

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

Date:- 11TH JULY, 2023

BETWEEN:-

FCT/HC/PET/471/2020

MRS. CHRISTIANAH OLUBUNMI AKINSOLA-----

PETITIONER

AND

MR. AYOOLA SAMUEL AKINSOLA-----

RESPONDENT

JUDGMENT

By a notice of petition dated 28th September, 2020 filed by the Petitioner against the Respondent seeking the following reliefs:-

A decree of dissolution of the marriage on the ground that both the Petitioner and the Respondent have been living a part for at least three years.

The ground upon which the Petitioner is seeking for the dissolution of the marriage between parties is that the marriage has broken down irretrievably in that parties have been living apart for a period of at least 3 years proceeding the presentation of the petition in such a way that the Petitioner cannot reasonably be expected to stay with the Respondent. The

circumstances that brought the filing of this petition can be seen from the entire petition filed by the Petitioner against the Respondent in her petition dated 28th September, 2020. The Petitioner gave evidence graphically on the account of the marriage with the Respondent from the evidence of the Petitioner. The Petitioner and the Respondent got married at Alimoshi L.G Registry Lagos State on 2nd April, 2015. The said marriage was contracted under the Act. The Petitioner's Counsel through PW1 (Petitioner) having led proper foundation applied and tender the certificate of marriage in evidence accordingly the said marriage certificate was admitted in evidence and marked as exhibit A. The record of this Court shows clearly attempt was made on several occasion and the Respondent was served with hearing notices by substituted means after obtaining the leave of this Court but the Respondent refused to appear and defend this petition nor file any answer to the petition having received the processes filed by the Petitioner against the Respondent. After the close of the Petitioner's case the Respondent was called upon to cross examine the petition this was done by serving the Respondent with the hearing notice through substituted means but still refuse to come and cross examine the Petitioner. The Petitioner's Counsel now applied to foreclose the Respondent from cross examining the Petitioner.

Accordingly this application was granted so also the Respondent failed to enter his defence also foreclosed based on the application made by the Petitioner's Counsel. It was also part of the Petitioner's evidence that when the Respondent moved to Lagos looking for a job the Petitioner decided to visit him in Lagos but the Respondent warn her not to do that according to her testimony they have been living apart for 6 years. Prior to his marriage. The Petitioner told the Court that she live at Gwagwalada while the Respondent lives in Lagos. The Respondent also told the Petitioner that she can move on with her life and also she should go back to her parent.

Several hearing notices were served on the Defendant at any stage taking during the proceceding but the Respondent refuse to do the needful. Equally despite the fact that the Respondent did not appear in this matter he was given his right of filing his final written address still the Respondent have not filed anything while the Petitioner filed her final writen address dated 21st May, 2023.

The petition was brought pursuant to order 111 Rule 1 Matrimonial Causes Act (Cap MF) LFN 2004 in the said final written address Counsel to Petitioner raised the following issues for Court determination:-

" Whether the Court has jurisdiction to preside over the case.

"Whether the Petitioner has satisfied the Cout that the marriage between the Petitioner and the Respondent has broken down irretrivably."

ON ISSUE ONE (I)

above Petitioner Counsel referred this Court to order iv rule 8(3) of the Matrimonial Causes Act Cap MF LFN and also order Vi Rule 7 (1) of the same Act which deals with issue of services.

In his argument Counsel maintained that the Respondent was adequately served with petition and subsquent hearing notices but same refused to appear in Court to defend the petition.

ON ISSUE TWO (II)

Petitioners Counsel referred the Court to section 15 (1) and (2) of the Matrimonial Causes Act Cap M7. LFN 2004 and the following cases *OMOTUNDE VS OMOTUNDE (2001) 9 NWLR (PT718) 252 Q 284. AGUMA VS AGUMA (1972) 2 ECCLR 41.*

In the said written address Counsel to the Petitioner argued that where evidence adduced in proof of certain fact by a party which is not controverted by the adverse party such facts are deemed admitted by the adverse party and would require no further proof by the alleging party.

See *PROVOSTLAGOS COLLEGE OF EDUCATION VS EDUN (2004) 6 NWLR (pt 870) 476 500 PARAGRAPH F. OSUN STATE GOVT VS DANLAMI (2003)7 NWLR (pt818) 72Q 99 paragraph D. Abdul VS BENSU (2003) 16 NWLR (pt 845) 5985* paragraph E. see also section 82 (1) of the Matrimonial Causes Act. On the issue of desertion Counsel referred this Court to section 15 (2) (D) of the v and section 18 Matrimonial Causes Act *NWANKWO VS NWAKWO (2014) LPELR 24396*.

On a whole Counsel urge the Court to grant this petition and dissolve the marriage contracted on the 2nd April, 2015 between the Petitioner and the respondent herein has broken down irrevocably for the reasons that they have been continuously living apart for at least 3 years preceding the filing of this petition.

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 EKRE BE (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 dissolved. Decree Nisi shall 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

Ada Onobun:- For the Petitioner.