

**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/400/2018

BETWEEN:

MRS PATRICIA ANYIM.....PETITIONER

VS

MR NORBERT OGBONNA ANYIMRESPONDENT

JUDGMENT

By a Notice of Petition filed on 17/10/18 by the Petitioner – Mrs Patricia Anyim against the Respondent – Mr. Norbert Ogbonna Anyim, seeking the following reliefs in Paragraph 14 of the Petition as follows:

- (1) That consequent upon all the facts mentioned herein I humbly pray the court to make an order mandating the Respondent to pay to me a monthly sum of ₦50,000.00 (Fifty Thousand Naira) only for the upkeep of our only child.
- (2) The said marriage be dissolved on the ground that since the marriage the Respondent has behaved in such a way the Petitioner cannot reasonably be expected to live with the Respondent.

The facts relied on by the Petitioner as constituting the grounds for the Petition are:-

PARA 10: FACTS

The Petitioner and Respondent have lived apart for a continuous period of over Three (3) years immediately preceding the presentation of this Petition.

- (a) **CRUELTY:** The Respondent never paid attention to the emotional and financial needs of the petition, abandoning her at the early stage of pregnancy when she was seriously sick.
- (b) As of the time the Respondent abandoned home the rents were unpaid forcing the Petitioner to move with their daughter to a makeshift accommodation, to avoid the wrath of the landlord.
- (c) The Respondent by reason of his desertion has lived apart from the Petitioner since January 2015 till date.
- (d) The Petitioner from the date of birth of their daughter has paid the child's bills from medical to education till date without any simple contribution from the Respondent.
- (e) That I have been in custody of our child since birth.

The Petition and other processes were served on the Respondent on 07/1/2019. However did not file an Answer to the Petition but was present

throughout trial and not represented by counsel. The Respondent rather opted not to contest the Petition.

On 21/5/2019, the Petitioner as PW1, testified stating that she got married to the Respondent at the Abuja Municipal Area Council Marriage Registry (AMAC) Marriage Registry on 14/9/2012. That the marriage was blessed with a child by name Anyim Nneoma Fortune born on 26/9/2013. She stated that the Respondent and herself started living apart since 2018, despite all efforts by the family to reconcile them, she stated that before the Respondent abandoned the home, he was always assaulting her and in one of the occasion was rushed to hospital and the matter reported to the Lugbe Police Station, she said that shortly after the marriage, she got pregnant, but went through difficult delivery through C.S and because of his constant assault she developed high B.P, that after the Respondent abandoned her, she has been solely responsible for the upkeep of the child. She stated that the child is in the Nursery School and she pays ₦15,000.00 school fees per session. Finally, prays the court to grant the reliefs sought.

In course of the Examination-in-Chief of the PW1, the following documents were received in evidence,

- (1) Certified True Copy of Marriage Certificate No. 1778 of Marriage between the parties was received as Exhibit "A".
- (2) The Birth Certificate No. AO12 – 278305 issued by N.P.C in favour of Anyim Nneoma Fortune as Exhibit "B".

There was no cross-examination of PW1 by the Respondent; the Respondent in court told the court that he is resting his case on the case of the Petitioner evidence.

At this stage, case was adjourned for Adoption of Final Address.

Address the court on 21/1/2020, Pascal Jiwuaku Esq, Petitioner Counsel adopted their Final Address dated 6/6/2019, but filed on 25/6/19 as their oral submission in support of the Petition. In the said Address formulated three issues for determination.

- (1) Living apart for a continuous period of three years immediately preceding the presentation of the Petition.
- (2) Whether the Petitioner is entitled to the custody of the only child (daughter) of the marriage and the monthly sum of ₦50,000.00 (fifty Thousand naira) pay as maintenance.
- (3) Whether by the Respondent not joining issues with the Petitioner or objecting to the Petitioner is unchallenged.

And submits that the Petitioner has by her evidence proved the grounds of Section 15 (2) (e) of the Matrimonial Causes Act (MCA) to be entitled to the relief sought. Further that the failure of the Respondent to cross-examine or file an Answer to the Petition, makes the evidence of the Petitioner unchallenged and uncontroverted. That it is trite law that unchallenged evidence of a witness amounts to an admission and be taken as unchallenged. Referred to case of Salzgitter Stahi (GMBH) Vs Tunji

Domunmu Ind. Ltd (2010) 42 (PT.2) NSCQR 1085 @ P.1109. And urged the court to grant the Petitioner's reliefs as contained.

