

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/174/2019

MRS. ABIDEMI RISIKAT OLA-JAMES (NEE SENGE)-----PETITIONER

AND

MR. AIREOMIYE M. OLA-JAMES -----RESPONDENT

JUDGMENT

The Petitioner filed a petition dated 12/3/2019, seeking for a decree of the dissolution of the marriage she celebrated with the Respondent on 1/12/2007 at the Marriage Registry, Ilorin, Kwara State on the ground that, the marriage has broken down irretrievably by reason of the fact that the parties to the marriage have lived apart for a continuous period of at least 3 (three) years immediately preceding the presentation of this Petition. The Respondent on the 17/6/2019 filed an Answer and Cross Petition to the Petitioners Notice of Appeal.

At the hearing Counsel to the Petitioner C. E. C. Njoku informed the court that the Petitioner is finding it hard to come down to Nigeria and the Petition cannot go on without the Petitioner, he therefore applied that the Petition be struck out which said application was not objected to by the Respondent hence the Petition was struck out. The Respondent applied that his Cross Petition be set down for hearing.

The Respondent/Cross-Petitioner at the trial adopted his written Statement on Oath filed 26/9/2019 and he tendered a copy of the Marriage Certificate as Exhibit "A". The Respondent/Cross-Petitioner adopted his written Address filed on the 24/10/2019 and raised a sole issue for determination

“whether in the light of the evidence before this Honourable Court, the Respondent/Cross-Petitioner has proved his Cross-Petition to entitle him to a grant of a decree of the dissolution of his marriage with the Petitioner”

Learned Counsel submitted that **Section 15 (1) and (2) of the Matrimonial Causes Act** made provisions guiding dissolution of marriage contracted under the Marriage Act, as the marriage in issue by evidence of Exhibit A (Marriage Certificate). Counsel submitted that by **S. 15 (1) of the Matrimonial Causes Act** either party to a marriage can approach the court for a decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably by proving one or more grounds or facts set out in **Section 15 (2) (a-h) the Matrimonial Causes Act**, as evidence of one of the grounds may be sufficient for the court to hold that the marriage has broken down irretrievably and then proceed to grant a decree nisi in dissolution of the marriage, Counsel cited **Ekerebe v. Ekerebe (1999) 3 N.W.L.R. (Pt. 592) p. 514**. Counsel submitted that one of the grounds as provided by **S. 15 (2) (f) of the Matrimonial Causes Act** is where parties have lived apart for a continuous period of three years immediately preceding the presentation of the Petition. Counsel also submitted that a Respondent in a Petition for a decree of dissolution of marriage can as well Cross-Petition against the Petitioner where he desires to institute a proceedings for a decree of dissolution of marriage against the Petitioner as provided under

Order 7 Rule 2 of the Matrimonial Causes Rules and that The Respondent/Cross-Petitioner seeks for a decree of dissolution of marriage on the ground that the marriage has broken down irretrievably by reason of the fact that the parties have lived apart for a continuous period of 8 years immediately preceding the presentation of the Petition. Counsel further submitted that the Petitioner/Respondent to the Cross-Petition did not challenge this evidence and in the eyes of the law the Petitioner/Respondent to the Cross-Petition has admitted the evidence of the Respondent/Cross-Petitioner and in the circumstance the court is under a duty to accept and act on it. He relied on the case of **Nnanna v. Nnanna (2006) 3 N.W.L.R. (Pt.966) p. 1**. Counsel urged the court to accept the uncontroverted evidence of the Respondent/Cross-Petitioner and grant the reliefs sought.

In moving the court the Petitioner/Respondent to the Cross-Petition rest his case on that of the Respondent/Cross-Petitioner and in view of that position, did not file a written address.

The issue for determination is

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

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, the Respondent/Cross-Petitioner has adduced evidence to the fact that parties to the marriage has lived or stayed apart for a continuous period of more than eight years immediately preceding the presentation of this petition. The Petitioner/Respondent to the Cross-Petition in his oral reply to the Respondent/Cross-Petitioner application rested his case on the written address of the Respondent/Cross-Petitioner .

In my considered view, the evidence of the Respondent/Cross-Petitioner has satisfied the requirement of the Matrimonial Causes Act, 2004, in Section 15 (1) and (2) (c) and (e) which is that;

2(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;

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

On the whole, it is my considered view that, the Respondent/Cross-Petitioner having satisfied Section 15 (1) and (2) (F) of the Matrimonial Causes Act, 2004, and the dissolution of marriage not being challenged by the Petitioner/Respondent to the Cross-Petition, I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the

Respondent/Cross-Petitioner, **MR. AIREOMIYE M. OLA-JAMES**, and the Petitioner/Respondent to the Cross-Petition, **MRS. ABIDEMI RISIKAT OLA-JAMES (NEE SENGE)** at the Marriage Registry, Ilorin, Kwara State on the 1st of December, 2007 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.

The Respondent/Cross-Petitioner in his Cross-Petition adopts and relies on the arrangements for the children of the Marriage proposed by the Petitioner/Respondent to the Cross-Petition in Paragraph 9.0 to 9.3 of the struck out Petition which are as follows;

- a. The children of the marriage shall be in custody of the Petitioner.
- b. The Petitioner undertakes to, and shall continue to, take responsibility for the financial welfare and maintenance of the children of the marriage.
- c. The Respondent shall be allowed unfettered access to the children.

Consequently, Paragraph 9.0 to 9.3 of the struck out petition is hereby made part of the judgment of this court and it is hereby entered as follows;

- a. The children of the marriage Aderinsola Ola-James, female and Aderinsola Ola-James, male shall be in custody of the Petitioner/Respondent to the Cross-Petition.
- b. The Petitioner/Respondent to the Cross-Petition shall continue to, take responsibility for the financial welfare and maintenance of the children of the marriage.

c. The Respondent/Cross-Petitioner shall be allowed unfettered access to the children.

Parties: Respondent/Cross-Petitioner present. Petitioner/Respondent absent.

Appearances: C. C. Njoku for the Petitioner/Respondent. Respondent/Cross-Petitioner not represented.

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