

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/PET/244/2016

BETWEEN:

GODSPower STEPHEN OSEMUDIAME.....PETITIONER

AND

PAULINE STEPHEN OSEMUDIAME.....RESPONDENT

JUDGMENT

By an Amended Petition filed on 23/3/17 the Petitioner herein-Godspower Stephen Osemudiamé is seeking the reliefs set out in Para 9 of the Petition as follows:-

- (a) A Decree dissolving the marriage between the Petitioner and Respondent.
- (b) Access to the children namely: Favour Osemudiamé and Godspower Osawe Osemudiamé who are currently in the custody of the Respondent during weekends and holidays and at such other times as may be mutually agreed by both parties.
- (c) Any other ancillary order.

The facts upon which the Petitioner relies on for the dissolution of the marriage are as contained in Paragraph 5 of the Petition as follows:-

- a. Sometimes in September, 2011, Petitioner returned home from work to discover that Respondent has packed all her personal belongings and left the matrimonial home with their two children, namely Favour Osemudiamé and Godspower Osawe Osemudiamé after some disagreement without further prior discussion with, consent of or notice to Petitioner and without any further reason known to Petitioner.
- b. Petitioner upon discovering that Respondent has packed out of the matrimonial home called her via her mobile telephone number to enquire about Respondent's whereabouts and he also met with her to enquire about the reason for her moving out of the matrimonial but Respondent made it clear to Petitioner that she was no longer interested in the marriage or returning to the matrimonial home. All efforts by family members to reconcile the Respondent with the Petitioner proved abortive.
- c. Respondent has since refused to resume co-habitation with Petitioner or restore consortium inspite of entreaties from Petitioner and family members and friends.

The Petition and other processes were served on the Respondent on 11/4/17 but the Respondent did not file her Answer to the Petition, was absent throughout the hearing of the matter and was not represented by counsel despite services of Hearing Notices on her. The Petition therefore proceeded to hearing as undefended and unchallenged.

On 5/12/18, the Petitioner opened his case and testified as PW1 and stated that he was lawfully married to Respondent under the Marriage Act at the Surulere Marriage Registry, Lagos on 26/2/2004. The Marriage Certificate with No. 5390003 issued by the Marriage Registry, Surulere Lagos on 26/2/2004 was admitted in evidence as Exhibit "A". He testifies that after the marriage they cohabited and live at 41 Close Road 2, Block 2 Flat 13, Festac Town, Lagos but since September, 2011 they have not been living together. When asked what led to this, the PW1 stated;

"One of the morning, the Respondent was beating our first daughter over an issue and I found that the beating was too much, I had to intervene to find out what was the issue. But she did not explain to me."I had to leave them in the house for the church. When I returned I did not see her with my daughter and son. I noticed that she had moved out with some of my properties. I had to look for her to her father's house in Ajegunle No. 90 Orodu Street. I asked her why she left the house, and she told me that she is no longer ready to marry an Edo man but want to marry from her state – Imo State. I sent for my parents, church members and Respondent's parent but maintained that she is not prepared to marry again. I have waited for her since that time and till now she has refused to come back".

He also told the court that the children of the marriage; Favour Osemudiamé born 18/5/2006 and Osewa Osemudiamé born 30/6/2009 are living with the Respondent but since that September 2011, he has been responsible for payment of their school fees and every month he pay money into their First

Bank for feeding and sometimes when they are sick, takes them to hospital and pay the bills.

The PW1 also informed the court that there was a pending Suit in respect of this matter brought before High Court of Justice, Lagos State but has since withdraw the case. Want the court to grant the reliefs sought. In the course of evidence of the Petitioner, the following documents were also received in evidence.

- (1) The 19 pieces of First Bank deposit slips No. 033024110 – 22973781 – Exhibits “B¹⁻¹⁹”.
- (2) The 7 pieces of Fidelity Bank deposit slip long with the receipts issued by Mother Marry Catholic Nursery& Primary School/St Mary Catholic Crèche& Day care – Exhibit “C¹⁻⁷”.
- (3) The Notice of Withdrawal of Suit No. ID/1149HD/2015 dated 10/5/16 – Exhibit “D”.
- (4) The enrolment order of court dated 27/6/18- Exhibit “E”.

At the close of the evidence of the PW1 – the Petitioner, the case was adjourned to 7/2/19 for Cross-Examination of the PW1. On the adjourned date, the Respondent who was duly served with Hearing Notice failed to show up in court or represented by counsel. Consequent upon the application of Petitioner counsel, the Respondent was foreclosed from cross-examining the PW1 and the matter was adjourned to 10/4/19 for filing and adoption of Final Written Address.

