

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI –ABUJA**

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE:- 30th May, 2023

FCT/HC/PET/461/2022

BETWEEN:

COMFORT FEBISOLA -----

APPLICANT

AND

BRAIN JOSEPH BAXENDAL -----

DEFENDANT

JUDGMENT

This is a petition brought against the respondent with the leave of the Court the Respondent was served with the Court processes by substituted means also the Court ordered that same shall be served via his whatsapp. the petitioner through her Counsel filled a motion exparte which led to the grant of the above prayers as contained on the motion exparte.Despite the service effected on the Respondent by the above means same chose or refused to appear in Court neither does the Respondent filed any processes in answer to the said petition.

On the date fixed for hearing. The respondent was not in Court.Therefore the petitioner applied that the matter be adjourned to another date and also apply to the Court that hearing notice be served on the same. This application was accordingly granted by this Court still on resumption the Respondent was not in Court. The Petitioner proceeded with her case on 20th February, 2023 and graphically gave evidence which led to the

admitting of the marriage certificate as exhibit 1 dated the 24th September, 2020 in evidence as can be seen from the process filed by the Petitioner. She clearly stated the circumstances that led to the filing of her petition. In the petition, the Petitioner averred that the Respondent obtained her consent by deceit and fraud by presenting himself as a very good suitor for the petitioner while the contrary was discovered to be the case. The petitioner alleged that while they were chatting and discussing about the intending union she clearly informed the Respondent that she would not want to get married to a man that smoke cigarettes or drink alcohol and that man has so to be a good Christian. The petitioner went further to state that the Respondent claimed that he was a very good Christian who does not smoke cigarette or drink alcohol and deceived the petitioner into marrying him.

The said marriage was conducted under the marriage act as can be seen from exhibit 1. After the marriage the Respondent who is an American citizen took the Petitioner and her son of a previous marriage to the United State. It turn out to the shock and surprise of the petitioner that in reaching the U.S.A the Respondent started exhibiting his smoking and drinking habit and very unchristian attitude. The petitioner alleged that the situation brought several rifts and argument between them when the Respondent would be howling at her and making her to feel very unsafe. The petitioner alleged that the Respondent would sometimes drink to stupor and would fall down on the floor like a lifeless human being. The Respondent was threatening the life of the petitioner. This situation made the Petitioner to virtually escape for her dear life and took her son back to Nigeria. All this are contained in the petitioner's deposition. Having gave evidence extensively the matter was fixed for cross examination, on 2nd March, 2023 when the matter came for cross examination the Respondent was not in Court. The Petitioner's Counsel applied to foreclose the Respondent. The application was granted by the Court. Consequently the matter was adjourned to the 9th March, 2023 for defence.

On the 9th March, 2023 the Respondent was also not in Court. The petitioner Counsel applied that his right for defence be foreclosed. This application was also granted by the Court. The petitioner's Counsel applied for a date to enable same filed their final written address. This application was accordingly granted by the Court. I must state in this judgment that throughout this trial any steps applied for by the Petitioner's Counsel hearing notice must be served on the Respondent this is in line with principle of fair hearing as enshrined in our constitution the petitioner filed their final written address dated the 14th April, 2023. The reliefs sought by the Petitioner against the Respondent is that:-

A decree of nullity of marriage on the ground thus: -

- A. Whether the petitioner has proofed her case before the Court.
- B. Considering the facts and circumstance whether the Respondent has been given fair hearing in this case.

On the above Petitioner's Counsel cited the case of *SOWAIDE VS SOWAIDE UNREPORTED case FSC 130/62 28TH JUNE, 1963* and also section 34 of the Matrimonial Causes Act. Also see the case of *DR. JOSHUA OMOTUNDE VS MRS YETUNDE OMOTUNDE (2003) 9 NWLR (pt. 718)252*.

While on issue b Counsel referred the Court to the case of ***NEWSWATCH COMM VS ATTA (2006) 12 NWLR (pt 993) PGE 144-1700 STATE INDEPENDENT ELECTORAL COMMISSION EKITI STATE VS NATIONAL CONSCIENCE PARTY*** to grant its reliefs. I have substantially took into consideration the evidence of the petitioner and the exhibit tendered. I am of a strong view that the reliefs sought in my opinion does not strictly comply with section 15(2) Matrimonial Causes Act. And also all the case cited and the issue raised by the Petitioner.

I found it worthy of consideration to take the two issues raised in the final written address and deal with them under one item Whether the petitioner is entitled to any reliefs this is trite. It is settled law where an affidavit is not challenged the Court would hold that the averment in the

said affidavit are true. See **UNITED BANK PLC VS LAWRENCE UZAL (2004) 14 NWLR (pt 893) 323**. Applying this principles of law with the case at hand is clearly show that the averment on the affidavit of the petitioner is true. This is because the Respondent has not file anything or contravene the said affidavit.

Also it is clear from the case of **ASIFA FOODA FACTARY VS ALVAIN NIG. & ANOR (2002) LPELR 570 SC**. From the construction of the above evidence and judicial authoritiesi can finally hold that this Court would not force an unwilling partner to continue with a marriage that he/her does not have interestAlthough. See 15(2) Matrimonial Causes Act is the general law applicable to a dissolution of anymarriage.

I am convincedthat the Respondent is not against the reliefs sought by the petitioner based on the applicability of section 3(1) of the Matrimonial Causes Act.

Subject to the provision of this section a marriage that takes place after the commencement of this Act is void in any of the following cases but not otherwise. That is to say where;-

- a) Either of the parties is at the time of the marriage-lawfully married to some other person.
- b) That parties are within the prohibited degree of consanguinity or subject to section 4 of the Act of affinity
- c) The marriage is not a valid marriage under the law of the place where the marriage taken place, by reason of failure toto comply with the requirements of the law of that place with respect to the form of solemnization of marriage
- d) The consent of either of the parties is not a real consent.
 - i. It was obtained by deceit or fraud or
 - ii. That party is mistaken as to identify of the other party or as to the nature of the ceremony performed
 - iii. That party is mentally incapable of understanding the nature of the marriage contract

iv. Either of the parties is not of marriageable age

Consequently, from the unchallenged evidence i would conclude by strictly applying section 3(1) Matrimonial Cause ACT (D) (1) and annulled the marriage. Consequently, the marriage between the Petitioner and the Respondent conducted at Abuja Municipal Area Council Marriage Registry on the 24th day of September, 2020 is hereby annulled.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

appearance

Sophia O. Ifijeh:- For the Petitioner