

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT HIGH COURT 20 GUDU - ABUJA**  
**DELIVERED ON WEDNESDAY THE 19<sup>TH</sup> DAY OF APRIL 2023**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE.R. OSHO-ADEBIYI**

**SUIT NO.FCT/HC/PET/010/2021**

**BETWEEN:**

**YEWANDE OLUBUKOLA JUNAID ----- PETITIONER**

**AND**

**TONY KUNLE JUNAID ----- RESPONDENT**

**JUDGMENT**

The Petitioner on the 4<sup>th</sup> of January 2021 filed this petition against the Respondent claiming for the following:

1. A DECREE of dissolution of the marriage contracted on the 21<sup>st</sup> day of April, 2006 at the Abuja Municipal Area Council Marriage Registry, Abuja — FCT Nigeria between the Petitioner and Respondent on the ground that the marriage has broken down irretrievably and the Petitioner and Respondent have lived apart for a continuous period of at least three years immediately preceding the presentation of the instant Petition.
2. AN ORDER of this Honourable Court granting full the Children of the Marriage, Abayode Junaid (Male) and Zainab Junaid (Female) to the Petitioner until they attain the age of majority. .
3. AN ORDER of this Honourable Court granting the Respondent access and visitation rights to the children of the Marriage, Abayode Junaid (Male) and Zainab Junaid (Female).
4. AN ORDER of this Honourable Court that the Petitioner shall be responsible for the upkeep, accommodation, welfare, medical bills, and tuition fees of Abayode Junaid (Male) and Zainab Junaid (Female) until graduate level, while the Respondent shall provide moral guidance, emotional stability and financial support for the children of the Marriage.
5. AND FOR ANY OTHER ORDER OR FURTHER ORDERS as this Honourable Court may deem fit to make in these circumstances against the Respondent.

Also filed along with the petition is a verifying affidavit and certificate of reconciliation. The Respondent was served with the

petition via substituted means to wit by pasting at the last known address of the Respondent at House 36, 35 Road Gwarinpa, FCT-Abuja. Petitioner gave evidence virtually on the 8<sup>th</sup> day of March, 2022 and testified to the facts summarily; that Petitioner and the Respondent got married on the 21/4/2006, at Abuja Municipal Area Council Marriage Registry, Abuja. That after their marriage they moved to United Kingdom and subsequently moved back to Nigeria. That they both found out they were not compatible in many ways and were unable to resolve certain differences between them which led to ceasure of cohabitation between them on the 1<sup>st</sup> of July, 2012. That the marriage between her and the Respondent has since broken down irretrievably as they have lived apart for a continuous period of at least (8) eight years and (5) five months immediately preceding the presentation of this petition. That she has been living with the children of the marriage, Abayode Junaid and Zainab Junaid since separation without objection from the Respondent. That she has single handedly been paying her house rent, school fees for the children of the marriage, has been solely responsible for their upkeep, responsible for their emotional and financial needs. That the two (2) children of the marriage are Abayode Junaid (male) born on the 2/11/2005 and Zainab Junaid (female) born on the 21/2/2007 both currently attend Ladybridge High School Bolton BNL3 4NG United Kingdom. That she is capable of catering for the welfare of the two children of the marriage and it will be in their interest to continue to remain in her custody until they attain the age of majority. That she prays the Respondent will have full access and visitation rights to the children. That the children of the marriage shall continue to attend descent schools and she will be fully responsible for their upkeep, tuition fees, books, accommodation and welfare till they finish their tertiary institution while the Respondent is also at liberty to provide moral guidance, emotional stability and financial support for the children. That she will be fully responsible for the medical care of the children of the marriage subject to any contribution from the Respondent. In proof, the Petitioner tendered the "Certified true copy of marriage certificate dated 21/4/2006" in evidence and marked was Exhibit A.

Upon conclusion of the examination in chief of the Petitioner, the Court adjourned for cross-examination and for the Respondent to open his case. The Respondent was served all processes and hearing notices via substituted means by order of court but failed to appear in court to cross examine the Petitioner and open his defence. The Respondent was served but did not file an answer to the Petition

neither was the Respondent represented by a counsel. The Court on application of the Petitioner's Counsel, foreclosed the Respondent.

The Petitioner's Counsel filed the written address and raised a sole issue for determination which is;

“Whether the marriage between the Petitioner and the Respondent has broken down irretrievably taking cognizance of the fact that the Petitioner and Respondent have lived apart for a continuous period of at least (8) eight years immediately preceding the presentation of this petition?”.

Summarily, counsel submitted that from the evidence led at trial the Petitioner has undoubtedly established that the marriage between both parties has broken down irretrievably relying on **Section 15 (1)(2)(f) of the Matrimonial Causes Act**. That it is trite that where the defendant as in the instant case does not call evidence at trial, the onus of proof on the plaintiff will be discharged on a minimal of proof citing **Aina V. U.B.A Plc (1997) 4 NWLR (Pt. 498) 181 at 189**. Counsel submitted that the evidence before the court has not been challenged or controverted by the Respondent relying on **Ajidahun V. Ajidahun(2000) 4 NWLR (Pt. 654) 605**. Counsel further submitted that **Section 15 (2)(f) of the Matrimonial Causes Act** as far as living apart is concerned is not interested in right or wrong or the guilt or innocence of the parties. That once the parties have lived apart and the Petitioner as in the instant case has established this fact to the reasonable satisfaction of the court, the court is bound to grant the decree. Counsel submitted that by the provision of **Section 7(1) of the Matrimonial Causes Act**, in proceedings with respect to the custody, the court shall regard the interests of those children as the paramount consideration and subject thereto, the court may make such order in respect of those matters as it thinks proper and referred the court to **Odusote V. Odusote (2012) 3 NWLR 487**. Counsel urged the court to grant the petitioners' prayers.

