

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA

TUESDAY, THE 14TH DAY OF FEBRUARY, 2023

BEFORE HIS LORDSHIP THE HON. JUSTICE ELEOJO ENENCHE

SUIT NO. FCT/HC/PET/018/2022

BETWEEN:

JOSEPHINE EDEBO IDACHABA PETITIONER

AND

AUGUSTINE ELEOJO IDACHABA RESPONDENT

JUDGEMENT

The Petitioner and the Respondent were lawfully married at the Abuja Municipal Area Council Registry Abuja on the 22nd of September 2017 after a celebration of the marriage at the First Baptist Church, Idah, Kogi State.

The Petitioner has brought this petition, inviting the Court to put an end to the marriage on the grounds that cohabitation ceased between parties sometime in November 2019 and that the Petitioner and Respondent

have been separated for about Two Years and Six Months prior to the commencement of this petition.

Upon being served with the Petition, the Respondent filed an “Answer to the Petition” in which he considerably denied the material allegations in the Petition however, he also prayed the court that the marriage be dissolved only on the grounds of separation under Sec. 15 (2) (e) of the Matrimonial Causes Act.

At the hearing of the Petition, counsel to the Petitioner Unekwu Enegbani informed the court that the parties are at a consensus that the marriage be dissolved as in his answer, Respondent is equally urging the court to dissolve the marriage. He urged me to dispense with a full hearing and enter judgment as sought. Conversely, Counsel to the Respondent, Solomon Apenja had no objection to this request and adjured the court to dissolve the marriage, as requested by both parties.

Beyond the submission of counsel and the consensus of the parties as contained in their pleadings, I must convince myself that the requirement of the relevant law is met before the subsisting marriage can be dissolved. Thus Section 15 of the Matrimonial Causes Act (MCA) sets out in detail the grounds upon which a marriage can be dissolved. It provides as follows:

- 1. A petition under this Act by a party to a marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably.***

2. The Court hearing a petition for a decree of dissolution of a 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 wilfully 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.

3. For the purpose of Subsection (2) (e) and (f) of this section, the parties to a marriage shall be treated as living apart unless they are living with each other in the same household.

The above paragraphs have thus set out in detail what a petitioner must establish to be entitled to a decree of dissolution of a marriage under Section 15(2) MCA. The Section has received statutory interpretation in many decided cases including, *See NANNA V. NANNA (2006) 3 NWLR (PT. 966) 1; BIBILARI V. BIBILARI (2011) LPELR-4443(CA); AKINBUWA V. AKINBUWA (1998) 7 NWLR (PT. 559) 661; DAMULAK V DAMULAK (2004) 8 NWLR (PT. 874) 151.*

By Section 15 (2), a Court shall only hold that the marriage has broken down irretrievably if, but only if, the petitioner satisfies the Court of one or more of the facts therein set out. There are eight factual situations in all. The question in the instant case is whether I am satisfied that the Petitioner's case has achieved this task.

The relevant facts to my mind set out in his petition are as in paragraph 2 (C) of the verifying affidavit: ***“that I (petitioner) and the Respondent have been separated for (2) Years and six months prior to the commencement of this petition for dissolution of marriage”***.this was also alluded to in the facts relied upon in bringing the petition. Going further, it was the

reply of the Respondent that he and the petitioner have been separated for upwards of Two (2) years but states that the decision to move out of the matrimonial home was taken by the petitioner.

One of the aims of the MCA is to aid parties in the dissolution of an existing marriage that subsists only on the marriage certificate held by them. By virtue of Section 15 (1), the sole ground upon which either party to a marriage can seek a dissolution is that the marriage has broken down irretrievably. It is therefore the duty of the court to hold that the union has so broken down if any of the eight facts in Sec. 15 (2) is presented before it.

The facts before me suggest and indeed I agree that the parties have lived apart more than two years . Section 15 (2) (e) provides that a marriage can be held to have broken down irretrievably where, ***“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.”***

From the pleadings, parties are ad idem that they have lived apart for more than 2 years commencing from “around November 2019” . Though no specific date in November 2019 was pleaded, it is the law that facts which are admitted need no further proof. See **SENATOR EMMANUEL BWACHA v. CHIEF DAVID SABO KENTE & ORS(2022) LPELR-58989(CA).**

It is evident to me from the pleadings of both parties that the love which blossomed into this marriage has since dimmed and that cohabitation even ceased completely as well. All these facts in my opinion more than

enough meet the requirement of Section 15 (2), (e) of the MCA and I so hold. It is therefore my finding that the marriage of the Petitioner and the Respondent has broken down irretrievably.

In totality, and after a composite consideration of the facts put before me and the law in support, I find and hold that this marriage has broken down irretrievable and I proceed to make the following orders;

1. I hereby pronounce a Decree Nisi ordering the dissolution of the marriage contracted on the on the 22nd Day of September, 2017 at the Abuja Municipal area Council Registry Abuja, Nigeria. The Decree Nisi shall become absolute by operation of the law upon the expiration of three (3) months from today.

There shall be no order as to costs.

Hon. Justice Eleojo Enenche

Counsel:

Unekwu Enegbani:For the Petitioner

Solomon Apenja:For the Respondent

JOSEPHINE EDEBO IDACHABA Vs. AUGUSTINE ELEOJO IDACHABA