

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 27 GUDU - ABUJA
DELIVERED ON THURSDAY THE 1ST DAY OF APRIL 2021
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE.R. OSHO-ADEBIYI
SUIT NO.FCT/HC/PET/397/2020

BETWEEN:

ANUOLUWAPO OLORI-----PETITIONER

AND

TEGA OLORI-----RESPONDENT

JUDGMENT

By a notice of Petition dated and filed on the 13th day of August 2020, the Petitioner filed this suit against the Respondent seeking the following reliefs;

1. A decree of dissolution of the Marriage, that the marriage between the Petitioner and the Respondent contracted on the 13th of April 2013 on the ground that the marriage has broken down irretrievably and that the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with him.
2. An ORDER of this Court that the Respondent return the spouse sim card belonging to the Petitioner.
3. And for such further orders as the Court may deem fit to make in this circumstance.

The facts grounding the Petitioner's petition is that the marriage between the Petitioner and the Respondent has broken down irretrievably, in that in the course of the marriage, the Respondent has behaved in such ways that the Petitioner cannot reasonably be expected to live with the Respondent.

The Respondent in this case was served with the Petition and the accompanying processes as well as hearing notices but the Respondent failed to file a response or be represented by Counsel.

Trial in this matter commenced on the 16th of November 2020, with the Petitioner opening her case and testifying as the sole witness. The Petitioner (PW1) adopted her witness statement on oath and gave evidence to the effect that she got married to the Respondent on the 13th of April 2013 at Mountain of Fire Miracles Ministries and was issued with a Marriage certificate under the Marriage Act. That the Respondent treats her with absolute disrespect, disdain and disregard and high sense of ingratitude, despite that fact that she pays all the bills including rents and feedings. That the Respondent has not provided for his family and depends solely on Petitioner for his survival, and that of his family members since they got married. That Respondent deserted their matrimonial home since 2nd August 2018 leaving with Petitioner's personal belongings including her office telephone line. That owing to the sudden disappearance of the Respondent since August 2018, the Respondent has been committing adultery with other women in his present place of abode, while he abandoned Petitioner in their matrimonial home. That Petitioner does not trust the Respondent's intentions towards her, since Respondent has chosen to live apart from her for over two years now. Petitioner

tendered a copy of the marriage certificate which was admitted as exhibit A.

At the close of the Petitioner's case, the Counsel to the Petitioner urged on the Court to foreclose the Respondent due to the continuous absence of the Respondent and/or his Counsel, which was granted by the Court. The Court thereafter adjourned the case for final court address.

The Petitioner's Counsel filed their written address and adopted same as argument in support of the Petitioner's case. In the written address, Counsel to the Petitioner raised a sole issue for determination, "whether the marriage between the petitioner and the respondent has broken down irretrievably"

Counsel submitted that from the uncontroverted evidence of the Petitioner, the Respondent and the Petitioner have been living apart for over two years preceding the filing of this petition.

Submitted that the evidence of the Petitioner is unchallenged and uncontroverted, and Petitioner has discharged the burden of proof to the grant of this petition as required by the Law.

Counsel urged the Court to hold that the Petitioner has proved her case on a balance of probability and that the marriage has broken down irretrievably and grant the reliefs of the Petitioner as claimed.

Counsel relied on the following authorities;

1. Garba & 2 Ors Vs. Zaira (2005) 17 NWLR (Pt.953)55,66.
2. Magna Maritime Services Limited V. Oteju & Anor (2005)14 NWL(Part 945)517 541 G-H.

3. Kaduna Textiles Limited v Umar reported in (1994) NWLR (Part 319)143, 159

4. National Insurance Corporation of Nigeria (NICON) v Power & Industrial Engineering Co Ltd (1986) 1 NWLR(Pt 14) at 27.

Having considered the evidence before this Court, I find a sole issue for determination to wit;

“Whether the marriage between the Petitioner and the Respondent has broken down irretrievably for Petitioner to be entitled to the relief sought”.

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. Section 15 (1) of the Matrimonial Causes Act, 2004, provides that *“A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably.”*

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 (2) (a) – (h) of the Matrimonial Causes Act, 2004. Although evidence of Petitioner is unchallenged and uncontroverted the burden of proof imposed on the Petitioner under Section 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act must be fully discharged by the Petitioner.

The Petitioner’s main grounds for seeking for the dissolution of the marriage is that the Respondent has behaved in such ways that the Petitioner cannot reasonably be expected to live with the Respondent

and that the Respondent deserted her. In proof of this, Petitioner testified to the fact that the Respondent in the course of the marriage, the Respondent treats the Petitioner with disrespect, disdain, orally abusive towards her and persistently failed/refused to provide for the family. That the Respondent deserted their matrimonial home since the 2nd day of August 2018 and left with all of Respondent's personal belongings including her office telephone line. These pieces of evidence were uncontroverted by the Respondent. The law is trite that that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the court ought to act positively on the unchallenged evidence before it. See the case of CAMEROON AIRLINES v. OTUTUIZU(2011) LPELR-827(SC).

The Respondent was duly aware of this Petition and hearing notices served on him but failed to file a response or controvert the evidence the Petitioner, hence, this Court will rely on the uncontroverted and unchallenged evidence of the Petitioner.

In my view, from the totality of the evidence of the Petitioner, Petitioner has found it intolerable to live with the Respondent as a result of the behaviour as stated in the evidence of the Petitioner and the act of Respondent abandoning the matrimonial home of the parties amounts to desertion of the Petitioner. The Respondent not opposing this application in my view is not challenging the dissolution of marriage between him and the Petitioner. It would therefore not be in the interest of the parties for them to remain married.

In my considered view, the evidence of the petitioner has satisfied the requirement of the Matrimonial Causes Act, 2004, in Section 15 (1) and 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 and (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 2(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

Having regard to the evidence before me, I am satisfied that the marriage between the Petitioner and the Respondent has broken down irretrievably and it ought to be dissolved and is accordingly dissolved.

Consequently, it is hereby ordered as follows;

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **ANUOLUWAPO OLORI**, and the Respondent, **TEGA OLORI**, at the Mountain of Fire and Miracles Ministries, Abuja on the 13th day of April, 2013.
2. 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.
3. That the Respondent immediately returns the the Petitioner's office spouse telephone sim card to the Petitioner.

Parties: Parties absent.

Appearances: J. C. Ochasi, Esq., holding brief for G. B. Ogunmola, Esq., for the Petitioner. Respondent not represented.

HON. JUSTICE MODUPE OSHO-ADEBIYI
JUDGE
1ST APRIL 2021