

**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: UKONUKALU&GODSPOWEREBAHOR

COURT NO: 12

SUIT NO: FCT/HC/PET/21/2016

BETWEEN:

PHILIP ROBERT APAV.....PETITIONER

VS

GRACE MULE APAV.....RESPONDENT

JUDGMENT

This Petition for Dissolution of Marriage was filed on 16/11/16 by Mr. Philip Robert Apav (hereinafter called the Petitioner) for the relief set out in Paragraph 11 of the Petition as;

- (1) A Declaration of the dissolution of the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably.

The Petition along with other processes of court were served on the Respondent on 28/11/2016. The Respondent on the other hand did not file an Answer to the Petition and was not represented by counsel of her choice. Respondent was absent throughout the hearing of the Petition, despite service of Hearing Notices on the Respondent. The Petition thus proceeded as undefended.

On 21/5/17, the Petitioner opened his case and testified as PW1, he adopted the deposition in his Witness Statement on Oath filed on 16/11/16 as his oral testimony in the course of his Examination-In-Chief the following documents were received in evidence;

- (1) Certified True Copy of Marriage Certificate No/33/2006 evidencing marriage between the Petitioner and the Respondent at the Federal Marriage Registry Abuja on 11/7/2007 admitted as Exhibit "A".

- (2) Two photographs of the witness image showing torn clothes admitted as Exhibits "B¹⁻²".

He wants the court to dissolve the marriage.

On 13/2/2018, one Oscar Apesough testified as PW2, he adopted his depositions in his Witness Statement on Oath filed on 16/11/16 as oral testimony in support of the Petition.

At the close of the evidence of the Petitioner, the case was adjourned for the Respondent to Cross-examine the witnesses, the Respondent failed to respond to all the Hearing Notices served on her at each adjourned dates. The court therefore ordered the foreclosure of the Respondent from cross-examining PW1 and PW2 following the application of the counsel for the Petitioner. The case was thereafter adjourned to 20/9/19 for the Respondent to open her defence, when the case came up, Respondent was absent and upon an application of Petitioner's counsel, the court ordered the foreclosure of the right of the Respondent to defend the Petition and

called on the Petitioner through his counsel to file his Final Written Address.

Addressing the court on 7/11/18, T.C. AdagaEsq for the Petitioner adopted the Final Written Address dated 23/10/2018 but filed on 31/10/18 as oral submission in support of the Petition. Urge court to hold that the Petitioner has proved his case.

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 grounds alleged in seeking the decreeof dissolution of marriage and therefore entitled to the reliefs sought”.

First the Respondent who was served with court processes failed to file her Answer to the Petition, the implication of this is that the evidence of the Petitioner remains unchallenged. The court has held that where evidence is neither challenged nor controverted, court should deem that evidence as true, correct and act on it. See CBNVsIgwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. In the case of AfribankNig Ltd VsMoslad Enterprises Ltd (2008) ALL FWLR (PT.421) 829 @ 894 Paras E – F AkaahsJCA (as he 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, that minimum evidence must be credible enough for court to rely on it. See *Zenegal Ltd VsJagalPharma Ltd* (2007) ALL FWLR (PT.389) @ 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 any of the facts prescribed by Section 15 (2) of the Matrimonial Causes Act categorized in sub-section (a) – (h).

In the instant case, Petitioner relies on the facts contained in Section 15 (2) (c) of the Matrimonial Causes Act as gleaned from the pleadings and evidence of the Petitioner, as grounds for court to dissolve the marriage. The Section 15 (2) (c) reads;

“That since the marriage the Respondent has behaved in such a way that the Petitioner cannot be reasonably be expected to live with the Respondent”

It is trite law that to succeed under this ground the Petitioner must lead sufficient evidence to the reasonable satisfaction of the court, acts of the Respondent which he finds intolerable and such acts must be grave, weighty to make further co-habitation impossible. See the case of Ibrahim

Vs Ibrahim (2007) ALL FWLR (PT. 345) 480 – 490 Paras H – B; See also the English case of Katz Vs Katz (1972) ALL ER 219.

In proof of this ground, Petitioner testifying as PW1 together with PW2, narrated a catalogue of the acts or conduct of the Respondent which he finds he cannot live with, he stated in paragraph 3 of his Witness Statement on Oath;

“That immediately after the marriage the Respondent has shown cruelty and behaved in such a way that I cannot reasonably be expected to live with her”.

He also stated that;

“That due to the continuous nagging, harassment and threats to my life by the Respondent, I am now hypertensive and have since left the matrimonial home”.

On his evidence Petitioner recounted that Respondent descended on him shredding his clothes while he ran to Apo Resettlement Police Station after the Respondent had threatened to inflict bodily harm on him. That the Respondent informed one Oscar Apesough to inform him not to come to their matrimonial home or he would be killed as corroborated by PW2 in paragraph 2, 3 of the Witness Statement on Oath of PW2.

I have considered the entire evidence of the Petitioner, which remained unchallenged and uncontroverted and I find them grave and weighty enough to make further co-habitation impossible and therefore sufficient to hold that the marriage between the parties have broken down irretrievably.

From all of these and having considered the evidence of the Petitioner in support of the sole ground relied upon for court to dissolve the marriage, this having found them satisfactory and in conformity with the law holds that this Petition for dissolution succeeds and judgment is entered as follows:-

- (1) The marriage celebrated between the Petitioner- Philip Robert Apav and Grace Mule Apav – The Respondent on 11/7/2006 at the Federal Marriage Registry Abuja accordingly to the Marriage Act has broken down irretrievably and I 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

4/2/2019

I. J. MBATSAVDUEESQ WITH HIM T.C. ADAGAESQ FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT.