

**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/52/2016

BETWEEN:

MRS. HELEN RAPHAEL OLUSEGUN OLOGUN.....PETITIONER

VS

MR. RAPHAEL OLUSEGUN OLOGUN.....RESPONDENT

JUDGMENT

By a Notice of Petition filed on 5/12/2016 the Petitioner herein seeks the following reliefs contained in Paragraph 11 of the Petition as;

- (a) A Decree of Dissolution of Marriage on the ground that the marriage has broken down irretrievably.

The ground upon which the Petitioner seek the dissolution of marriage as gleaned from the pleadings and evidence is 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 Petition along with other processes of court were served on the Respondent by substituted means to wit; by serving him at National Population Commission, Planning Department. Wuse Zone 2 Abuja pursuant to Order of Court dated 8/5/17. On the other hand, Respondent

did not file an Answer to the Petition, was not represented by counsel and was absent throughout trial despite repeated service of Hearing Notices. Respondent wrote to court that he was not interested in the matter on 24/5/17. The Petition thus proceeded as undefended.

Petitioner testified as PW1 and called no other witness; she adopted the depositions in the Witness Statement on Oath filed on 5/12/10 as oral evidence in support of the Petition.

During the course of Examination-in-Chief of PW1, the Certified True Copy of Marriage Certificate with No. 5372 issued by Abuja Municipal Area Council Registry, Abuja evidencing marriage celebrated on 30/4/2017 between the Petitioner and Respondent is admitted as Exhibit "A"

At the close of evidence of the Petitioner the case was adjourned for the Respondent to open his defence. On the date the case came up the Respondent was absent in court and was not represented by counsel. The court acting on the letter written by the Respondent, wherein he stated that he will not be contesting the Petition the court ordered the foreclosure of the Respondent from defending the Petition. The case therefore proceeded to Address.

On, 5/11/2018, Ese Bolokor Petitioner Counsel adopted their Final Written Address dated 14/8/18 and filed same day as her oral argument in support of the Petition. In the said Final Written Address, Petitioner Counsel formulated a sole issue for determination, that is;

“Whether the Petitioner has not met the condition precedent under the Matrimonial Causes Act for dissolution of marriage.”

He urges court to grant the Petitioner's prayers.

Having carefully considered the pleadings and evidence of the Petitioner as well as the submission of counsel to the Petitioner and the judicial authorities cited the court finds that only one issue call for determination that is;

"Whether the Petitioner has proved the ground alleged in seeking the decree of dissolution of marriage and therefore be entitled to the relief sought"

Firstly, Respondent did not file an Answer to the Petition and informed court vide a letter dated 24/5/17 that he was disinterested in the Petition. The implication of this is that will deem the unchallenged and uncontroverted evidence of the Petitioner as true and correct and act on it. See the case of CBN Vs Igwilo (2007) 14NWLR (PT. 1054) 393 @ 406. In the case of Afribank Vs Moslad Enterprise Ltd (2008) All FWLR (PT. 421) 879 @ 934 Paras E – F Akaahs JCA (as we then was) had this to say;

"Where a Defendant does not produce evidence or testify or call witness in support of defence, 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 the minimum evidence must be credible enough for court to grant the claim of the Petitioner. See the case of Zenegal Ltd Vs Jagal Pharma Ltd (2007) All FWLR (PT. 387) @ 950 Paras F – G.

In the determination of a Petition for dissolution of marriage under Section 15 (1) of the Matrimonial Causes 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 of any of the facts as prescribed by Section 15 (2) of the Matrimonial Causes Act categorized in sub-Section a – h.

In the instant case the Petitioner rely on the facts of Section 15 (2) (f) of the Matrimonial Causes Act which reads;

“That the parties to the marriage have lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the Petition”.

In proof of this ground PW1 - Petitioner told the court that she travelled to Delta State on 24/09/10 when she came back she discovered that the Respondent had changed the keys to the house. All efforts made to reconcile with the Respondent failed and ever since both parties have lived apart. Respondent has remain adamant insisting that Petitioner should not return to their home.

On what may constitute living apart the court in the case of Nnana Vs Nnana (2006) 3 NWLR (PT. 966) @ 32 held that;

“It is not enough to show that the parties have lived apart for a continuous period of two (2) years immediately preceding the presentation of the Petition, but that 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”

From the evidence of PW1 - the Petitioner, summed up above the parties have lived apart for more than three years without their mutual consent. The Respondent according to PW1 has insisted that the Petitioner should not return to their home. I find these pieces of evidence sufficient proof of the facts of this ground relied upon by the Petitioner for the dissolution of marriage and therefore avails the Petitioner. The court therefore holds that the marriage between the Petitioner and the Respondent has broken down irretrievably.

From all of these and having considered the evidence of the Petitioner in support of the ground and fact relied on for the dissolution of marriage, and when remained unchallenged and uncontroverted, this court having found them satisfactory and in conformity with the law particularly Section 15 (2) (f) of the Matrimonial Causes Act, the court holds that the union has broken down irretrievably and deserves a judicial burial. Consequently the Petition succeeds. Judgment is hereby entered in favour of the Petitioner as follows;

- (1) The marriage celebrated between the Petitioner - Mrs. Helen Raphael Olusegun Olugun and Mr. Raphael Olusegun Ologun - Respondent on 30/4/2007 at Abuja Municipal Area Council, Registry Abuja according to the Marriage Act has broken down irretrievably and hereby pronounce a Decree Nisi dissolving the marriage between the parties.

- (2) The said order shall become absolute after a period of three (3) months from today.

Signed

HON. JUSTICE O. C. AGBAZA

Presiding Judge

28/1/2019

ESE BOLOKOR FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT.