

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 6th DAY OF DECEMBER, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
COURT 26

SUIT NO.FCT/HC/BW/PET/11/17

BETWEEN:

OMOBOLANLE SENAMI OLATUNJI

}

PETITIONER

AND

SEWANU OLUFEMI OLATUNJI

}

RESPONDENT

JUDGMENT

The Petitioner instituted this action on 6/6/17. In this Petition for the Dissolution of marriage the Petitioner **SENAMI OMOBOLANLE OLATUNJI** alleged that the marriage between her and **SEWENU OLUFEMI OLATUNJI** has broken down irretrievably in that since the marriage she and the Respondent have lived apart for a continuous period of at least 2 years immediately preceding the presentation of this petition as the Respondents had deserted her and does not object to the marriage being dissolved and the decree being granted..

The couple were married at the Ikeja marriage Registry on the 24/5/14 the marriage was solemnized at the Fountain of Hope Church Ilupeju in Lagos State .Both were Spinster and Bachelor respectively. There was no previous marriage and the marriage was not blessed with any child. Immediately after the marriage the couple lived at No.3 ALAPA Drive, LASU Road AKESAN, Lagos State. According to the Petitioner, shortly after the marriage the Respondent travelled first to Finland, and subsequently to the USA purportedly for holidays and had since refused to comeback to Nigeria. That he informed her that he had no intension to come back to Nigeria and had advised her to seek for divorce. That since then he had severed all communication channels with the Petitioner and had expressed lack of interest in the marriage. The Petitioner made efforts for the Respondent to see reason for the marriage to go on. But all was abortive. All effort by both families of the parties to resolve the matter failed.Hence she decided to institute this action and seek this Order for:

“Dissolution of the marriage conducted on the 24th day of May, 2014 between Her and the Respondent on the ground that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and that the Respondent does not object to a devoice being granted”.

She attached a copy of the Marriage Certificate which is marked as Exhibit 1. According to her the desertion has occasioned denial of conjugal right. She stated that she has not condoned nor connived with the Respondent to file the present Petition. That she had filed a similar Suit sometimes in 2016 **Suit No. TEMP/2279/2016** and

ID/2080WS/2016 but later withdrew same for the fact that she now resides in Abuja FCT.

After the filing of the present Suit the Respondent filed a motion ex parte for leave to serve the Respondent by substituted means at their family compound. The Court granted it. The service was by pasting the Originating Processes and all other subsequent processes at the family house of the Respondent where his parents still reside at NO.3 ALAKA Drive, LASU ROAD, Akesan Lagos, Lagos State. On the 19/11/18, the petitioner opened her case testified among other things that all effort to get in contact with the Respondent failed as he had blocked all communication channels including social media and that she does not know the Respondents where about. She stated that the couple only lived together for about 3 week because the Respondent travelled and never came back. There was no upkeep or any form of financial support from the Respondent till date.

That she has been emotionally traumatised by the desertion. That she never wanted her marriage to crash. That the Respondent, before he left lied to her that the Ministry Of Environment wanted him to attend a workshop after which he hoped to embark on holiday. That he showed her a document the letter of invitation for the workshop in USA that she did not believe him because she wondered why the Respondent is the one that will represent the Hon. Minister of Environment in such workshop since he was not working in the said Ministry. That before then the Respondent had gone for a course in Finland where he spent 2 years and came back. That was before the parties got married. She urge the Court to grant her petition since she had lived apart with the Respondent for over a period of 4 years as at that time.

After, the Court adjourned the case for cross-examination of the Petitioner. The Respondent did not enter appearance. He never asked a Counsel to represent him. The Court ensured that hearing notices were duly served on him anytime the matter was adjourned.

He never came to cross-examine the Petitioner. The Court granted the application by the petitioner to foreclose the Respondent from cross-examining and subsequently for opening and closing his case after he had failed to open his case on 30/1/19 when it was scheduled for him to do so. The matter was eventually adjourned for Final address.

The Respondent never filed any notwithstanding that the Petitioner filed her Final address on the 16/5/19 and served the Respondent as per the subsisting Order of this court made since 10/10/18. In the written address the Petitioner's Counsel I. A chidi, on behalf of the Petitioner, raised an issue for determine which is:

“Whether the marriage between the Petitioner and Respondent has broken down irretrievably”.

