



**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/110/19

BETWEEN:

CARMY ADERONKE ADEBANJI.....PETITIONER

AND

MAYOWA JAMES ADEBANJI.....RESPONDENT

JUDGMENT

This is a petition by a wife/petitioner for dissolution of marriage with the Respondent, Mr. Mayowa James Adebanji. The parties were married at the Federal Marriage Registry, Ikoyi, Lagos on the 21st day of September, 2013. After the Marriage Ceremonies, the couple lived and cohabited at No. 41, Adetola Street, Aguda, Surulere, Lagos State but the petitioner travelled out of the country to further her education. The marriage was not blessed with any issue.

The reliefs sought at paragraph 10 of the petition is as set out hereunder:

- 1. A decree for the dissolution of marriage between the Petitioner and the Respondent by virtue of the fact that the marriage has broken down irretrievably.**
- 2. A decree Nisi of dissolution of marriage between the Petitioner and the Respondent by reason of matters herein stated.**
- 3. Cost of this action.**

The grounds for the presentation of this petition for dissolution of marriage by the petitioner as contained in paragraph 8 of the petition is that the marriage has broken down irretrievably in that the petitioner and the Respondent have lived apart for a period of over 3 years immediately preceding the presentation of the petition.

The petitioner was granted leave to serve the Respondent by Substituted means vide an Order of Court made on the 27th February, 2019. The record of the Court revealed that the Respondent was duly served as directed by the Court. There is an affidavit of service and supporting documents to show that the Respondent was duly served by pasting at No. 1, Gregory Street, Ketu Kosofe, Lagos which is his last known address. As a matter of fact the Bailiff of court took pictures of the Street sign, the property and the processes pasted on the access gate of the property.

However, the Respondent elected not to oppose this petition as he failed to enter appearance let alone file processes in opposition to the Petitioner's claim.

From the evidence led at trial it was at the point when the Petitioner returned from the United Kingdom on 7/09/2015 after the completion of her Master's Degree that trouble started. The Respondent had sent his driver to pick the petitioner at the Airport. Surprisingly instead of taking her home the driver drove her to a Hotel where the Respondent was waiting for her. At the Hotel the Respondent informed the petitioner that he is no longer interested in the marriage and that he had moved out of their Matrimonial Home.

A reconciliation meeting was convened on 25/9/2015 by the family of parties but it turned out to be a futile adventure. The Respondent has neither contacted the Petitioner since then nor speak with her till date.

Although the Respondent did not defend this petition the Petitioner nonetheless has the legal duty to establish her claim to the effect that her marriage to the Respondent has broken down irretrievably.

This naturally takes me to Section 15 (1) of the Matrimonial Cause Act, Cap M7, Laws of the Federation of Nigeria, 2004 which 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.**

Upon a careful reading of the provision it would appear that the Petitioner is relying on ground (F) which states:

“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”

In the witness statement on Oath filed by the Petitioner the facts in support of the above ground were clearly stated. Paragraph 16–20 of the sworn evidence of the Petitioner states as follows:

16. That immediately after my programme, I returned to Nigeria on the 7th September, 2015. The Respondent sent his driver to pick me from the Airport and instead of driving to the matrimonial home, the driver informed me

that the Respondent instructed him to take me to a hotel where the Respondent was waiting for my arrival.

17. That when I inquired from the Respondent as to why he brought me to a hotel instead of our matrimonial home, the Respondent informed me that he has relocated from our matrimonial residence. The Respondent further informed me that he is no longer interested in the marriage and instructed the driver to go to his new residence and bring my belongings to me.
18. That I stayed with my parents upon my return and thereafter made several efforts to reconcile with the Respondent which attempt proved abortive at the instance of the Respondent. That attempts by family members as well as the church to reconcile the both of us also failed to yield any positive result.
19. That since 22nd September, 2015, when family members brought us together with the aim of reconciliation, the Respondent neither contacted nor communicated with me.
20. That I relocated to the Federal Capital Territory to move on with my life and since the 22nd September, 2015, I have not set my eyes on the Respondent.

The Respondent did not join issue with the Petitioner on the evidence reproduced above. In essence the evidence of the Petitioner is not challenged and therefore binding on the Court.

See **NZERIBE V. DAVE ENGINEERING CO. LTD (1994) 8 NWLR (PT.351) 124 AT 137** where Iguh, JSC held as follows:

“Where evidence given by a party to any proceeding is not challenged, controverted or discredited by the opposite party who had the opportunity to do so, it is open to the court seized of the matter to act on such unchallenged evidence before it.”

See also:

- 1. AYINKE V. LAWAL (1994) 7 NWLR (PT 356) 263; and**
- 2. OBEMBE V. WEMABOARD (1977) 5 S.C 115.**

On these facts, which have not been denied or controverted it is firmly established that parties have been living apart for more than three years immediately preceding the presentation of this petition. The evidence before me is that the Respondent parted ways with the Petitioner on 7th September, 2015 while this suit was filed on 14th February, 2019, a space of 3 years 5 months.

Living apart I must say under Section 15 (2) (f) of the Matrimonial Causes Act is a question of fact. And from the fact of this case it is clear that the Respondent brought that state of affair (i.e. living

apart) unto being. Even if the Petitioner had been responsible for the circumstances that brought the facts of living apart into being, that does not detract from the point that parties are living apart.

I am therefore satisfied that the Petitioner has proved her case that her marriage with the Respondent has broken down irretrievably and that she is entitled to a decree of dissolution and I so hold.

Accordingly, the marriage entered unto between the Petitioner and the Respondent at the Federal Marriage Registry, Ikoyi, Lagos on the 21st day of September, 2013 is hereby dissolved.

I make an order of Decree Nisi to be made absolute after 3 months. The claim for cost is refused and dismissed as it is not supported by the facts in support of the petition and evidence led at trial.

SIGNED
HON. JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
16/10/2019