

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY 11TH SEPTEMBER, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE V. V.M. VENDA
SUIT NO: FCT/HC/PET/121/16

BETWEEN:

KUNARA Y. OLOGBOSERE.....PETITIONER

AND

AUSTYNE IYERE OLOGBOSERE.....RESPONDENT

JUDGMENT

By a Petition No. PET/121/2016 dated the 16 and filed the 17th day of May, 2016, the Petitioner seeks the following reliefs thus:

- (1) A decree of dissolution of marriage with the Respondent on the ground that the marriage has broken down irretrievably, due to violence, threat to life of the Petitioner by the Respondent, intolerable behaviour, incompatibility, and that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with him.*

(2) An Order of injunction restraining the Respondent from harassing or assaulting the Petitioner, and from going to Petitioner's house.

(3) An Order of injunction restraining the Respondent from threatening the Petitioner's life from the date of dissolution of the marriage.

In support of the Petition is a verifying affidavit deposed to by Petitioner herself wherein she stated that she verifies the facts stated in the Petition as well as the grounds in support of same.

The Petitioner also filed a witness statement on Oath dated the 17th of May, 2016. She deposed that she married Respondent on 14th May, 2009 at the marriage Registry, Kaduna and the Catholic Church Kaduna on the 23rd of May, 2009 respectively.

That immediately after the wedding, she cohabited with Respondent at flat A10 HRS Estate, 20, Hyambula Crescent, Old Karu Road, Nasarawa State, and that the marriage is not blessed with any child.

It is her further testimony that the Respondent suddenly became cantankerous, quarrelsome and violent at the slightest provocation, to the extent of beating her at any little disagreement. That the Respondent has been threatening her life so much that she now fears for her life which prompted her to move out, and that the

parties have been living apart prior to the filing of this Petition. She tendered the marriage Certificates which are marked exhibits "A" & "B" respectively.

On his part, the Respondent filed an Answer to the Petition dated the 14th day of December, 2016. In his answer and verifying affidavit, he conceded to the divorce but denied most of the paragraphs of the Petition and made clarifications to some. He stated that the parties were living separately until the year 2013 upon Petitioners request and in the interest of the marriage, he resigned from his employment, left his place of abode at No 3, Ilu Drive, Ikoyi, Lagos and relocated to cohabit with Petitioner at flat 4, Karu Court Estate, Nassarawa State. He avers further that it is not in his nature to be quarrelsome and boisterous, neither did he beat up Petitioner nor threaten her life in any way.

He did not also send her parking. Rather it was Petitioner who packed out of their present abode without his knowledge he believed could be settled.

That on the 4th of May, 2016, while he was attending an evening service in church, Petitioner moved some of her personal effects and belongings out of the matrimonial home. That he was prompted to call her relatives and ask for her whereabouts to no avail, but

Petitioner later called him on phone and warned him never to call her relatives to ask for her where about. Also, on the 18th May, 2016, Petitioner in company of her guardian, and some office staff arrived the apartment with a truck to move some of the items the truck could carry and later came back to clear the rest of the properties, leaving the apartment completely empty. The Respondent avers further that, on the 20th of May, 2016, Petitioner brought some Policemen to arrest him on charges of assault and false imprisonment and eventually served him the Petition on the 30th of May, 2016. He finally confirmed that the marriage has broken down irretrievably due to irreconcilable differences.

In response to the Respondent's Answer to the Petition, the Petitioner filed a Reply dated the 14th day of April, 2017. In the Reply, she denied all the paragraphs at the answer to the Petition and maintained that the Respondent is quarrelsome, boisterous and made life unbearable for her. That she left the matrimonial home because of Respondent's constant harassment, quarrelling and cruelty.

It is her further testimony that Respondent did not resign his work because of her, but for his personal reasons, and that the Police escorted her for safety purpose to enable her pack her belongings without any harassment from Respondent.