The learned Counsel submitted that it is the law that a petition for dissolution of marriage may be presented on the ground that the marriage has broken down irretrievably. He referred the Court to **S.15 (1) MCA**

That by virtue of **S.15(2) (c)** that the circumstance which a Court can hold that marriage has broken down irretrievably is, among other things, that the Respondent has behaved in such a way that petitioner cannot be reasonably be expected to live with the Respondent and that the Respondent as in the present case has deserted the petitioner for a continuous period of at least one year preceding the presentation of the petition. That in the present

petition the ground is in all fours with the provision of **S.15(2) (C & d) M.C.A.**

That in her testimony the Petitioner has stated how the Respondent had travelled abroad 3 weeks after their marriage and how he has severed all communication channels between them. That, that fact was not contradicted by the Respondent as he did not file any answer, cross-petition or adduce evidence to contradict or defend himself. He referred the Court to case of:

ANOSIKE V.ANOSIKE (2011) IPELR-3774 (CA)

Where it was held that

“That by virtue of S.15 2(d) M.C.A, a Court is bound to hold that a marriage has broken down irretrievably if it is established that the Respondent has deserted the petitioner for a continues period of at least one year immediately preceding the presentation of the petition”.

He submitted that in this case the Respondent has abandoned the Petitioner after travelling abroad three weeks into the marriage based on a lie that he was going for a workshop and shortly after that he severed all communication with the Petitioner and stopped caring for the Petitioner since 2015.

That by that action, it is clear that the Respondent has severed cohabitation with the Petitioner having lived apart for over 4 years and still counting with no financial support, no communication and severance of conjugal rights and total withdrawal from all marital and matrimonial obligations. He referred to the case of: **EKEREBE V.EKEREBE (1999)3 NWLR (PT596)514**

That Respondent did not appear before this court to give evidence he never entered appearance never called witnesses or put up any defence, That being the Case the Petitioner's facts as contained in this petition are deemed admitted as fact admitted need no further proof.

He urge the Court to hold that the fact averred by the Petitioner and the evidence led were unchallengeable and uncontroverted by the Respondent. He urged the Court to dissolve the marriage the Petitioner haven established that the marriage has broken down irretrievably.

COURT:

In any action predicated on petition for dissolution of marriage, the only condition that the Court expects the Petitioner to establish is that the marriage as conducted under the M.C.A has broken down irretrievably. That, the petition can do, by presenting before the Court any of the grounds set out in **S.15 (2) MCA.**

This, the Petitioner must do by evidence presented through the testimony and the facts as contained in the Affidavit of petition for Dissolution of marriage. To the Court to entertain same, such marriage must be under the Act-MCA.

Solemnization may or may not be done but marriage must have been conducted under the Act at the marriage registry or in a licensed government recognised place of worship which must have issued and is empowered to issue Marriage license/Certificate given by the government. Once a Petitioner has been able to establish that the marriage so conducted has broken down irretrievably in that the petitioner is not expected to continue in the marriage after the Respondent has behaved in such a way that Petitioner is not

expected to continue in the marriage the Court will listen and may, if well established dissolve the marriage. But the petitioner must equally present facts based on any of the listed ground as provided in **S.15 (2) (a)-(k) MCA**.

That means that the Petitioner must plead and prove any of those facts as contained in the said **S.15 (2) a-h MCA**. Otherwise the Court will not grant the Order for dissolution of marriage. That is the decision of the Court in the case of:

EKEREBE V.EKEREBE

Among the ground set out in the **S.15 (2) a –h MCA** is Desertion. Once a Petitioner has established that the Respondent has been in desertion or that the Petitioner has been in desertion for a period of not less than one year preceding the filing of the petition for dissolution of the marriage, the Court will listen and is bound to hold that such marriage has broken down irretrievably. That is the decision of the Court of Appeal in the case:

ANOSIKE V.ANOSIKE SUPRA.

Once there is withdrawal of support and cessation of cohabitation and severance of conjugal rights without the consent of one of the parties in a marriage, coupled with avowed intension of abandoning or actually abandonment, and intension to permanently separate from the spouse, one is said to be in desertion in the marriage. That means that once there is abandonment and voluntary withdrawal from all marital and matrimonial obligation sexually, economically and socially and communication wise by any of the spouses in a marriage, it is said that there is clear desertion by the spouse who have to severed the relationship.

