

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON WEDNESDAY THE 16TH DAY OF JANUARY, 2020.
BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO. PET/231/2019

ALI PATIENCE JOSEPH -----PETITIONER

AND

GAKKUK NENGAKE JOSEPH -----RESPONDENT

JUDGMENT

The Petitioner filed this petition dated the 26th day of April, 2018 seeking for a decree of the dissolution of the marriage she celebrated with the Respondent on 18/08/2017 at the Abuja Municipal Area Council Marriage Registry (AMAC) on the ground that the marriage has broken down irretrievably, in that, since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent's, Cruelty, Adultery and that the Respondent deserted the Petitioner for a continued period of one year preceding the presentation of this Petition.

Petitioner adopted her witness statement on oath filed 15/10/2019 as her evidence in this case. From the facts deposed, it is the case of the Petitioner that she and the Respondent got married on 18/08/2017 at Abuja Municipal Area Council Marriage Registry. That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. That the

Respondent is cruel in nature and has intolerable behaviour. That the Respondent deserted the Petitioner for a continued period of one year preceding the presentation of this Petition. That there are irreconcilable differences between the Petitioner and the Respondent. That the Petitioner and the Respondent have not had sexual intercourse for a year and two months preceding the commencement of this Petition. That the Respondent beats up the Petitioner without just cause or at the slightest provocation. That the Respondent commits adultery. That the Respondent's estranged wife also threaten to kill the Petitioner if she fails to divorce the Respondent. That it is in the interest of justice for the marriage to be dissolved. Petitioner testified that there are no children of the marriage.

In proof of Petitioner's case, Petitioner as PW1 tendered three (3) exhibits as follows;

- a. Marriage certificate dated 18/08/2017 admitted and marked as Exhibit A
- b. Picture of injury admitted and marked Exhibit B
- c. Picture of a woman sitting on a mattress marked REJECTED.

The Respondent in his answer to the Petitioner's application for the dissolution of marriage filed Respondent's answer to Petition on 11/10/2019 and did not challenge the dissolution of the marriage between him and the Petitioner. In reply, Respondent admitted to the marriage between him and the Petitioner and the date in which cohabitation between him and the Petitioner ceased. But denies paragraph 6 (a, b, c, d, e, f, g, h, i, j, k & m) on the Notice of Petition wherein the Petitioner

claimed of the Respondent's cruelty, violence, adultery, physical abuse and verbal abuse.

The Respondent in his verifying affidavit avers that he is not opposed to the granting of the dissolution being sought by the Petitioner. That he has been without the Petitioner for over a year since 2018. That he and the Petitioner no longer see themselves as husband and wife. That there is no more affection between him and the Petitioner. That he can no longer live with the Petitioner having regards to the circumstances of the short period and terrible marriage they had due to the inconsiderate attitude of the Petitioner. That he is not contesting the suit. That he will be much relieved if the application of the Petitioner is granted.

The Petitioner adopted her written Address filed on the 19/11/2019 and raised a sole issue for determination

“Whether the Petitioner has proved her case on the balance of probabilities to warrant this honourable court to dissolve this marriage as prayed”

Learned counsel submitted that it is trite law that facts admitted need no further proof, the Petitioner told the court that the marriage between her and the Respondent has broken down irretrievably which said fact was admitted by the Respondent in his Witness Statement on Oath. Counsel submitted that it is in view of this fact that they came to the conclusion that the marriage between her and the Respondent has broken down irretrievably and that both parties find it unbearable to continue to live with each other as husband and wife. Counsel urged the court to resolve

the sole issue for determination in favour of the Petitioner and dissolve the marriage.

The Respondent adopted his written Address filed on the 28/10/2019 and raised two issues for determination as follows;

“Whether the Honourable Court has the jurisdiction to hear and attach probative value to the witness statement on oath and annexed exhibits having obtained during the pendency of this suit.”

“Whether or not the said exhibits are not computer generated evidence that certificate of compliance as provided by law ought to be filed.”

Learned counsel urged the court to discountenance the witness statement on oath of the Petitioner and all the annexed exhibits. Learned counsel submitted that Exhibit A, B and C are computer generated evidence which cannot be admitted in evidence without satisfying the requirement and provision of the law under **Section 84 of the Evidence Act 2011**. He cited **OMISORE V. AREGBESOLA (2015) 15 N.W.L.R (PT. 1482) PG 226 S.C @RATIO 23**, **KUBOR V. DICKSON (2013) 4 N.W.L.R (PT. 1345) PG 549 S.C @RATIO 14**. Counsel further submitted that a party that seeks to rely on computer generated evidence must file and serve a certificate of compliance as provided by the law. That since the Petitioner never fulfilled the pre-conditions laid down by law, he urge the Honourable Court to discountenance all the Exhibit annexed which are computer generated evidence and so hold are inadmissible. In moving the court the Respondent rest his case on that of the Petitioner.