In an attempt to settle the matter out of court, the parties filed terms of settlement but later informed the court that settlement failed. Thereafter, the court adjourned the matter to 22nd of February, 2018 for hearing, and ordered parties to file their evidence on oath.

The Petitioner opened her case on the 26th of February, 2018 and stated her name as Kunara Yawulda Ologbosere, an investment banker with Ecobank who lives at No 5A, Asemawu Road, Barnawa, Kaduna State. She adopted her evidence on oath as her oral testimony in this case.

In her evidence on oath, she stated that she married Respondent on the 14th May, 2009 at the Marriage Registry, Kaduna and the Catholic Church Kaduna on the 23rd May, 2009 respectively. That immediately after the wedding, she cohabited with Respondent at Block A1 Flat 4, Karu Court Estate and later at flat A10, HRS Estate, 20, Hyambula Crescent, Old Karu Road, Nasarawa State. The marriage is not blessed with any child due to Respondent's health condition and his refusal to do the needful. That the Respondent also refused to heed Petitioner's mother's advise that the parties adopt a child in 2016, to which he responded that he was not ready to train someone else child. Respondent also stopped her from visiting any relative and prevented them, from visiting their house. That she sustained various degrees of injuries during this period including a

broken thumb, a dislocated right hand, bruises all over her body which emotional trauma.

She attached photographs of the bruises which were later rejected in evidence due to lack of proper foundation. That due to the injuries Petitioner sustained as a result of Respondent's violent acts, a medical Report from total care Hospital headed "Excuse duty/uniform" dated 18th September, 2014 was issued and addressed to Petitioner's employee, and that she also wrote a Petition against Respondent which was addressed to the Deputy Inspector General of Police Force Criminal Intelligence and investigation department, Area 10, Garki Abuja.

That during the subsistence of the marriage, Respondent resigned his work and was feeding and taking responsibilities of his extended family upon the Pet income, and all efforts made to make him work again proved abortive, and that the parties have been living apart since 4th May, 2016 prior to the filing of this Petition.

She attached the following documents which are admitted in evidence.

- (1) *Marriage Certificate No. 36 52 dated 23rd May, 2009 bearing the names Austyne Ologbosere and Kunara Mbaya is exhibit "A"*

(2) The Petition dated 11/5/2015 and received on 11/5/2015 addressed to deputy Inspector General of Police, FCIID Area 10, Garki, Abuja is exhibit "B".

Under cross examination, she admitted that the marriage was not blessed with children. She does not have any health challenge, and believe it is God that gives children. She has brothers and Sisters who came to live with her at different times but moved out because of Respondent's consent harassment. She gave the names of her relatives molested by her husband as Dorcas Madu and Elizabeth known as Ego.

She did not report the matter to the police because she only became aware of after moving out of the house.

That Respondent stopped her colleagues in the office from visiting her and also stopped her from communicating with them. That she did not break her husband's finger, as he sometimes wears his wedding ring on both hands

On Re-examination she admitted that her elder brother was living with her in Abuja but left before her husband joined her, but that her younger Sister was still living with her when her husband joined her.

When the case came up for defence, counsel to the Respondent informed the court that Respondent would not put up a defence. He closed his case and rested it on Petitioner's case. Thereafter, the court ordered parties to file their final written addresses and adjourned the matter to 10th of July, 2018 for adoption.

The Petitioner's final written address is dated 9th July, 2018 and filed 10th July, 2018. She formulated two issues for determination thus:

- (1) Whether the Petitioner has proved her case to show that the marriage has broken down irretrievably to be entitled to the grant of the reliefs sought.*
- (2) Whether the court can grant an Order of decree for dissolution based on the consent of the parties.*

Arguing the issues, counsel on behalf of the Petitioner submitted that Petitioner led unchallenged and uncontroverted evidence of the behaviour of Respondent which she cannot reasonably be expected to live with, which includes cruelty. In paragraphs 9 and 10 of her evidence on Oath respectively, Petitioner stated that Respondent suddenly became Cantankerous, quarrelsome and violent at the slighted provocation as a result of which she sustained various degrees of injuries including a broken thumb dislocated right hand, injuries all over her body and emotional trauma. The Respondent who is in a better position to admit or deny the facts neither

appeared in court nor adopted his Answer to the Petition. The implication of this is that the evidence of the Petitioner is taken as true and correct, and the court can act on it.

