



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



PETITION NO. FCT/HC/PET/91/16

BETWEEN:

BABATUNDE ADEDAPO ADETOBA.....PETITIONER

AND

OLUTOPE OLUFUNSHO ADETOBA.....RESPONDENT

JUDGMENT

The Petitioner, Mr. Babatunde Adedapo Adetoba was married to the Respondent at the Federal Marriage Registry, Abuja on 14th February, 2004. The marriage was also celebrated at the First Baptist Church, Ikeja, Lagos on the 6th day of March, 2004. After the marriage ceremonies they lived together at Flat 99, CBN Quarters, Zaria Street, Garki 2, Abuja and Block D35, Flat 2, Zone 5, Games Village, Abuja respectively. The union is blessed with two infant children between the ages of 7 and 11 years. However, the Petitioner has alleged that the marriage has broken down irretrievably and in consequence filed this petition for the

dissolution of his marriage to the Respondent. The reliefs set out on the face of the Further Amended Petition read as follows:

- (a) A Decree of Dissolution of the marriage between the Petitioner and the Respondent celebrated and conducted on 14th February, 2004 at the Federal Marriage Registry, Abuja and First Baptist on the ground that the marriage has broken down irretrievably by reason of the Respondent's intolerable behavior that the Petitioner cannot be expected to continue living with the Respondent.**

- (b) An Order granting the Petitioner shared/partial custody of the offspring of the marriage being:**
 - (i) Adeoluwa Oluwatobi Adetoba**
 - (ii) Adetola Anjolaoluwa Adetoba**

The ground for the presentation of the petition for dissolution of marriage by the petitioner as contained in the petition is that the marriage has broken down irretrievably in that since the marriage to the Respondent she has behaved in such a way that the Petitioner cannot be reasonably expected to live with the said Respondent.

The Respondent did not file any process in opposition to this petition. However, she retained the services of Dux Ducis Chambers to represent her at the hearing of the petition. Thus Alozie

Nmerengwa, Esq duly cross examined the Petitioner who testified as PW1. At the close of the Petitioner's case parties filed final written addresses. The Petitioner's final address was filed on 4th July, 2019 while the Respondent filed her final written address on 23rd July, 2019.

Now Section 15 (1) of the Matrimonial Cause Act, Cap M7, Laws of the Federation of Nigeria, 2004 provides that:

“A Petition under this Act by a party to a marriage for a decree of dissolution of marriage may be presented to the Court by either party to the marriage upon the grounds that the marriage has broken down irretrievably.”

Section 15(2) of the Act provides the grounds upon which the Court may find that a marriage has broken down irretrievably:

- (a) That the Respondent has willfully and persistently refused to consummate the marriage;**
- (b) That since the marriage the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent;**
- (c) That since the marriage the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent;**

- (d) That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;**
- (e) That the parties to the marriage have lived apart for a 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;**
- (f) 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;**
- (g) That the other party to the marriage has, for a period of not less than one year, failed to comply with decree or restitution of conjugal rights made under this Act;**
- (h) That the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.**

I have carefully considered this petition against the backdrop of the above provision and it would appear that the petitioner is relying on ground (C) which states:

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

Now the gist of this petition is that since the marriage between parties was contracted sometimes in 2004 the Petitioner has not found peace and happiness in the union on account of the intolerable behavior of the Respondent. Facts in support of the petition are replete with catalogues of woes suffered by the Petitioners in the hand of the Respondent. For the avoidance of doubt paragraph 7(a) - (i) of the facts in support states as follows:

- (a) The Respondent has since the marriage, not shown any love and attention to the emotional needs of the Petitioner.
- (b) The Respondent is quarrelsome, insulting, and constantly nags at the Petitioner.
- (c) Sometime in 2009, the Respondent made statement to the Petitioner to the effect that if she wanted, she could have ‘out something’ (sic) in his food. The Petitioner in great fear for his life has since then not eaten any food served by the Respondent.

- (d) The Respondent treats the Petitioner shabbily and does not give any regard to her husband in both private and public.
- (e) The Respondent always insists on doing things her way and hardly ever consults the Petitioner, even when it involves the running of the house and the children.
- (f) The Respondent has at various times embarrassed the Petitioner in public places and always threatens to do this at the slightest provocation.
- (g) The marriage is overcrowded as the Petitioner cannot take any decision with the Respondent without her family members finding out.
- (h) The Respondent has mentioned at various times in the past that she is no longer interested in the marriage and is only in it for the sake of the children.
- (i) The Respondent has at various times, asked the Petitioner to seek a divorce if he is not satisfied with her behavior adding that she will be fine with the outcome of the proceedings.

The Petitioner further stated at paragraph 7(j) - (q) of the facts in support of the Further Amended Petition that:

- (j) The Respondent's conduct, attitude, character, disposition, behavior and manners have been consistent and she has never hidden the fact that she is tired of the marriage.
- (k) The Petitioner is emotionally affected by the events described above and wishes to have peace of mind; something that has eluded him in this marriage.
- (l) The Petitioner's health is also deteriorating as he hardly sleeps due to the emotional and physical stress.
- (m) The Petitioner fears for his life and wellbeing due to the tendencies, conduct and behaviour of the Respondent.
- (n) The Respondent's mother (the Petitioner's mother in-law) is overbearing and constantly sets the Respondent against the Petitioner thus ensuring that the Petitioner and the Respondent never agree on anything. The banning of the Respondent's mother from matrimonial home (sic) has done little to improve the situation as she still controls events from outside.
- (o) The Respondent hardly ever takes correction; she is unduly defensive and launches verbal attacks freely each time her conduct is questioned.

- (p) The Petitioner has tried several times to correct the Respondent and mend the marriage but the Respondent has stubbornly refused to change her behaviour.
- (q) There is little or no love between the Petitioner and the Respondent and what they have for the past 9 years can hardly pass for a marriage.

The Respondent did not join issue with the Petitioner on the facts stated above. The learned Counsel to the Respondent simply submitted in his final address that the Respondent would not join issue with the Petitioner. That joining issues with the Petitioner would amount to washing their dirty linen in the public, especially when the Respondent is not opposed to the grant of a decree of dissolution of the union. What that means is that the evidence led by the Petitioner in support of the series of intolerable behaviour of the Respondent stand unchallenged and uncontroverted. If that be the case, the Law is settled that unchallenged evidence ought to be believed and applied by the Court.

Thus in **THE NIGERIAN ARMY V. W/O BANNI YAKUBU (2013) LPELR-20085 SC** the apex Court (per Fabiyi, JSC) stated that:

“It is basic that unchallenged evidence stands. The Court should accept same and act on it. The Court below was on firm ground in the stand taken by it.”

See also: **OMOREGBE V. LAWANI (1980) 3-4 S.C 108; and FASORO V. BEYIOKU (1988) 2 NWLR (PT.76) 263.**

On that score, I agree with the submission of the learned Counsel to the Petitioner that the Petitioner has established his entitlement to the dissolution of his marriage to the Respondent. What I am saying in essence is that I am satisfied that the Petitioner has established that her marriage with the Respondent has broken down irretrievably on account of the intolerable behaviour of the Respondent which the Petitioner cannot be reasonably expected to cope with and I so hold.

Accordingly, the marriage entered into between the Petitioner and the Respondent at the Federal Marriage Registry, Abuja on 14th February, 2004 is hereby dissolved.

I make an Order of Decree Nisi to be made absolute after 3 months pursuant to Section 58 of the Matrimonial Causes Act.

I also accede to the Petitioner’s prayer for shared/partial custody of the two infant children of the union.

SIGNED
HON. JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
25/10/2019