Having carefully considered the evidence of the Petitioner, submission of counsel and judicial authorities cited, the court finds that only one (1) issue calls for determination;

“Whether the Petitioner has proved the grounds alleged in seeking for the decree of discretion of marriage and therefore entitled to the reliefs sought”

Firstly, the Respondent was duly served with the processes, but failed to file an Answer to the Petition, was present throughout the trial but opted to observe and rest his case on that of the Petitioner. The implication of this, is that the evidence of the Petition in proof of her case remains unchallenged and uncontroverted. And it is trite that where evidence is neither challenged nor controverted, the court should deem the evidence as admitted, correct and act on it. See *Njoemana Vs Ugboma & Or (2014) LPELR – 22494 (CA)*.

However, the burden of proof imposed on the Petitioner by Section 131 – 134 of the Evidence Act, 2011 and Section 15 (1) and 15 (2) A – H of the Matrimonial Causes Act must be discharged for the Petition to succeed.

In the determination of the Petition for the dissolution of marriage under the Section 15 (1) of Matrimonial Causes Act, it is competent for a marriage to be dissolved once a court is convinced that the marriage has broken down irretrievably. And to come to that conclusion, the Petitioner

must satisfy the court of any of the facts laid down in Section 15 (2) of the Act categorized under sub-Section A – H.

In this instance, the petitioner relies in Section 15 (2) (f) of the Matrimonial Causes Act which reads:-

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

The Petitioner in her evidence, testified that both parties have since been living apart since January, 2015. This piece of evidence was not challenged or controverted by the Respondent. The living apart since January, 2015 as admitted requires no further proof. See case of FMH Vs Comet Shipping Agencies (2009) ALL FWLR (PT.483) 1260 @ 1266 Ratio 14. By the admitted facts of living apart for a continuous period of a least 3 years immediately preceding the presentation of the Petition, the court finds that the marriage has broken down irretrievable between the parties.

On the Petitioner claim for ₦50,000.00 (Fifty Thousand Naira) for monthly upkeep of the child.

On the issue of maintenance for monthly upkeep of the child of the marriage, it is trite law that the court has the power to make an order of maintenance of a party to the marriage and children of the marriage, but that exercise shall be subject to laid down guidelines set in the case of Adejumo Vs Adejumo (2010 LPELR – 3602 (CA) and the provision of Section 70 (1) of the Matrimonial Causes Act which reads:-

“Subject to this Section, the court may in proceedings for an order of maintenance of a party to a marriage, or children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regards to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances”

In this instance case, the Petitioner – PW1 did not give any evidence as means, earning capacity of the Respondent, but merely asking for ₦50,000.00 without more. This fact was never controverted by the Respondent. The Petitioner in this case, did not furnish this court with evidence in line with the guidelines in *Adejumo Vs Adejumo* (Supra). This leaves this court to exercise its discretion in the matter, in so doing, it must be noted that at Common Law, a man has a duty to maintain his wife and children. In the circumstance, therefore, and in exercise of that discretion and noting the fact that the Respondent has failed to react to this piece of evidence. I award the sum of ₦50,000.00 (Fifty Thousand Naira) monthly as maintenance for the upkeep of the child of the marriage.

On the issue of custody, the Petitioner did not specifically make any prayer for custody save that she stated that she has made appropriate arrangement for the child of the marriage who is presently in her custody and ready and willing to continuous to do so, with reasonable access to the Respondent. These facts again were not challenged by the Respondent. I shall in the circumstances allow this request.

In all, it is the finding of this court as follows:

- (1) The marriage celebrated at Abuja Municipal Area Council, Abuja on the 14th September, 2013 between the Petitioner-Mrs. Patricia Anyim and the Respondent – Mr. Norbert Ogbonna Anyim has broken down irretrievably and hereby pronounce a Decree Nisi dissolving the marriage and the said order shall become absolute after three (3) months.
- (2) It is hereby ordered that the Respondent pay the sum of ₦50,000.00 (Fifty Thousand Naira) monthly for the maintenance and upkeep of the child of the marriage.
- (3) The custody of the child of the marriage, Nneoma Fortune Anyim (Female) shall remain in the custody of the Petitioner, but with reasonable access to the Respondent.

HON JUSTICE O.C AGBAZA

Judge

8/4/2020

PASCAL JIWUAKU FOR THE PETITIONER

NO REPRESENTATION FOR THE RESPONDENT