In this case the Respondent left the marital home 3 weeks after the marriage was conducted with a lie that he was travelling for a workshop in USA, Claiming that he was going to represent the Minister for Environment when in actual fact he does not work with the ministry. To perfect his lie, he brought documents which he showed his wife, the Petitioner in this case to convince her that his trip was genuine. Though not convinced, the Petitioner believed him, thinking that his spouse of a few weeks will not deceive her. But he did.

Since after the trip, the Respondent decided to sever all communication after telling the Petitioner in telephone conversation that he is no longer interested in the marriage and that the Petitioner can go on and seek for Divorce.

Naturally, by that he stopped caring or catering for the young bride. Conjugal rights were equally severed and the young bride was left in the cold maritality. Not knowing what to do, she ran first to her family and then to her parents-in-law seeking for solace. But did not receive any, as the Respondent has made up his mind and resolved never to come back to his wife. The Petitioner as a law abiding citizen ran to Court almost 4 years after the desertion seeking the dissolution of the marriage that can best be described that was dissolved even before it was conducted, given the fact that the couple lived together as husband and wife for only 3 weeks before the Respondent disappeared to the USA.

This court had gone through the testimony of the Petitioner and made sure that Respondent was given all the time to answer to the Petition or even file a cross-petition. But he never entered appearance or filed any document to that effect. He never challenged any of the facts in support of this petition He did not file

any or sent any Counsel to represent him. Throughout the Hearing/Proceeding in this Case.

It is the law and has almost on daily basis stated in our courts that facts not controverted are deemed admitted because if the person against who the facts are raised has any challenge he would have stated so. This is more so when such party was given more than an ample time to challenge and controvert those facts but failed to do so..

That has been the attitude of the Respondent in his case. He neither filed nor challenged this petition. That means that he does not have an answer to the petition and had admitted all the facts stated thereon as true. This is the decision of the Court in the case of:

NANNA V. NANNA (2006) 3NWLR (PT966) I

Once evidence is not challenged or discredited and once such evidence is very relevant to the issues in dispute, the Court should admit that and rely on it and hold that such facts/evidence are uncontroverted and unchallenged.

It is very evident that the evidence of the Petitioner in this case is not controverted or challenged, since the Respondent did not file any answer or called evidence in this suit. Since from the totality of the evidence/facts in this Case can it then be said that the marriage between the Petitioner, Senami Omobolanle Olatunji, and Sewanu Olufemi Olatunji conducted on 24/5/14, at the Marriage Registry at Ikeja but solemnized at the Fountain of life Church at Ilupeju Lagos, Lagos State, has broken down so irretrievably in that the Petitioner is not expected to continue in the marriage particularly so as the Respondent has been in Desertion for over 4 years preceding the filing of this Suit and after all entreaties from the petitioner to make

Respondent see reason for them to live together, in that this Court should grant the prayer by dissolving the said marriage as sought?

It is my humbly view that this marriage has broken down irretrievably and the petitioner has supported her case with cogent facts which have not been controverted by Respondent and that the petitioner is not expected to continue in the said marriage. That been the case this Court has no reason not to grant the Relief sought by Petitioner.

This Court therefore Order that the said marriage between the Petitioner, Senami Omobolanle Olatunji and Sewanu Olufemi Olatunji conducted on the 24th May 2015 is hereby DISSOLVED. In that a Decree of Order Nisi is hereby granted dissolving the said marriage.

This Court also Order that this Order Nisi shall automatically be made ABSOLUTE after 90 days from the day of this Order 6/12/19 unless the parties resume cohabitation before the expiration of 90 days.

**This is the Judgment of this Court delivered today
The ----- day of -----, 2019 by me.**

K.N.OGBONNAYA

HON.JUDGE

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 5TH DAY OF NOVEMBER, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE K.N. OGBONNAYA
JUDGE

SUIT NO: FCT/HC/CR/120/19

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ----- } **APPLICANT**

AND

CLARA CHUKWUKERE ----- } **DEFENDANT**

BENCH JUDGMENT

In a charge filed on the 30/12/18, the Defendant Mrs. Clara Chukwukere was charged with a 2 count charge bordering on employment of a minor, Ezinne Dike, aged 12 years, as a domestic worker which is an offence contrary to S. 23 (1) (c) of Trafficking in Persons Prohibition Act, 2015.

She was also charged with for an offence of causing emotional abuse of the said Ezinne Dike which is an offence contrary to S. 14 (1) of the same Act.

On the 2nd April 2019, she was arraigned before this Court and she took her plea after the 2 counts charges were read to her.

