

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

ON FRIDAY 10TH NOVEMBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 8, MAITAMA, ABUJA

PET NO/185/2023

BETWEEN:

JANE OREZIESIEVOPETITIONER

AND

EMMANUEL ESIEVO RESPONDENT

JUDGMENT

By a notice of petition filed in this Court on the 01/02/2023, the petitioner seeks for the decree of dissolution of marriage contracted between herself and the Respondent at the Warri South Local Government Marriage Registry, Delta State, on the 17th day of May, 2003, on the ground that the marriage has broken down irretrievably in that both parties have lived apart for a

period of at least three (3) years immediately preceding the presentation of the Petition.

It is borne by the records of the court that the respondent was served with the petition *vide* substituted means but failed to file an Answer thereto. The Respondent was equally served with hearing notices for the scheduled hearing dates but failed to turn up at the hearing or be represented by counsel. As a result, the Court treated the Petition as an undefended Petition.

Nevertheless, the Petitioner testified in person at the trial. She stated that she got lawfully married to the Respondent at the Warri South Local Government Marriage Registry, Delta State, on the 17th day of May 2003. She tendered in evidence as **Exhibit P1**, certified true copy of the Certificate of Marriage issued to them at the Marriage Registry.

The Petitioner further testified that immediately after the marriage, both parties resided at Sedeco Road, Enerhen, Warri, Delta State and subsequently at No. B6,

Edewor Estate, Warri, Delta State; and at No. 16203, Decker Place, Derwood, Maryland 20855, USA, where she claimed that both parties lived until January, 2020, when cohabitation between them ceased when the Respondent deserted the matrimonial home to an unknown location.

The Petitioner further testified that the marriage between her and the Respondent produced two male children, namely **Master Oghenefejiro Esievo**, born on **12 December, 2003** and **Master Oghenetega Esievo**, born on **25 July, 2007**.

With regards to the children of the marriage, the Petitioner testified that she had been solely responsible for their schooling, upkeep and welfare since the Respondent deserted the matrimonial home and she is willing to continue to take care of the needs of the children.

The Petitioner further testified that she was not guilty of condonation and connivance at the presentation of the

instant Petition and that there have not been any previous divorce proceedings between the Respondent and her in any other Court prior to the presentation of the instant Petition.

At the close of trial, and having regard to the fact that the respondent failed to challenge the Petition, learned counsel for the Petitioner orally addressed the Court in final summation, relying on the provision of **s. 15(2)(f)** of the **Matrimonial Causes Act (MCA)**, as the basis for the Petition. Learned counsel also relied on the Marriage Certificate, **Exhibit P1** and urged the Court to grant the Petition as prayed.

Now, from evidence placed before this Court, the fact of the marriage between the Petitioner and the Respondent in accordance with the provision of **s. 24** of the **Marriage Act** is clearly established. The Petitioner had tendered in evidence as **Exhibit P1**, certified true photocopy of the Marriage Certificate issued to the parties upon celebration of the said marriage at the Warri South

Marriage Registry, Warri, Delta State on the 17th of May, 2003.

Again, by the provision of s. **15(1)** of the **MCA**, there is only one ground upon which a party may present a petition for dissolution of marriage which is that the marriage has broken down irretrievably.¹

The provision of s. **15(2) (a) – (h)** of the **Act** further set out the various facts upon which the Court could hold that a marriage has broken down irretrievably. A Petitioner need only to establish any one of those facts as set out in s. **15(2) (a) – (h)** of the **MCA**, in order to prove that the marriage has broken down irretrievably.²

In the instant case, the Petitioner has predicated the ground of the Petition in the fact set out in s. **15(2)(f)** of the **MCA**, which provides as follows:

“15 (2) – The Court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have

¹ See *Hamman vs. Hamman* (1989) 5 NWLR (Pt.119) 6; *Anagbado vs. Anagbado*[1992] 1 NWLR (Pt. 216) 207.

²See also *Nanna vs. Nanna* (2006) 3 NWLR (Pt. 966) 1.

broken down irretrievably if, but only if, the Petitioner satisfies the Court of one or more of the following facts: -

a).....

b).....

c).....

d).....

e).....

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).....

h).....”

The uncontroverted evidence of the Petitioner is that the Respondent and her have continued to live apart since January, 2020, when the Respondent deserted the matrimonial home to an unknown place. The instant Petition was filed on 01/02/2023. This clearly established that from January, 2020, when cohabitation between the parties ceased and 01/02/2023, when the Petition was filed, there had been a period of at least three years interval. This state of affairs being so, the law

therefore presumes that the marriage between the two parties have broken down irretrievably and either party was at liberty to approach the Court for a formal declaration of their divorce.

On the basis of the foregoing therefore, it is my finding that the Petitioner has satisfactorily established to the Court the ground upon which the Petition is predicated in line with the provision of **s. 15(2)(f)** of the **MCA**, in that the period both parties lived together prior to the presentation of the Petition clearly exceeded the minimum threshold number of years within which proceedings of this nature can be brought as required by the provisions of the **Act**.

Without any further ado, I hereby grant **Order nisi** dissolving the marriage celebrated between the Petitioner and the Respondent in accordance with the **Marriage Act** on the 17th day of May, 2003, at the Warri South Local Government Marriage Registry, Warri, Delta State, on the ground that the marriage has broken down irretrievably in that the parties to the marriage have lived

apart for a continues period of at least **3 (three) years** immediately preceding the presentation of the Petition.

On the issue of the custody of the second child of the marriage, to whom the provision of **s. 71** of the **MCA** applies, since the Respondent had not contested the Petition, it is hereby further ordered that the Petitioner shall continue to have custody of the second child of the marriage, **MasterOghenetega Esievo**, with the proviso that both parties, as responsible parents, shall work out amicable arrangement for the Respondent's reasonable access to the child, if he shows up before the child reaches the age of adulthood.

Pursuant to the provision of **s. 58(1)(c)(i)** of the **Matrimonial Causes Act**, this decree shall become absolute at the expiration of Three (3) months from today, barring any intervening circumstances.

OLUKAYODE A. ADENIYI
(Hon. Judge)
10/11/2023

Legal Representation:

Ese Igbako (Mrs.) – (with **Favour Owurwie (Miss)** and **D. M. Balami, Esq.**) – *for the Petitioner*

Respondent unrepresented by counsel