges she was chased out of the house countless times especially when the

Respondent was angry. She further alleges that Respondent was psychologically, financially, emotionally and physically violent, acts which she avers was done publicly on some occasions.

Petitioner insists that the behavior of the Respondent affected her health as she developed high blood pressure and have lost her self-confidence. She alleges she endured and stayed in the marriage for 16years half of which time was spent in intimidation and being locked out of her home and business place.

Petitioner insists she stayed on hoping the Respondent will change as she assumed his mean behavior was due to work stress but to her dismay, nothing changed over time rather, Respondent's attitude towards her went from bad to worse.

With the evidence of the Petitioner, her case was then closed.

Despite the Respondent's nonchalance and blatant disinterest, I was minded to give him an opportunity to Cross Examine the Petitioner and also put up his defence. I therefore made an order for service of hearing notice on the Respondent, but yet again, he did not enter any appearance neither in person nor through counsel.

It is correct that Section 15(1) of the Matrimonial Causes Act provides for the irretrievable breakdown of a marriage as the only ground upon which a party may apply for a dissolution of a marriage. *"A Petition under this decree by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably."* Per AKEJU, *J.C.A in Anioke v. Anioke (2011) LPELR-3774(CA) (Pp. 34 paras.B) S*

The facts that may however lead to this breakdown are clearly categorized under Sec.15(2)(a) to (h) of the Act.

The petitioner made pivotal allegations leading me to believe that she has suffered all kinds of cruelty during her marriage to the Respondent. It must be stated that cruelty is grave and the accumulation of acts of ill treatment causing or likely to cause a breakdown under strain certainly constitutes cruelty. See *Bibilari v. Bibilari (2011) 13 N.W.L.R (PT217)232 A-B*; See also *Damulak V. Damulak (2004)8N.W.L.R (pt.874)151.*

It could be physically, mentally, or emotionally meted out to a partner and it is sufficient to be described as a behavior

unacceptable in a marriage. The Respondent who on his own part, refused to defend himself or at least show any form of interest in this petition, has given me an inclination of his attitude towards crucial matters, just as this petition should be considered as one. However, the duty of court stops at ensuring that the pendency of a matter is brought to the notice of all parties concerned but the court cannot compel a party to attend and file processes. It is in that light, that the law presumes, that a party who has notice of a pending suit but failed to attend is deemed to have stayed away because such a party admits as true the content of the allegation made in the proceedings. On this see the case of *Obulor V. Obor (2001) FWLR (PT47)1004*. See also *Danladi V. Taraba state House of Assembly & Ors (2014) LPELR-24021(SC)*

I am left with no other choice than to believe the facts as they have been put before me. Flowing from the unchallenged averments above and the nonchalant disposition of the Respondent on a whole, it is clear that this marriage exists only in name. As earlier pointed out, any of the facts under Section

15(2) a-h of Matrimonial Cause Act if proved by credible evidence is sufficient to grant a petition for divorce.

The prayer for divorce under this petition clearly falls within the purview of Section 15(2) which provides that a marriage will break down irretrievably where since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. The fact of intolerable behaviour has been established by the Petitioner, and admitted by the Respondent by his failure to make representation for himself despite being aware of the pending suit, rather he asked that the Petitioner be granted what she wants speedily.

In all, I find that the marriage in this case has no doubt broken down irretrievably and parties clearly have no desire to continue with the marriage, AND I SO HOLD.

I am of the opinion that if parties to a consensual marriage relationship cannot live any longer in peace and harmony, then it is better they part in peace and with mutual respect for each other, especially here, where they have a shared bond through the three children of the marriage. Thankfully there is no issue raised

on the question of custody arising from the petition and if my calculations stand correct, I believe the last child is 18 years old, it is therefore my belief that there are no joining issues based on the children's living arrangement as none is notably raised either.

However, Petitioner has proposed arrangement for the children viz;

- a) The welfare of the children to the marriage will be catered for by the Respondent.
- b) The Respondent shall ensure and cater for the children's education up until their Master's degree level. This should not deter the Respondent from attending through to levels above Master level where he deems fit.

In summation, having carefully evaluated the evidence and averments of the petitioner and considering the Respondent's disposition to the petition, I accordingly make the following orders;

- 1. I HEREBY GRANT AN ORDER OF DECREE NISI**
dissolving the marriage celebrated between the Petitioner,

Ifeoma Okoye and Respondent Augustine Okoye on 21st October 2000 at Saint Charles Lwanga Catholic Church, Ikeja Military Cantonment Lagos. This Order Nisi shall become absolute after three months by operation of law.

2. **I HEREBY ORDER** that the welfare of the children to the marriage and their education will be catered for fully by the Respondent.

.....
Hon. Justice

Eleojo Enenche

24/01/23

COUNSEL

FOR PETITIONER: Amauche Onyedum & Queen Ubokutom

RESPONDENT: Nil

IFEOMA VIVIAN OKOYE VS AUGUSTINE OSITA OKOYE