As stated above the Respondent did not file a response to the Petition neither was he represented by counsel and the law is trite that where the evidence of the Petitioner is unchallenged the Court is bound to act on it. The Supreme Court in the case of **CAMEROON AIRLINES V. OTUTUIZO (2011) LPELR 82-(SC) Per Rhode- Vivour J.S.C** held,

*“it is well settled that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the Court ought to act positively on the unchallenged evidence before it”*

The evidence of the Petitioner in this case is not challenged or controverted by the Respondent. The effect therefore is that the evidence of the Petitioner will be taken as accepted or established. However, notwithstanding the above general principle, the Petitioner is still duty bound to prove his case. I find in support of this the case of **Nnamdi Azikiwe University v. Nwafor (1999) 1 NWLR (Pt.585) 116 at 140-141** where the Court of Appeal per **Salami J.C.A.** expounded the point thus:

*“The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence... the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establishes or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant...”*

Therefore, from the above point the burden of proof lies on the plaintiff or petitioner in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the unchallenged evidence.

I have examined the evidence and read the final written address of the Petitioner’s Counsel, the issue for determination in this case is:

**“Whether Petitioner has successfully proved her case for dissolution of marriage”**

The fact that a marriage has broken down irretrievably is the sole ground for the presentation of a divorce petition, and the Court cannot make such findings unless one or more facts specified under **Section 15(2) of the Matrimonial Causes Act**, is or are proved. The facts as stated in **Section 15 (2) of the Matrimonial Causes Act**, that can be basis for grounds for dissolution of marriage are as follows:

- a. *That the respondent has 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 a way that the petitioner cannot be reasonably 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.*

The evidence of the Petitioner in proof of those facts are succinctly stated in the earlier part of this judgment and I find these unchallenged and uncontroverted evidence of Petitioner satisfactory and are in conformity with **Section 15 (2) (f) of Matrimonial Causes Act 2004** in establishing that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of this petition. The Petitioner, having discharged the burden placed on her to prove the petition by the fact that parties have lived apart for 8years and 5months, the marriage in my view has irretrievably broken down by virtue of the provisions of **Section 15(2) (f) of the Matrimonial Causes Act 2004** and I so hold, therefore the marriage celebrated between the Petitioner and the Respondent is hereby dissolved.

With respect to the reliefs on custody and maintenance of the children of the marriage sought by the Petitioner, from the provisions of **Section 71(1) of the Matrimonial Causes Act, Cap 220 Laws of the Federation of Nigeria, 1990** and **Section 1 of the Child's Right Act 2003**, the Court is bound to have regard to the interest and welfare of the children as the paramount consideration in the grant of custody and maintenance of children. The Petitioner has asked for full custody of the children of the marriage until they attain the age of majority as both of them have been living with her from birth till date. The Respondent having not filed any process or led evidence in challenge of the reliefs sought by the Petitioner implies he is not aversed to the Court granting the reliefs. In the circumstance, I will grant full custody of the children of the marriage to the Petitioner.

With respect to the relief relating to the upkeep of the children, by **Section 70 (1) of the Matrimonial Causes Act Cap 220 Laws of the Federation of Nigeria, 1990**, it provides thus;

*“Subject to this Section, the court may in proceedings for an order of maintenance of a party to a marriage, or children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regards to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances”*

The education and welfare of a child are serious and sensitive matters that is guaranteed under the **Child Rights Act of 2003**. What is best for the child should take precedence over all other considerations in the Court. In this case, the Petitioner has stated in her witness statement on oath and in her reliefs sought that she would be responsible for the upkeep, accommodation, welfare, medical bills, and tuition fees of Abayode Junaid (Male) and Zainab Junaid (Female) the children of the marriage until they graduate having been the one single handedly taking care of them since 1<sup>st</sup> day of July, 2012 till date, while the Respondent shall provide moral guidance, emotional stability and financial support for the children of the Marriage. In the circumstance, therefore, and in exercise of that discretion and noting the fact that the Respondent has failed to react to this petition the prayers of the Petitioner is granted as prayed.

The Petitioner, having discharged the burden placed on her to prove the petition and the marriage so dissolved between the Petitioner and the Respondent, consequently it is hereby ordered as follows.

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **YEWANDE OLUBUKOLA JUNAID** and the Respondent **TONY KUNLE JUNAID** at the Abuja Municipal Area Council Marriage Registry, Abuja, Nigeria on the 21<sup>st</sup> day of April, 2006.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.
3. That the Petitioner shall have custody of the Children of the marriage **Abayode Junaid (Male) and Zainab Junaid (Female)** until they attain the age of majority.
4. That the Respondent shall have access and visitation rights to the children of the Marriage, **Abayode Junaid (Male) and Zainab Junaid (Female)** at any reasonable time and place

during the day and with the prior and timely information to the Petitioner and also by telephone conversations, text or video conferencing or electronic mail or other forms of communication at any reasonable time during the day while the children are in custody of the Petitioner.

5. That the Petitioner shall be responsible for the upkeep, accommodation, welfare, medical bills, and tuition fees of **Abayode Junaid (Male) and Zainab Junaid (Female)** until graduate level, while the Respondent shall provide moral guidance, emotional stability and financial support for the children of the Marriage.

**PARTIES:** Absent

**APPEARANCE:** S. F. Pele appearing for the Petitioner. Respondent is not represented.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**JUDGE**  
**19<sup>TH</sup> APRIL, 2023**