

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

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 12

SUIT NO: FCT/HC/PET/261/2016

BETWEEN:

GLORIA UDUAK EKPO.....PETITIONER

VS

SAMUEL GUMMAH NABAASA.....RESPONDENT

JUDGMENT

This Petition for Decree of Dissolution of Marriage was filed by Gloria Uduak Ekpo (hereinafter called the Petitioner) for the relief set out in Paragraph 13 of the Petition as;

- a. A Decree of Dissolution of the Petitioner's marriage celebrated on 12th July 2011, with the Respondent on the ground that the marriage has broken down irretrievably.
- b. That terms as agreed by the parties in the separation agreement with respect to the property settles the property.

The fact supporting the ground for the Petition is as follows;

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.

The Petition along with other processes of court were served on the Respondent by substituted means to wit: through DHL Courier Service. On the other hand the Respondent did not file his Answer to the Petition, was absent throughout hearing of the Petition, but was represented by Agbaji Ochayi holding brief of John Ebokpo.

The Petition proceeded to trial, with Petitioner testifying as PW1 and called no other witness. In the course of her Examination-in-Chief, the original copy of the Marriage Certificate No 301/2011 of the marriage celebrated at the Federal Marriage Registry Abuja on 12th July 2011 between the Petitioner and the Respondent was tendered and admitted in evidence as Exhibit "A" PW1 want the court to dissolve the marriage.

At the close of the evidence of the Petitioner the case was adjourned for the Respondent's Counsel to Cross-examine PW1. Under Cross-examination PW1 told the court that she was not married to any other person before her marriage to the Respondent and that the two parties have lived apart for a period of three years and ten months.

There was no Re – Examination of PW1. The court thereafter adjourned for the Respondent to open his defence upon the application of Respondent's counsel.

On the said adjourned date, Respondent counsel informed the court that he leaves the court with the discretion to deal with the case, since the Respondent have not filed any process and absent in court. And upon the application of Petitioner's Counsel, the court foreclosed the right of the Respondent to defend the Petitioner and adjourned the case for Adoption of Final Address.

On 16/1/18, Segun Olatunji Esq for the Petitioner, adopted their Final Written Address settled by Ebere Okonkwo Esq and deemed filed and served on 16/1/18, as oral argument in support of the Petition. In the said Final Written Address, Petitioner's Counsel formulated a sole issue for determination, that is;

“Whether the Petitioner has proved that her marriage with the Respondent has broken down irretrievably, to be entitled to a Decree of Dissolution of Marriage”

He urge the court to grant the Petition in favour of the Petitioner.

Having carefully considered the unchallenged evidence of PW1 – the Petitioner, the submission of counsel and the judicial authorities cited, the court finds that only one (1) issue calls for determination that is;

“Whether the Petitioner has successfully made out a case to warrant the grant of the relief sought”

Firstly, the Respondent did not file an Answer to the Petition although he Cross-examined the evidence of the Petitioner. The implication of this is that the court will deem the evidence of Petitioner as true and correct and act on it. See the case of CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406 in the case of Afribank (Nig) Ltd Vs Moslad Enterprises Ltd (2007) All FWLR (PT. 421) 819 @ 894 Para E – F Akaahs JCA (as he then was) had this to say.

“Where in Defendant does not produce evidence, or testify, slight or minimum evidence, which can discharge the onus of proof would be required to ground the Plaintiff’s Claim”

I am, however, quick to add that, that minimum evidence must be credible enough for court to grant the claim of the Petitioner. See Zenegal Ltd Vs Jagal Pharm Ltd (2007) All FWLR (PT. 387) 950 Para F – G.

Now in the determination of a Petition for Dissolution of Marriage, under Section 15(1) of the Matrimonial Cause Act, it is competent for a marriage to be dissolved once a court is satisfied that the marriage has broken down irretrievably and to come to that conclusion, the Petitioner must prove to the reasonable satisfaction of court any of the facts as prescribed by Section 15(2) of the Matrimonial Cause Act categorized in sub-section (a) – (h).

In the instant case, the Petitioner place reliance upon the fact contained in Section 15 (2)(e) of the Act as gleaned from the pleadings and evidence adduced before this court. The Section 15(2) (e) reads;

“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”

In discharging the burden of proof of this fact, PW1 – Petitioner narrated a catalogue of events between the parties, while co-habiting in Uganda which necessitated the Petitioner to move out of their matrimonial home. for a period of Six months, without the Respondent looking for her. And when Petitioner could not fend for herself due to strict Immigration requirements in Uganda, Petitioner returned to Nigeria and since 11/7/2014 when Petitioner moved out of their matrimonial home, the parties have lived apart. And despite effort to get in touch with her husband had proved abortive, hence this Petition.

On what may constitute “Living Apart” the court in the case of Nnana Vs Nnana (2006) 3 NWLR (PT. 966) 1 @ 10 Ratio 3 said;

“It is not enough to show that the parties have lived apart for a continuous period of at least two years (2) immediately preceding the presentation of the Petition, but the desertion within Section 15(2) (e) and (f) must be one where any of the parties have been

abandoned and forsaken without justification thereby renouncing his or her responsibilities and evading its duties”

Moreover, there must be a clear intention on the part of one or both spouses not to return to the other and the treatment of the marriage as having come to an end. See the case of Famude Vs Famude (1997) 1 CCH 71 cited in Family Law in Nigeria E.I Nwogugu HEBN Publishers Ibadan 1990 P.188. And in applying the Provisions of Section 15(2) (e) of the Matrimonial Causes Act the court will not be concerned with the determination of which of the parties was at fault or is responsible for their living apart. See Family Law in Nigeria (Supra) @ Pg. 190.

The evidence of PW1 – Petitioner, summed up earlier is to the effect that they have lived apart since the 11th of July 2014 when she moved out of their matrimonial home in Uganda and this Petition was filed on 5/10/2016, a period of more than two years which the parties have lived apart. I find these pieces of evidence satisfactory and in conformity with the proof of the fact relied on for dissolution of marriage. I hereby hold that the marriage has broken down irretrievably.

On the Petitioner’s relief that the terms as agreed by the parties in the separation Agreement with respect to the property settles the property. Petitioner made a plea for this relief but failed to lead evidence in support of that relief. It is trite law that where pleading is not supported by evidence, such pleading is deemed abandoned. See the case of Niger Mills

Company Plc Vs Agube (2008) All FWLR (PT. 427) 86. The Petitioner is therefore deemed to have abandoned that relief and must fail. I so hold.

From all of these and having proven to the reasonable satisfaction of court of facts relied on for the dissolution of marriage, this Petition succeeds in part and judgment is accordingly entered in favour of the Petitioner as follows;

1. The marriage celebrated at the Federal Marriage Registry Abuja under the marriage Act on 12/7/11 between Gloria Uduak Ekpo the Petitioner and Samuel Gumman Nabaasa, the Respondent has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between them.
2. This order shall become absolute after three (3) months from the date of judgment.
3. Relief 2 is hereby dismissed, same having been abandoned by the Petitioner.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

26/3/2019

EBERE OKONKWO FOR THE PETITIONER

A.O. OCHAYI HOLDING BRIEF OF JOHN EBOKPO FOR THE RESPONDENT.