He cited section 15(1) and (2) (C) of the Matrimonial Causes Act, 2004. He also cited the case of **AFRINBANK (NIG) LTD VS. MOSLAD ENTERPRISES LTD (2008) ALL (FWLR) (PT.421) 879 @ 894 PARAGRAPH E-F** and the case of **DAMULAK VS. DAMULAK (2004) 8, NWLR (PT 874) 151 AT 154**. He argues that the Petitioner has satisfied the provisions of the sections of the above cited Act by discharging the evidential burden under section 132 of the Evidence Act.

On issue 2, counsel submitted that the Respondent did not dispute the Petition. Rather, he conceded to the dissolution of the marriage. This evidenced in paragraph 1 of the Respondent's Answer, affirming that the marriage has broken down irretrievably, and no further issue was raised to change this position.

He finally urged the court to grant the reliefs sought by the Petitioner as per the content of the Petition.

The Respondent's final written address is dated and filed 29th October, 2018. He formulated 2 issues for determination thus:

- (1) Whether the Petitioner has proved her case to be entitled to the grant of the reliefs sought.*
- (2) Whether the court can grant an Order of dissolution based on the consent of the parties having both concented to the dissolution.*

Counsel on behalf of the Respondent submitted that the Respondent did not testify. Only Petitioner testified. The question is whether Petitioner satisfied the requirements of the law in her evidence which was not challenged by Respondent.

He argued further that exhibit "2" which was purportedly written on the 11th of May, 2015 while Petitioner was with the Respondent but submitted after Petitioner left the matrimonial home May, not be reliable but an afterthought.

On issue 2, learned counsel submitted that since the Petitioner has left the matrimonial home and has shown and displayed evidence that she is no longer interested in the marriage, Respondent consents to the dissolution since he cannot force her to continue in the marriage against her will. He urged the court to do justice as desired by the parties.

The two parties in this suit have agreed that this marriage has broken down.

I wish to make myself understood that the position of the law is that parties do not declare their marriage as having broken down irretrievably, it is the court that does so. See section 15(2) of the Matrimonial Causes Act. Where the facts of a case show that the marriage has broken down irretrievably the court will declare the marriage as having broken down irretrievably, if otherwise, then, so shall it be declared?

This Petitioner alleges that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. Her case is supported by evidence alluding acts of violence on the Petitioner to the extent that she sustained injuries such as a broken thumb, dislocated right hand, bruises all over her body which resulted in emotional trauma.

It is also in evidence that the Respondent became very quarrelsome at the slightest provocation in the course of the marriage. These are but a few of the evidence against the Respondent none of which was denied.

Though the respondent filed an Answer to the Petition, he did not really lead evidence deny these allegations; he only stated the acts of the Petitioner which he also believed he would not contain therefore, calling on the court to dissolve the marriage. However, the Respondent failed to testify to support these allegations.

Rather he abandoned his process and rests his case on that of the Petitioner.

The law is clear that when evidence is not denied nor contradicted same is deemed to have been admitted.

Thus in the case of **AGOMUO VS. OGWUEGBU (1999) 4 NWLR (PT 599) 1** the court held:

When there is an unchallenged and uncontradiction evidence as in the instant case, the court must act on such evidence except in such cases where the evidence is itself fraught with legal inhibition. See **NIGERIAN MARITIMES SERVICES LTD VS. AFOLABI (1978) 2 SC 79** and **OMOREGBE VS. LAWANI (1980) 3-4 SC 109**.