She pleaded NOT GUILTY to both counts. She was reminded in Prison Custody before Bail was eventually granted.

On the 7th June 2019, the Prosecution opened their case and called their first witness who is the official from NAPTIP who testified and was cross-examined.

On the 9th May 2019, the Nominal Complainant testified and was cross-examined. The Prosecution Witness 1 also testified and was also cross-examined. The matter was adjourned for Defence to open their case. The Defendant notified the Court that they are exploring way to Plea Bargain in the Suit. The Court obliged their term as sought. The Defendant was subsequently charged with less offence as required by Act, 2015.

Subsequently the Parties concluded the Plea Bargaining. They filed the terms of the Plea Bargaining. They applied for Court to enter same as settlement of the issue in dispute.

On 5th November 2019, this Court in its Judgment received the said Report of the Plea Bargain as part of this Judgment and the Court's record.

COURT:

The Court had received the report of the Plea Bargaining with it as per the Court's -----.

The Counsel on both sides have in turn presented on record the report of the Plea Bargaining.

The document received from the Parties – Plea Bargain terms as set out was registered.

Based on this, the Court is glad that this “family matter” has ended in Plea Bargaining as the Parties had heeded to the Court’s advise.

The Court is also glad that the terms of the Plea Bargain had been fully enforced.

It is imperative to note that once there is Plea Bargain the Defendant is charged with a lesser offence and where there is sentencing then it will be less than the original terms as provided in the provision of the Administration of Criminal Justice Act – ACJA 2015.

Today the Defendant – Mrs. Clara Chukwukere had successfully heeded to the advice of the Court which is in line with the extant provision of the ACJA 2015.

The said terms of Plea Bargain are as contained below:

I, **Clara Chukwukere**, a Defendant who was charged with employing of a minor and causing emotional and psychological abuse of **Ezinne Dike** (victim) hereby undertake the Terms of Plea Bargain in respect of this case and state as follows:

1. That I shall pay the sum of **Five Hundred Thousand Naira (N500, 000.00)** only, as compensation to the victim in this case.
2. That based on the above, I have paid the sum of **Two Hundred Thousand Naira (N200, 000.00)** only on Monday the 10th day of June, 2019, as **first instalment**.
3. The second instalment of **Three Hundred Thousand Naira (N300, 000.00)** only on **Monday, the 8th day of July, 2019**.

4. That I have fully complied with the terms as stated in the undertaking I signed in the office of the Complainant dated **10th of June, 2019**. The undertaking and evidence of payment are annexed here with.

5. That I have complied with this undertaking and terms of Plea Bargain voluntarily and freely without any inducement or intimidation.

Dated and filed on the 14th day of November, 2019.

Same was signed by the Defendant and his Counsel on the same day. And also signed by the Complainant and his Counsel on the same day.

This Court therefore has no reason not to discharge and acquit her and set her free for the offence which is now lesser. She is set free from the said offence and is hereby discharged and acquitted.

However, in the interest of quick dispensation of justice this Court incorporate the said terms as a vital part and parcel of this Judgment after this Court had read the said Terms out before all Parties, their respective Counsel, the accused person and all other Nigerians lay and learned.

After that this case comes to a close. In that any other thing shall be post Judgment if the Parties so decide.

Since this Court hereby read out the said terms, the accused Mrs. Clara Chukwukere is

Hereby discharged and acquitted from all the charges against her in this case.

She is free to go home.

The Court will deem as read the filed copy of the Terms which the Counsel for the Defendant will present to this Court after which the Judgment can become operative.

It is imperative to note that this Terms of Plea Bargaining which the Court read out today was signed on the 10/6/19 almost 5 months ago.

This is the Judgment of this Court delivered today

the ----- day of -----, 2019 by me.

K.N.OGBONNAYA

HON.JUDGE

5/11/19

PLAINTIFF COUNSEL: A. Orti

DEFENDANT COUNSEL: N.T. Aguda

29/01/2020

The Chief Registrar
FCT High Court
Maitama, Abuja

Through
Estate Officer

**REQUEST FOR THE TILING OF MY LORD JUSTICE
K.N. OGBONNAYA'S OFFICE AND REPLACEMENT
OF RUG/CARPET IN THE L.A. OFFICE.**

I write in respect of the above stated. Reason being that work has been concluded but the above mentioned is yet to be replaced.

Thanks in anticipation.

Yours Faithfully,

I.A. SADIO

FOR HON. JUSTICE K.N. OGBONNAYA