On 28/10/19, Petitioner's counsel N.I. Kebordih adopted the Petitioner Final Written Address dated 9/2/19 but filed on 19/2/19. In the said Address, counsel formulated only one (1) issue for determination;

“Whether the Petition ought to succeed”

Answered the question in the affirmative and submits all the averments of PW1 in his Petition as well as his oral evidence in support of the averment in the course of trial remains unchallenged and uncontradicted and therefore deemed admitted by Respondent. Commend the court to several judicial authorities; National Insurance Corporation of Nigeria Vs Power & Industries Engineering Co Ltd (1986) 1 NWLR PT 14 1 at 4, Ajidahun Vs Ajidahun (2000) 4 NWLR PT 654 605 at 607, Nnana Vs Nnana (2006) 3 NWLR PT 966, I, Ijebu L.G. Vs Adedeji (1991) LPELR 22 (SC), Chief Sunday Ogunyade Vs Solomon Oluyemi Oshunkeye & Anor (2007) 7 SC PT, 60. Submits that the action of Respondent moving out of the matrimonial home with all her belongings since Sept 2011 without returning till date and her consistent insistence she was never going to marry any person of any other tribe other than hers was/is intended to bring co-habitation between her and Petitioner permanently to an end, refer to Adebisi Vs Adebisi (1979) HCLR, 91. Urge court to grant the reliefs of Petitioner.

Having carefully considered the pleadings and evidence of Petitioner – PW1 as well as the submission of Petitioner's counsel, the court finds that only one (1) issue calls for determination, that is;

“Whether the Petitioner has successfully made out a case in seeking the Decree of Dissolution of marriage and therefore entitled to the reliefs sought”

First, it is on the records of court that the Respondent was duly served with the Petition and all other processes and at each adjourned date, she was also served with Hearing Notice but failed and/or neglected to file an Answer to the Petition, she did not show up or appear in court and was not represented by counsel. The implication of this is that the evidence of the Petitioner – PW1 is taken as unchallenged and uncontroverted. And it is law that where evidence is neither challenged nor controverted, the court should deem that evidence as admitted, correct and act on it. See CBN Vs Igwilo (2007) 14 NWLR PT. 1054 393 at 406. See also Ozigbu Engineering Vs Iwuamadi (2009) 16 NWLR PT 1166 44 at 63.

Now, in the determination of a Petition for dissolution of marriage under Section 15 (1) of the Matrimonial Causes Act, it is competent for a marriage to be dissolve once court is satisfied that the marriage has broken down irretrievably and to arrive at that conclusion, the Petitioner must prove to the reasonable satisfaction of the court any of the facts as prescribed by Section 15 (2) of the Matrimonial Causes Act categorized in sub-section A – H.

In this instant case, the Petitioner – PW1 relied upon the ground set out under Section 15 (2) F of the Matrimonial Causes Act as gleaned from the pleadings and evidence adduced before this court. The Section 15 (2) (F) reads:-

“That the parties to the marriage have lived apart for a continuous period of a least three (3) years immediately preceding the presentation of the Petition”.

The court interpreted “desertion” and “living” apart in the case of *Nanna Vs Nanna* (2006) 3 NWLR PT 966, 1 at 7 that “It is not enough to show that the parties have live apart for a continuous period of two (2) years immediately preceding the presentation of the Petition, but that the desertion within Section 15 (2) (e) must be one where any of the parties have been abandoned and forsaken without justification thereby renouncing his or her responsibilities and evading its duties”.

The evidence of the Petitioner – PW1 in proof is that the Respondent moved out of the matrimonial home with her belongings and the two children of the marriage since September, 2011 and has refused to return. That he looked for her to her father’s house and enquire why she left the matrimonial home and was told she is no longer interested in the marriage. That he involved his parents’, church members and Respondent’s parents in the matter but all his efforts were to no avail as the Respondent maintained she is not prepared to marry again. That he had waited for Respondent to return since that September, 2011 but uptill now, the Respondent has refused to return.

These pieces of evidence of Petitioner was not controverted and challenged. I have earlier stated the position of the law in such situation, that the court should deem the unchallenged evidence as admitted, correct and act on it. See *CBN Vs Igwilo* (Supra) at 40 and *Ozigbu Engineering Vs Iwuamadi* (Supra) at 63. The amended Petition of the Petitioner was filed on 23/3/17 and by

computation it is clearly and more than three (3) years that the Petitioner and Respondent had lived apart and is evident that the Petitioner has proved the ground as prescribed by Section 15 (2) (F) in bringing this Petition for dissolution of marriage. It, therefore, avails the Petitioner.

From all of these, the court finds that this Petition succeeds and accordingly judgment is hereby entered as follows:

- (1) The marriage celebrated between the Petitioner –Godspower Stephen Osemudiamé and the Respondent Pauline Stephen Osemudiamé on 26/2/2004 at the Surulere Marriage Registry, Lagos in accordance with the Marriage Act has broken down irretrievably and I hereby pronounce a decree Nisi dissolving the marriage between the parties. This said order shall become absolute after a period of three (3) from today.
- (2) Access to the children of the marriage namely: Favour Osemudiamé and Godspower Osawe Osemudiamé who are currently in the custody of the Respondent during weekends and holidays and at such other times as may be mutually agreed by both parties to the Petitioner.

HONOURABLE JUSTICE O.C. AGBAZA

(Presiding Judge)

14/1/2020

N.I. KEBORDIH – FOR THE PETITIONER

NO REPRESENTATION FOR THE RESPONDENT