More explicit on this is the Supreme Court pronouncement in the case of **OGUNYADE VS. OSHUNKEYE (2007) WRN (VOL. 44) 1 @ 46** where the court held:

It is not the general rule that whenever the evidence tendered by the Plaintiff is unchallenged or uncontradicted, the Plaintiff is entitled to Judgment.

The law, in my view, settled that where evidence gives by a party to any proceeding was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seized of the proceedings to act on the

unchallenged evidence before it. ODULAJA VS. HADDAD (1973) 11 SC 357; (1973) 1 ALL NLR 191; (1973) 8 SC 614. NIGERIA MARITIME SERVICES LTD VS. ALHJI BELLO AFOLABI (1978) 2 SC 79. Unchallenged, uncontradicted evidence ought to be accepted by the court as establishing the facts therein contained. See NWOGO OBIA and others VS. AGWU NJOKU & ORS (1990) 3 NWLR (PT 140)570.

In the instant case the Respondent was given ample opportunity to challenge the evidence before the court. The Petitioner filed her evidence on Oath and served same on the Respondent. He was meant to read same and contradict each allegation seriatim, while stating the true position of affairs. He indeed factually filed an Answer which he suddenly abandoned and rested his case on the case of the Petitioner.

The evidence of the Petitioner is clear that the Respondent is prone to anger which usually transcends to fits of rage thereby causing bodily harm to the Petitioner a situation which was not denied.

It is also in evidence that this marriage was not blessed with the fruit of the womb and that the Respondent is not opposed to the dissolution of the said marriage. In the interest of justice, therefore, for this marriage to be dissolved, I hereby grant a decree Nisi for the

dissolution of the marriage between the Respondent AUSTIN IYERE OLOGBOSE and MRS. KUNARA Y. OLOGBOSE conducted at the Marriage Registry KNLG on the 14th day of May 2009 and at the Catholic Church Kaduna on the 22nd day of May, 2009.

The decree nisi shall be made absolute three months from the date of this judgment.

Signed
Hon. Judge
11/9/2019

PARTIES:

1. KUNARA Y. OLOGBOSERE - PETITIONER
2. AUSTYNE IYERE OLOGBOSERE - RESPONDENT

APPEARANCE:

1. HAJARA GBOLAGADE FOR THE PETITIONER
2. O. OSA-AMADASUN WITH J.O. IDOGA FOR THE RESPONDENT.

STATUTE:

1. SEC. 15(1) AND (2) (C) OF THE MATRIMONIAL CAUSES ACT 2004.
2. SEC. 132 EVIDENCE ACT
3. SEC 15(2) OF THE MATRIMONIAL CAUSES ACT 2004.

DECIDED AUTHORITIES:

1. AFRIBANK (NIG) LTD VS. MOSLAD ENTERPRISES LTD (2008) ALL (FWLR) (PT 421) 879 @ 894 PARAGRAPHS E-F.
2. DAMULAK VS. DAMULAK (2004) 8 NWLR (PT 874) 151 2 154.
3. AGOMUO VS. OGWUEGBU (1999) 4 NWLR (PT 599) 1
4. NIGERIA MARTIMIES SERVICES LTD VS. AFOLABI (1978) 2 SC 79.
5. OMOREGBE VS. LAWANI (1980) 3-4 SC 109.
6. OGUNYADE VS. OSHUNKEYE (2007) WRN (VOL. 44) 1 @ 46.
7. ODULAJA VS. HADDAD (1973) 11 SC 357; (1973) 1 ALL NLR 191; (1973) 8 SC 614.
8. NIGERIA MARTIMIE SERVICES LTD VS. ALHAJI BELLO AFOLABI (1978) 2 SC 79.
9. NWOGO OBIA & ORS VS. AGWU NJOKU & ORS (1990) 3 NWLR (PT 140) 570.