

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

30TH DAY OF MAY, 2023

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

SUIT NO. FCT/HC/PET/34/2013

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

OTIYO ABILA PETITIONER

AND

NGOZI ROSALINE ABILA RESPONDENT

JUDGMENT

The Petitioner’s Petition dated and filed on 21/10/2013 amended vide an Amended Notice of Petition dated and filed on 16/04/2018 is for the following:

- (1) A decree of dissolution of marriage on the ground that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and or that the parties have lived apart for a continuous period of two years

immediately preceding the presentation of the Petition and the Respondent does not object to a decree being granted.

The Respondent was served with the Notice of Petition. She filed an Answer dated 7/01/2014. The Respondent was also served with Hearing Notice.

On the 12th day of October, 2022, the Petitioner opened his case and gave evidence for himself. He adopted his Witness Statement on Oath deposed to on 26/05/2022. In the said Witness Statement, he deposes as follows:

That he got married to the Respondent at Ajeromi/Ifelodun Local Government Marriage Registry, Lagos State on 9/11/2001. That they cohabited at No. 10, Somiari Estate, Abuloma Port Harcourt and No. 2, Donall Crescent, Off Amazon Street, Maitama, Abuja. That Jessica Abila, femaole was born on 11th of July 2001.

That Respondent is extremely hostile, cruel, cantankerous. That she was verbally and physically

abusive of him and his other child born of him before his marriage with the Respondent. That she made the matrimonial home perpetually heated up and uncondusive.

That Respondent was rude towards him and his extended family members. That she threatened to commit suicide on three different occasions should the Petitioner accommodate his family members and his son born outside wedlock. That Respondent has totally become unamenable to advice.

That they have lived apart for a continuous period of eight (8) years. She insisted of not returning to the matrimonial home and decided to lodge in Protea Hotel.

That all efforts by their parents to resolve issues proved abortive as Respondent refused to yield. That he never had a good time since the marriage as Respondent is extremely hostile and cruel. That the marriage has broken down irretrievably.

That the child of the marriage resides with the Respondent. That he has been responsible for the upkeeps, school fees and other welfare issues of the child of the marriage. That he was barred from communicating with the child of the marriage.

That the Respondent and the child is under the protective custody of the British Government. That the Respondent lied to the British Government that he wanted to carry out female genital mutilation on the child of the marriage.

That he will not provide for maintenance of the Respondent as she is a businesswoman whose income is enough to support her. That the welfare, education and all other needs of the Respondent and the child of the marriage is being taken care of by the British Government. He wants the Court to grant all the reliefs.

The Respondent failed to cross-examine the Petitioner (PW1). She also failed to give evidence in support of her Answer.

The Petitioner's Counsel adopted his Final Written Address. He canvasses that the Petitioner has proved his Petition to be entitled to judgment. That the evidence of the PW1 is uncontroverted.

By Sections 131, 132 and 133 of the Evidence Act, he who asserts a fact must prove same. Any party who wishes the Court to give judgment in his favour must prove his entitlement to same.

By Section 82 (1) of the Matrimonial Causes Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact or as to that other matter.

The Petitioner throughout his evidence did not tender a marriage certificate to prove that there was a marriage.

In **ANYAEGBUNA vs. ANYAEGBUNA (1973) LPELR-507**, the Supreme Court held that it will be inappropriate to suggest that the only way to prove a birth, death or marriage is by the production of the relevant certificate or a certified true copy thereto. Thus, where there is evidence of a ceremony of marriage having been gone through followed by cohabitation of the parties, everything necessary for the validity of the marriage will be presumed in the absence of a decisive evidence to the contrary.

See **EKONG & ANOR. vs. AKPAN (2020) LPELR-49575 CA.**

I have read the evidence of the PW1 in this regard. There is evidence of marriage, there is also evidence of cohabitation. There is no evidence to the contrary. I presume therefore that the Petitioner and Respondent were married.

The Petitioner's evidence is that the Respondent was abusive. That she is extremely hostile, cruel and cantankerous. That she was rude towards him and family members. That she threatened to commit suicide thrice should Petitioner accommodate family members and his

son born out of wedlock. That the Petitioner and Respondent have lived apart for a continuous period of 8 years.

The Petitioner canvassed in his Petition and Written Address that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. That they have lived apart for a continuous period of 8 years and Respondent does not object to a decree being granted.

The Petitioner's evidence is uncontroverted. I am satisfied that the Petitioner has been able to prove Section 15 (2) (c) and (e) of the Matrimonial Causes Act. The marriage between the Petitioner and the Respondent has broken down irretrievably and I so hold.

Consequently, it is adjudged as follows:

1. A decree Order Nisi is hereby granted dissolving the marriage between the Petitioner, OTIYO ABILA and

Respondent, NGOZI ROSELINE ABILA contracted on the 9th day of November, 2001 at Ajeromi/Ifelodun Local Government Marriage Registry, Lagos.

2. The Order Nisi hereby granted shall become absolute after three (3) months.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
30/05/2023

Petitioner present.

Respondent absent.

Chief O. U. Orji for the Petitioner.

PETITIONER'S COUNSEL: The Respondent is absent. We
are ready for the Judgment.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
30/05/2023