

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:-28TH SEPTEMBER, 2023

FCT/HC/PET/369/2023

BETWEEN

TOLULOPEAJIBOLA PHILIPS-----

PETITIONER

AND

OLAYINKA PETER PHILIPS-----

RESPONDENT

JUDGMENT

This is a notice of petition for dissolution of marriage filed by TolulopeAjibola Philips (Petitioner) and Olayinka Peter Philips Respondent this petition is dated the 2nd may, 2023 filed against the Respondent.

The petitioner who is a civil servant and whose address is at No. 366B Close Road Gwarimpa Abuja petition the Court for a dissolution of marriage against the respondent whose address is at Road House 10 Adebisi Layout, NNPC Alepala,Ibadan Oyo State and whose occupation is business of oil and gas. On the ground that the marriage has broken down irretrievably and she can no longer live with him or stay with him. The Petitioner while given evidence gave graphic account how the marriage was conducted, she went on to tell this Court that she was married to the Respondent on the 7th December, 2017 at Ikoyi marriage registry Lagos State two years after the

marriage, Petitioner found out that the Respondent has been married to someone else, Petitioner saw marriage certificate that bears the name of the Respondent and another woman. According to the Petitioner she confronted the Respondent about it but the Respondent denied. Petitioner went on and informed the Court that before they got married, they both agreed that the Petitioner should retain her job here in Abuja. But after one year of the marriage according to Petitioner the Respondent complaint that Petitioner should leave her job and move down to Ibadan and stay with the Respondent, Petitioner said she insisted to continue with her job.

Thereafter the Respondent stopped paying the house rent and other financial responsibilities. In 2020 Petitioner got a scholarship to study in south Korea for her 2nd Degree the Respondent insisted that the petitioner should stay to bear him children. Later on the Respondent agreed that the Petitioner should travel first. While the Petitioner has travelled to South Korea the Respondent stopped communicating with the Petitioner for one year. When the Petitioner returned to Nigeria in December, 2021 she found out that the Respondent already have another woman and that he currently has a baby girl. During the proceedings a certificate of marriage between the Petitioner and the Respondent dated the 7th December, 2017 was received in evidence and marked as exhibit 1. At the close of the prosecution case Counsel to the Petitioner asked the Petitioner what does she want the Court to do for her she now answered that she wants the marriage to be dissolved. It would be placed on record that right of cross examination was adequately given to the Counsel to the Respondent for him to cross examine the witness but same told the Court that he did not intend to cross examine the witness.

After the close of the Petitioners case the Respondent's Counsel rest his case on that of the Petitioner. Consequently the two learned gentle men for and

against those who chose to waive their right to file their final addresses instead they only urge the Court to give a date for judgment. Having reproduced extensively what transpired regarding the petition filed by the Petitioner against the Respondent from the grounds contained in the Petitioner's petition and more importantly the resting of the Respondent's case on that of the Petitioner made me to strictly confine my finding to the provision of section 15 (10(2)) of the Matrimonial Causes Act and find out whether from the petition filed and the unchallenged evidence adduced by the Petitioner satisfied the requirements of the said section. Dissolution of marriage as applied by the petitioner in this case is otherwise known as divorce especially in ordinary man's language. A party asking for a decree of dissolution of marriage is seeking the intervention of the Court in a marriage that is not working. It presupposes that there is a marriage in existence. Under the Act, there is only one ground upon which an application for dissolution of marriage may be brought before the Court. See section 15(1) of the Act which provides.

"A petition under the Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably"

Commenting on the above provision Jijan Opines Jijani N Matrimonial Causes in Nigeria law and practice (Lagos renaissances law publishers Limited (2007) P. 37.

This is the only ground upon which divorce petition can be based. The condition under section 15(2) of the Matrimonial Causes Act are only meant to support this sole ground, Act can only be meant to support that a marriage has broken down irretrievably if at least one of the situations in section 15(2) is established.

Many time argument are heard in Court by Counsel to the effect that the petition for dissolution of the marriage is based on several grounds. But that is putting it in accurately. What Counsel should say is that several distinct facts in accordance with section 15(2) of the Act support the grounds that the marriage between the Petitioner and the Respondents has broken down irretrievably. Emphasizing the need to avoid this error. Tijani cites the case of ***HARRIMIN VS HARIMAIN (1989)5 NWLR (pt 119)6***. Where it was held inter alia..... firstly there is only one ground for the dissolution of all marriage under the Matrimonial Causes Act to wit " *that the marriage has broken down irretrievably*" vide section 15(1) of the Act.

The subgraphs of sub section 2 thereof eight of them A-H are only various species of the breakdown, or to put it differently, a petitioner who satisfies the Court on any one or more of those facts would be entitled to a finding that the marriage has irretrievably broken down, and consequently, be entitled to a decree of dissolution of same. They do not constitute separate grounds on the basis of which dissolution can be granted.

In order not to leave the issues of what amounts to irretrievable breakdown of a marriage to conjuncture, sub section 2 itemizes a list of facts which the Court must satisfy itself about. The sub section provides.

The Court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfies the Court of one or more of the following facts:-

- a. That the respondent has willfully and persistently refused to consummate the marriage
- b. That since the marriage the Respondent has committed adultery and the Petitioners finds it intolerable to live with the Respondent

- c. That since the marriage the respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent
- d. That the respondent has deserted the petitioner for 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 2 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 3 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 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.

From the above provisions of section 15 (1) (2) of the Matrimonial Causes Act I have exhaustively and comprehensively dealt with the said provisions. I must state in this judgment from the evidence adduced by the Petitioner which was unchallenged by Counsel to the Respondent I am finally convinced that the Petitioner has satisfactorily satisfied the requirements of sub section 2 of section 15 paragraph C,D,E and G. consequently the decree being sought by the Petitioner is hereby granted. However this order is hereby made Nisi same shall become absolute after the expiration of 3 months from when the judgment is delivered by the Court .

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

OlawolaAdetoun:- For the Petitione