

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

6TH DAY OF JUNE, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/PET/168/2017

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

MRS. STELLA OZIOMA LABAR PETITIONER

AND

MR. BAPIZAM LABAR RESPONDENT

JUDGMENT

This Petition is dated 27/03/2017 but amended vide an Amended Notice of Petition dated 27/06/2022. It prays this Court for the following:

A decree of dissolution of marriage on two grounds -

- (1) That since the marriage the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent.

(2) That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition.

The Petition was served on the Respondent. The Respondent was further served with Hearing Notice but failed to file an Answer to the Petition.

The Petitioner opened her case and gave evidence in proof thereof. She is Stella Ozioma Labar. She is a businesswoman. She lives at Apo Resettlement Estate, Apo. She remembers deposing to a Witness Statement on Oath in this Court on 26/01/2022. She adopted same as her oral evidence.

Exhibit A is the Marriage Certificate between her and the Respondent. She further relied on a Further Affidavit dated 27/06/2022. She adopts same as her further evidence.

In her Witness Statement on Oath dated 26/01/2021, she said she cohabited with the Respondent at Durumi 2.

They later moved to 753 Kaura District, Behind Games Village, Abuja from 2014 - February 2016.

That in 2012 she met the Respondent's uncle, Bishop Musa Labar. When she had accommodation problem, she started living with the Bishop, wife and children.

That on 23/05/2013, the Bishop introduced her to his nephew, Mr. Bapizam, the Respondent. That she got married to the Respondent under native law and custom on the 17th of May, 2014.

That the Respondent beat her up shortly after that. She could not tell anyone because of the shame, because they just got married.

That after their wedding, the Respondent changed totally. He was drinking to stupor virtually every day, keeping late nights and not giving her money for upkeep. He continued to beat her at every opportunity.

That shortly after the marriage in January 2015, she could no more keep the beating to herself. She told her brother Thomas Aroke. He confronted the Respondent. He was remorseful and promised to change.

That on 21/05/2015, the Respondent beat her up again and told her to leave the matrimonial home or else he would kill her. The Respondent travelled to see her parents for reconciliation at the behest of her brother.

On 25/05/2015, her brother called a meeting of the Respondent and his family on the instruction of her family. Her brother met with Respondent, his uncle, Bishop Musa Labar, his sister, Mrs. Ibro, Mr. Danladi Wuyep at Bishop Musa's house. After much deliberation, the Respondent undertook to stop beating her, stop drinking, smoking and keeping late nights. He also promised to provide money for upkeep of the home.

Sometime in November 2015, the Respondent picked a fight with her, he beat her, broke wedding photos, he broke the photos on her head. Her brother came that

night with Policemen. That she left the house with the assistance of the Police.

That in February 2016, she was summoned for another reconciliatory meeting. Her brother refused to attend. Her parents told her to return to the matrimonial home. She returned to her matrimonial home in February 2016.

That few days later on 14/02/2016, the Respondent ordered her not to go to church. When she insisted, he beat her mercilessly when she returned. The Respondent's mother cautioned him but he refused. He started another beating for reporting him to his mother.

In fear of her life, she took some of her things and ran to her brother's house. At that point, she knew he will never change.

The Respondent is unrepentant and his family members are tired of the constant assault. That on 24/05/2016 at about 10.00 p.m. he came to her brother's house and

started shouting. Her brother refused to open door because he was drunk.

The following day, she met him at a Garden in Gudu where he pounced her and beat her. He took her to Bishop Labar's house where he kicked and beat her, inflicting injuries on her. The Bishop was not at home. She was rescued by passerby. The Respondent never apologised till date.

He sends text messages threatening that the marriage is over and that she should get a divorce. She did not connive or condone the grounds for divorce.

That since the marriage, there has not been any previous proceedings. She prays that the relief be granted.

In the Further Witness Statement on Oath, she states that she got married in the International Praise Church, IPC, Abuja on 24/05/2014 and not AMAC.

That Respondent deserted the marriage on 14/02/2016 and caused her to leave the matrimonial home in fear of her life and safety.

