



**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/218/19

BETWEEN:

IZEVBUA NOELLE INYANG.....PETITIONER

AND

MR. NDAUDO DAVID BASSEY INYANG.....RESPONDENT

JUDGMENT

This is a petition for dissolution of marriage with the Respondent. The parties were married at Cathedral of St. John, Sabo–Ora, Edo State of Nigeria on 14th December, 1997. After the marriage the petitioner has alleged that the parties have not lived together except for the purpose of consummation and procreation.

The ground for the presentation of this petition for dissolution of marriage by the petitioner as contained in paragraph 7 of the petition is that the marriage has broken down irretrievably in that the petitioner and the Respondent have never lived together since her marriage to the Respondent.

The reliefs sought by the Petitioner as stated at paragraph 10 of the Petition are as follows:

- 1. A decree of dissolution of the said marriage between the Petitioner and the Respondent, conducted on the 14th day of December 1997, on the ground that the marriage has broken down irretrievably.**
- 2. And any order or orders as this Honourable Court may deem fit to make in the circumstances.**

The Respondent was personally served at his residential address (i.e. House TC2, Lake View Homes, Kado, Abuja-FCT) on 24th May, 2019. He however elected not to oppose this petition as he did not enter appearance. He was also served relevant hearing notices of the trial but he did not participate at the trial of this case.

The gist of this petition is that since the marriage between parties was contracted sometimes in 1997 parties have never live together. That the only time the Respondent gets close to the petitioner is for sexual activities meant for procreation and nothing more. The marriage is blessed with five children within the ages of 12 and 21. The particulars of the children are set out below :

- i. Idot-Eyin Inyang born on the 24th day of March, 1998.
- ii. Iniobong Inyang born on the 30th day of September, 1999.
- iii. Ifiok Inyang born on the 4th day of August, 2004.

- iv. Akaniyene Inyang born on the 8th day of December, 2006.
- v. Akanimo Inyang born on the 8th day of December, 2006.

It was the petitioner's case that she had unresolved issues with the Respondent which has effectively denied her the much expected conjugal rights from the Respondents. She therefore wants the Court to hold that the marriage to the Respondent has broken down irretrievably and in consequence dissolve same.

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 (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.”

This state of affair is duly supported by the witness Statement on Oath filed and adopted by the petitioner. To facilitate ease of understanding I find it useful to reproduce paragraphs 8 – 20 of the statement, to wit:

8. That the Respondent and myself, have never lived together as a husband and wife since after our wedding in 1997, except for the purpose of consummation, resulting in the birth of five children.
9. That the children of the marriage are:
 - i. Idot-Eyin Inyang born on the 24th day of March, 1998.
 - ii. Iniobong Inyang born on the 30th day of September, 1999.
 - iii. Ifiok Inyang born on the 4th day of August, 2004.
 - iv. Akaniyene Inyang born on the 8th day of December, 2006.

v. Akanimo Inyang born on the 8th day of December, 2006. The last two children are twins.

10. That there has been no previous proceedings in any Court of law between the Respondent and myself since the marriage was contracted.

11. That the Respondent and myself, have always had issues relating to living together, whenever I confronted him to know why we could not live together as husband and wife.

12. That we have had series of arguments and fighting, regarding this issue of living together as husband and wife.

13. That I have not enjoyed any emotional or husbandly love from the Respondent neither have the children.

14. That the communication between the Respondent and myself, has been very scarce, far from being one of a husband and wife.

15. That since the year 2006, I have not had any sexual intercourse with the Respondent as a husband should do to his wife.

16. That the Respondent and I, have virtually not lived together since we got married and he is not in objection to this divorce.
17. That the five children of the marriage, presently live with me.
18. That I have neither connived nor colluded with the Respondent, in bringing this petition neither have I condoned the action of the Respondent.
19. That I took it upon myself to cater for the children in all ramifications, upon the respondent abandoning his obligation to the family.
20. That the children of the marriage are now all adults and so free to decide between myself and the Respondent, who they want to live with.

I have no contrary evidence to cast any doubt on the above line of evidence. In other words the testimony of the Petitioner is neither challenged nor controverted by the Respondent. The Court is therefore bound to believe the Petitioner.

It is curious that parties whose marriage is more 20 years old and blessed with five children have never lived together for once. Nevertheless the Court has no contrary evidence to cast any

aspersion on the evidence of the Petitioner to that effect. The Court is therefore bound to accept the testimony of the Petitioner.

On this point of Law see **ODUNSI V. BAMGBALA (1995) 1 NWLR (PT.374) 641** where it was stated that:

“The law is also settled that where evidence is led by a party to any proceedings as in the instant case and it is not challenged by the opposite party who had the opportunity to do so, it is always open to the court seised of the proceedings to accept the unchallenged evidence before it”.

See also:

- 1. FASEUN V. PHARCO (NIG.) LTD. (1965) 2 ALL NLR. 216 AT 220;**
- 2. NWABUOKU V. OTTI (1961) 2 SCNLR 232; (1961) 2 ALL NLR. 487;**
- 3. ASAFA FOOD FACTORY LTD V. ALRAINE NIGERIA LTD (2002) 5 S.C (PT.II) 1.**

On that score, I am satisfied that the Petitioner has established that her marriage with the Respondent has broken down irretrievably having lived apart from the Respondent for more than three years and that she is entitled to a decree of dissolution and I so hold.

Accordingly, the marriage entered into between the Petitioner and the Respondent at Cathedral of St. John, Sabo-Ora, Edo State of Nigeria on the 14th day of December, 1997 is hereby dissolved.

I make an Order of Decree Nisi to be made absolute after 3 months.

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