

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA,

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 6TH APRIL, 2023

FCT/HC/CV/GWD/PET/20/2022

BETWEEN: -

MRS. AKUBO ONUH ECHECHE----- PETITIONER/APPLICANT

AND

MR. JUDE AMANA AKUBO----- RESPONDENT

JUDGMENT

By a notice of petition dated the 28th September, 2021 and subsequently amended by the Court the petitioner filed this suit against the Respondent seeking the following reliefs: -

1. A decree of dissolution of the marriage on the ground that since the marriage, the Respondent has deserted the petitioner the petitioner cannot reasonably be expected to remain in the marriage with the Respondent, and therefore the marriage has broken down irretrievably.

2. And for such further other orders as the Court may think just and necessary to make in the circumstances.

The grounds upon which the petitioner is seeking for the dissolution of the marriage between parties is that it has broken down irretrievably in that the respondent has lived apart from the petitioner for a continuous ` period of 3 years and months proceeding the presentation of this petition and that the Respondent has behaved in such a way that the petitioner can not reasonably be expected to stay with the Respondent. The petitioner gave evidence graphically on the account of the marriage with the Respondent, from the evidence of the Petitioner, the petitioner and Respondent got married under the Act at the marriage registry on the 22nd May, 2018 in Abuja Municipal Area Council (AMAC) and that shortly after the marriage in 2019 the Respondent travelled outside the country U.S.A Florida since then she have not heard from him. No any form of communication all effort to communicate with the Respondent through friends and family prove abortive. The Respondent has made it clear that he did not intend to return. This caused her emotional, psychological and physical pain this over three years. she did not intend to continue with the marriage and that she also did not connive with the Respondent.

While in the cause of the trial the Petitioner tendered the certificate of marriage in evidence and same is admitted and marked as exhibit 1 the records of this Court show that attempt was made on

several occasion and the Respondent was served with hearing notice by substituted means after obtaining the leaving of Court but the Respondent refused to appear and defend the petition having received the processes of the Petitioner and the subsequent hearing notices as ordered by the Court. At the close of the Petitioner's case the Respondent was called upon to cross examine and subsequently open his defence. He neglected and subsequently was foreclosed upon the Petitioner's application. This Court thereafter adjourned the case for adoption of final written address.

The Petitioner raise a sole issue for determination through her Counsel whether given the facts and circumstances of the case the marriage can be said to have broken down irretrievably to warrant entering of judgment for the Petitioner.

Summarizing Counsel's address, the Petitioner's Counsel submitted that the Petitioner has on preponderance of evidence established the legal requirements for the grant of the petition. Counsel submits that the Petitioner has by unchallenged and uncontroverted evidence, shown that the marriage between the parties has broken down irretrievably, the Respondent having lived apart from the Petitioner for more than three (3) years and months shows clearly that the marriage has broken down irretrievably and parties have no desire to continue with the relationship. Counsel contends that this fact alone without more can ground a decree of

dissolution of marriage. Counsel urged the Court to grant the reliefs sought as the Petitioner has by uncontroverted evidence, discharged the burden of proof to be entitled to the reliefs sought.

I have examined the processes filed by the Petitioner together with the evidence adduced and the written address filed by the Petitioner's Counsel. The issue to be resolved is "*Whether the Petitioner has proved his case to be entitled to the reliefs sought*".

The dissolution of marriage contracted pursuant to our marriage law is guided by **Matrimonial Causes Act, Cap 22, Laws of the Federation 2004** and under the said law, a petition by a party to a marriage for decree of dissolution of marriage (as in this case), one or more facts of which the petitioner must establish before this Court shall be that the marriage has broken down irretrievably. See *IBRAHIM V IBRAHIM (2006) LPELR- 7670 (CA)*. In *EKREBE V EKREBE (1999) 3 NWLR (PT 596) 514 at 517*, Mohammed JCA held that for a divorce petition to succeed, the petitioner must plead one of the facts contained in **SECTION 15(2),(A)-(H) of the Matrimonial Causes Act**, and if the petitioner fails to prove any of the facts stated in law, the petition must be dismissed.

I have equally examined all the papers filed in this Court, and properly scrutinized the unchallenged testimony of the PW1 and the position of the law is always that for any evidence that is neither

attacked nor discredited, and is relevant to the issue, it ought to be relied upon by a judge. This is a Supreme Court holding in the case of *AMAYO V ERINWIN ABOVO (2006) 11 NWLR (PT 992) at page 699*. It is trite law that where evidence given by another party to a proceeding has not been challenged by the other party who had the opportunity to do so, it is always open to the Court seized of the matter to act on such unchallenged evidence before it.

The Petitioner during examination, tendered the Marriage Certificate, evidencing the celebration of a statutory marriage between her and the Respondent is with the Respondent. This has not been controverted by the Respondent who filed no reply. I am therefore left with no option other than to believe that a statutory marriage exists between the parties.

In my considered view, by virtue of the provisions of **Section 15(2) (d),(e),(f) of the Matrimonial Causes Act**, which provides as follows:-

“(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;”.

The Petitioner has firmly established that the Respondent deserted the Petitioner, that parties lived apart for a continuous period of more than three years immediately preceding the presentation of the petition and the Respondent does not object to the decree being granted.

In view of all the above, there is ample prove that the Respondent deserted the Petitioner since June 2019 when he left the matrimonial home cumulatively for a period of three (3) years and months preceding the presentation of this Petition, all efforts from the testimony of the Petitioner before this Honourable Court to reconcile with the Respondent to return to the matrimonial home or make the marriage work did not succeed. This also interprets that the Respondent has shown a manifest intention to remain separated. The marriage between the Petitioner and the Respondent to my mind and from available evidence before this Court has broken down irretrievably. This marriage should therefore in the interest of both parties be dissolved in order to release the petitioner from the oath of marriage having satisfied the requirement of the Matrimonial Causes Act, 2004.

Therefore, flowing from the above, this Court hereby grants the prayers sought by the Petitioner for a decree of dissolution of her marriage to the Respondent accordingly. Decree Nisi is hereby made. The marriage between the Petitioner and the Respondent is hereby dissolve decree Nisishall become absolute upon the expiration of 2 months from the date of this order unless sufficient cause is shown to Court why decree Nisi should not be made absolute.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

V.I Ohaeri:- For the Petitioner