The Petitioner submitted an issue for determination. It is: *Whether the Petitioner is entitled to the reliefs sought having regard to the evidence before the Court.*

Learned Counsel relies on Section 15 (2) (c) and (d) of the Matrimonial Causes Act. Learned Counsel canvasses that from the evidence, it is not possible for the Petitioner to be expected to live reasonably with the Respondent and urges the Court to hold that the Petitioner has satisfied Section 15 (2) (c) of the Matrimonial Causes Act.

That from the Affidavit evidence of PW1 made on 26/01/2022, it is clear that the Respondent was a habitual drunkard from the inception of the marriage. See also paragraph 5 (g) and (h) of the said Affidavit.

In respect of the second ground, Counsel refer to paragraph 5 (t) of the Affidavit of 26th January 2022 and paragraph 4 of the Further Affidavit of 27th June 2022 and urge the Court to hold that the Respondent deserted the matrimonial home.

He contends that the Petitioner's evidence was not controverted and is deemed admitted. He finally urges the Court to grant the relief sought.

Learned Counsel relies on Section 15 (2) (c) and (d) of the Matrimonial Causes Act as grounds for the dissolution of the marriage between the Petitioner and the Respondent.

The Respondent failed to file an Answer to the Petition. He also failed to cross-examine the Petitioner or give evidence in answer to the Petition. In the circumstance, evidence went one way.

The evidence of the Petitioner is uncontroverted. Nevertheless, it is the duty of Petitioner to prove her case. The standard of proof required is minimal proof.

Exhibit A is the Certificate of Statutory Marriage. The Petitioner gave evidence of places where the parties cohabited as husband and wife.

The dissolution of marriage contracted pursuant to the Marriage Act is guided by the Matrimonial Causes Act, particularly Section 15 (2).

By virtue of Section 15 (2) (c) of the Matrimonial Causes Act, a Petitioner is entitled to a decree of dissolution of his or her marriage if he or she can show that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

See **IBEAUCHI vs. IBEAUCHI (1973) HIGH COURT OF EAST CENTRAL STATE, ONITSHA JUDICIAL DIVISION**, delivered on **19th February 1975**.

The test of intolerable behaviour is always objective. The behaviour must be such that a reasonable man cannot endure. It is my duty therefore to consider the totality of the matrimonial history.

The only evidence available is that of the Petitioner. I have copiously reproduced it. The evidence is that the Respondent is a habitual drunkard. That the Petitioner was subjected to constant assault and battery. That the Respondent inflicted injuries on the Petitioner severally.

The Respondent when sober, pleads for forgiveness but no sooner he continues with the same behaviour. That his family member and uncle, Bishop Musa Labar got tired of the constant fighting. The Respondent also keeps late night.

The Petitioner's family are also tired of the situation and the Respondent is not changing. The Respondent unleashed violence on the Petitioner continuously. It is not a single act or solitary act.

The act and conduct of the Respondent is inhuman and the treatment meted to the Petitioner degrading. It is

therefore my view and I so hold that the conduct of the Respondent is sufficiently grave that the Petitioner cannot reasonably be expected to live with the Respondent.

On the issue of desertion, the evidence is that the Respondent's conduct and behaviour and the fear for her life made the Petitioner to pack out of the matrimonial home on the 14th of February 2016.

Proof of one of the grounds or facts contained in Section 15 (2) of the Matrimonial Causes Act is in the eye of the law a conclusive proof of irretrievable breakdown of the marriage.

Since the Petitioner has proved Section 15 (2) (c) of the Matrimonial Causes Act that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, it is unnecessary

to prove the second ground which is desertion in Section 15 (d) of the Act.

It is my view and I so hold that the marriage between MRS. STELLA OZIOMA LABAR, Petitioner and MR. BAPIZAM LABAR, Respondent has broken down irretrievably.

Consequently,

- (1) By an Order of Decree Nisi, the marriage between the Petitioner and the Respondent contracted and celebrated on the 24th day of May, 2014 is hereby dissolved.
- (2) The Order Nisi hereby issued shall become absolute after three (3) months.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
06/06/2023

Parties present.

Respondent absent.

Henry O. Chichi, Esq. for the Petitioner.

PETITIONER'S COUNSEL: The matter is for Judgment.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
06/06/2023