

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 3RD DAY OF APRIL, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/PET/139/2021

BETWEEN:

IFEOMA VIVIAN EKEANOZIE:.....PETITIONER

AND

ECHEKWUBE OBIORA EKEANOZIE:.....RESPONDENT

Uchenna Oparagwu for the Petitioner.
Respondent not represented.

JUDGMENT.

The Petitioner instituted this action against the Respondent with whom she contracted marriage at Ikeja local Government Marriage Registry on the 27th day of April, 2019, praying the Court for the following:

- a. A decree of dissolution of the marriage contracted between the Petitioner and the Respondent on 27th April, 2019 on the ground that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, and the marriage has broken down irretrievably.
- b. A decree of dissolution of marriage on the ground that since the marriage, the Respondent had persistently refused and failed to consummate the marriage which has left the Petitioner emotionally troubled.

- c. That the Court should order the Respondent to return any property of the Petitioner in the possession of the Respondent so that each may go their separate ways.

The facts on the basis of which the Petitioner instituted this petition, as per the averments in her witness statement on oath, are that since after their wedding, the Respondent failed and refused to consummate the marriage despite repeated requests by the Petitioner.

Furthermore, that after a brief cohabitation with the Respondent in Lagos following their wedding, the Respondent travelled to Abuja where he lives while she had to travel to the United Kingdom to complete her Masters Programme and the Respondent refused to keep to their prior agreement to join her overseas.

The Petitioner averred that the development has made her unable to conceive and bear children and that considering her age, she is not getting any younger.

She stated further that the Respondent has remained emotionally cruel and deceitful to her and that she cannot reasonably be expected to live together with the Respondent as the marriage has broken down irretrievably. That the Respondent has not only by his conduct shown that he is no longer interested in the marriage, but also told her verbally on 29th day of January, 2021 that he does not want the marriage again and that he even wants a divorce.

On the 18th day of January, 2023, the Petitioner adopted her witness statement on oath and tendered copies of their Certificates of Marriage in evidence.

The learned Respondent's counsel, Joy Onyekwuluje, Esq, told the Court that she did not have any questions for the Petitioner

in cross examination, and that the Respondent relies on the case of the Petitioner and does not object to the grant of the petition.

The Petitioner subsequently filed a final written address wherein her learned counsel, Uchenna Oparaguo, Esq, raised a sole issue for determination, namely;

“Whether the Petitioner is entitled to the relief sought in the petition.”

Arguing the issue so raised learned counsel posited that the Petitioner anchored the Petition on Section 15 (1), (2), (c), (d) and (f) of the Matrimonial Causes Act, Cap M7, laws of the Federation of Nigeria, 2004.

He referred to **Nanna v. Nanna (2006)3NWLR (Pt.966)1** on what a Petitioner must prove for a dissolution of marriage to be granted, as well as the case of **Damulak v. damulak (2004)8 NWLR (Pt.874)151 at 166.**

On what amounts to intolerable behaviour of Respondent in matrimonial causes, learned counsel referred to **Ibrahim v. Ibrahim (2007)1 NWLR (Pt.1013)383 at 403.**

He argued that since the Respondent has refused to cohabit with the Petitioner for more than two years after the marriage was contracted, that there is nothing to show that the Respondent is interested in the marriage. That as such, non-dissolution of the marriage will not be in the interest of the Petitioner, particularly as there is no child in the marriage and the Petitioner is not getting younger in age.

He urged the Court to hold that the marriage has broken down irretrievably and as such, the Petitioner cannot reasonably be expected to live with the Respondent.

He further urged the Court in conclusion, to grant the relief sought by the Petitioner by granting an Order for the dissolution of the marriage between the Petitioner and the Respondent.

In the determination of this Petition, this Court will adopt for consideration, the sole issue for determination raised by the Petitioner in her final written address namely, ***“Whether the Petitioner is entitled to the relief sought in the Petition?”***

The Petitioner is by this petition, seeking the dissolution of the marriage between her and the Respondent on the ground that same has broken down irretrievably.

In **Uzochukwu v. Uzochukwu (2014)LPELR-24139(CA)**, the Court of Appeal held that:

“A Court hearing a petition for the dissolution of a marriage shall grant the relief if the marriage has broken down irretrievably.”

On when a marriage can be said to have broken down irretrievably, Section 15 (2)(a)-(h) of the Matrimonial Causes Act sets out facts or circumstances one of which the Petitioner must establish for the Court to arrive at the conclusion that the marriage has broken down irretrievably.

From the averments in the Petitioner’s witness statement on oath, the established facts upon which the Petitioner is urging this Court to hold that her marriage to the Respondent has broken down irretrievably, are that;

- i. since the marriage, the Respondent has wilfully and persistently refused to consummate the marriage and,
- ii. the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition.

Thus the Petitioner has founded her Petition on Section 15(2)(a)&(e) of the Matrimonial Causes Act.

Under Section 15(2)(e) of the Act, the law requires that the Respondent should not object to a decree being made, for the order to be made on that ground.

The learned Respondent's counsel in this case, informed the Court that the Respondent does not object to the grant of the Petition and proceeded to rest his case on that of the Petitioner.

The Respondent having not disputed the facts as averred by the Petitioner, particularly that the Respondent has since the marriage, failed and refused to consummate the marriage and that the parties have lived apart for a continuous period of at least two years before the presentation of this Petition, this Court therefore finds and agrees with the Petitioner that the marriage between the parties has broken down irretrievably.

It is therefore my finding, and I so hold, that the Petitioner is entitled to the relief sought in this Petition.

Accordingly, this Petition succeeds and the Court orders as follows:

- a. A decree Order Nisi is hereby made dissolving the marriage contracted between the Petitioner and the Respondent on 27th April, 2019 on the ground that same has broken down irretrievably, the Respondent having behaved since the marriage, in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- b. A decree Order Nisi is further made dissolving the said marriage on the ground that since the marriage, the Respondent had persistently refused and failed to consummate the marriage.

c. Relief (c) fails and is hereby dismissed as the Petitioner did not plead or prove that any property of hers is in the possession of the Respondent.

HON. JUSTICE A. O. OTALUKA
3/4/2023.