The issue for determination here is;

“Whether this Court can dissolve the marriage between the Petitioner and the Respondent”.

First and foremost learned counsel to the Respondent stated in his written address that all exhibits A, B & C tendered by the Petitioner are computer generated and since they are not backed up by certificate of compliance as provided under S. 84 E. A; he urged the court to reject same.

Contrary to learned counsel to the Respondent submission Petitioner only tendered Exhibits A & B while what ought to have been Exhibit C was rejected by the court. Exhibit A is the copy of marriage certificate and not a computer generated document; same cannot be discountenanced by the court as it is the foundation of this petition.

Exhibit B on the other hand is allegedly a picture of the injury inflicted on the Petitioner from the Respondent's belt after viewing the said picture downloaded from the computer, this court has decided that the said picture carries no probative value, reason being that it is simply picture of an injured/bruised knee without showing the face attached to the knee and in line with the decision of the Apex Court **Per NIKI TOBI in NWABUOKU VS ONWORDI (2006) AFWLR (Pt. 331) 1236 @ 1252, Paras C-F**, this court has expunged the said Exhibit B and discountenanced same. Niki Tobi JSC had held that where a document earlier admitted does not carry any probative value, the judge can

expunge the document or disregard it in the course of evaluating the totality of the evidence to enable him arrive at a proper decision.

The law is now settled that, there is only one ground upon which the Court could be called upon to decree for dissolution of marriage, i.e, that the marriage has broken down irretrievably; and the Court on hearing the petition can hold that the marriage has broken down irretrievably if the Petitioner can satisfy the Court of one or more of certain facts contained in **Section 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act, 2004**. In the case of **IBRAHIM V. IBRAHIM (2006) LPELR-7670(CA) Per ARIWOOLA, J.C.A in Pp. 16-17, paras. E-F** held

"The law also provides for the facts, one or more of which a petitioner must establish before a Court shall hold that a marriage has broken down irretrievably. It reads thus - Section 15(2) - "The Court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the Court of one or more of the following facts-- (a) that the Respondent has wilfully 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 reasonably be 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 a 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"

See also **Bassey .V. Bassey (1978) 10-12 CCHCJ. P. 241 at p. 250** and **Yusuf .V. Yusuf (1978) 10-12 CCHCJ. p. 66 at p. 71.**

In this petition, both the Petitioner and the Respondent has adduced evidence to the fact that parties to the marriage has lived or stayed apart for a continuous period of more than one year immediately preceding the presentation of this petition and that since the marriage, that both the Petitioner and the Respondent has behaved in such a way that they cannot reasonably be expected to live with each other. Petitioner has failed to prove adultery against the Respondent as nothing is placed before this court to prove the assertion. The Respondent in his reply to the petitioner's application stated that he is not challenging the dissolution of marriage between him and that the marriage between the parties has broken down because of the inconsiderate and unreasonable conduct of the Petitioner which he cannot reasonably be expected to live with.

From the totality of the evidence adduced in this case, both parties are fed up with the marriage, and find it intolerable to live with each other.

The Respondent not challenging the dissolution of marriage in my view is also fed up with the marriage. It would not be in the interest of the parties for them to remain married.

In my considered view, the evidence adduced in this case has satisfied the requirement of the Matrimonial Causes Act, 2004, in Section 15 (1) and (2) (c) and (d) which is that;

2(c) that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;

2(d) that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.

And for that, the marriage celebrated between the parties ought to be dissolved.

On the whole, it is my considered view that, the Petitioner having satisfied Section 15 (1) and (2) (C) & (D) of the Matrimonial Causes Act, 2004, and the dissolution of marriage not being challenged by the Respondent, I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, ALI PATIENCE JOSEPH, and the Respondent, GAKKUK NENGAKE JOSEPH at the Abuja Municipal Area Council Marriage Registry on the 18th of August, 2017 and I hereby pronounce that the decree nisi shall become absolute upon the expiration

of three months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.

Parties: Absent

Appearances: M. P. Podos for the Respondent. Petitioner is not represented.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
16TH JANUARY, 2020**