

**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/37/2016

BETWEEN:

PRINCE OTIS ROBINSON.....PETITIONER

VS

ADENIKE BOSE ROBINSONRESPONDENT

JUDGMENT

This Petition for Decree of Dissolution of Marriage was filed by Prince Otis Robinson (hereinafter called the Petitioner) for the relief set out in Paragraph 13 of the Petition as follows;

- (a) An Order for a Decree of Dissolution of Marriage between the Petitioner and the Respondent contracted on the 10th day of May, 2000 at the Marriage Registry Lagos State.
- (b) And the Omnibus relief.

The Petition along with other processes of court were served on the Respondent by substituted means to wit: by a Reputable Courier Company at her last Address at 2102 E. Frierson Avenue Tampa Florida 33610, the United State of America vide an Order of Court granted on 25/1/2017. 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. The Petition thus proceeded as Undefended.

Petitioner testified as PW1 and called no other witness. He adopted the depositions in his Statement on Oath as oral testimony in support of the Petition. In the course of his Examination-in-Chief, the Certified True Copy of Marriage Certificate issued by the Marriage Registry, Lagos evidencing the marriage between the Petitioner and the Respondent celebrated on 10/5/2000 was tendered and admitted as Exhibit "A". PW1 – the Petitioner want court to grant his reliefs.

At the close of the evidence of the Petitioner, the case was adjourned for Cross-examination of PW1 – the Petitioner. On the date the case came up the Respondent was absent in court and was not represented by counsel. Upon the application of Petitioner's counsel, the court ordered the foreclosure of the right of the Respondent from defending the Petition. The court thereafter adjourned for Adoption of Final Written Address.

On, 17/9/18 F.I. Jacobs Esq Petitioner's counsel adopted their Final Written Address. In the said Final Written Address, Petitioner Counsel formulated a sole issue for determination that is;

“Whether the Petitioner has proven his case to be entitled to the reliefs sought”.

He urge court to grant the reliefs 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 reliefs sought”.

Firstly, Respondent did not file an Answer to the Petition and did not challenged the evidence of the Petition, the implication of this is that the court 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) 14 NWLR (PT. 1054) 393 @ 406 in the case of Afribank (Nig) Ltd Vs Moslad Enterprises Ltd (2007) ALL FWLR (PT. 421) 879 @ 894 Para E – F; Akaahs JCA (as he then was) had this to say;

“Where a 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 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 the 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 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 grounds of Section 15 (2) (e) of the Matrimonial Cause Act as gleaned from pleadings and evidence adduced before this court the Section 15 (2) (e) reads;

“That the parties to the marriage have lived apart for 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 respect of this ground, the evidence of the Petitioner is that both parties lived together in the United States of America, and co-habitation between them ceased in 2007, when he decide to relocate to Nigeria and without his consent, the Respondent has continued to remain in the United States of America. He has informed the Respondent of his intention to apply to court for Decree of Dissolution of the marriage if she does come back, but she remained indifferent.

On the meaning of “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 yearsthe desertion must be one where any of the parties have been abandoned or forsaken without justification thereby renouncing his or her responsibilities”.

The evidence of PW1 – the Petitioner reveals that both parties have lived apart since 2007 without his consent and by the conduct of the Respondent, indicates that she is no more interested in the marriage and therefore established that she would not object to a Decree being granted.

All of these are sufficient proof that indeed the marriage has broken down irretrievably. Therefore this ground relied on by the Petitioner as ground for court to dissolve the marriage avails the Petitioner and the court hereby holds that the marriage between the Petitioner and Respondent has broken down irretrievably. I so hold.

From all of these and having considered the evidence of the Petitioner in support of grounds and facts on for the dissolution of the marriage and which remained unchallenged and uncontroverted, this court having founds them satisfactory and in conformity with the law particularly Section 15 (2) (e) of the Matrimonial Cause Act, the court holds that the union has broken down. The Petition succeeds and judgment is hereby entered in favour of the Petitioner as;

- (1) The marriage celebrated between the Petitioner – Prince Otis Robinson and the Respondent Adenike Bose Robinson on 10/5/2000 at Ikoyi Marriage Registry Lagos accordingly to the

Marriage Act had 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.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

28/3/2019

F.I. JACOBS FOR THE FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT