

**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/434/2017
BETWEEN:**

PEACE UJU MBAH.....PETITIONER

AND

GEORGE CHUKWUMA MBAH.....RESPONDENT

JUDGMENT

This Petition for Decree of Dissolution of Marriage was filed by Peace Uju Mbah (hereinafter Called the Petitioner) for the reliefs set out in Para 21 of the Petition as;

- (a) A Decree of Dissolution of the marriage between the Petitioner and Respondent celebrated on the 17th day of August, 2002 at the St Peters Church Oba, Idemili South Local Government Area of Anambra State on the ground that the marriage has broken down irretrievably.
- (b) An Order granting custody of the children of the marriage; Michael Kosisochukwu Mbah, male born on 10th January, 2003 and Jackson Chukwuma Mbah male born on 8th December, 2005 to the Petitioner until they attain 21 years of age or attain

their First Degree whichever occurs earlier and giving the Respondent access and visitation rights to the children in the Petitioner's residence during school holidays.

(c) An Order directing the Respondent to pay the school fees and ancillary education expenses of the children of the marriage up to First Degree level within 24 hours of presentation of the relevant bill.

(d) An Order directing the Respondent to provide for the upkeep and maintenance of the children of the marriage until they attain 21 years of age by paying over to the Petitioner a monthly sum in advance on or before the 25th of the preceding month as follows:-

- | | | |
|-------------------------------|---|-------------|
| (1) Michael Kosisochukwu Mbah | - | ₦100,000.00 |
| (2) Jackson Chukwuma Mbah | - | ₦100,000.00 |

The Petition along with other processes of court were served on the Respondent by substituted means to wit: By pasting same in a conspicuous place at Respondent's last known address being No. 247 Ehi Road, Aba, Abia State. On the other hand, Respondent did not file an Answer to the Petition, was not represented by counsel and was absent throughout trial despite, repeated service of Hearing Notices. The Petition thus proceeded as undefended.

Petitioner testified as PW1 and called no other witness; she adopted her depositions in her Witness Statement on Oath deposed on 29/1/2019 as her oral testimony in support of the Petition. In the course of the

Examination-in -Chief of PW1, the Marriage Certificate issued under the Marriage Act by St Peter's Church Oba, evidencing marriage between the Petitioner and the Respondent celebrated on 17/8/2012 was admitted as Exhibit "A".

At the close of the evidence of the Petitioner, the case was adjourned for the Respondent to cross-examine PW1 – the Petitioner. On the date the case came up, the Respondent was absent in court and was not represented by Counsel, upon the application of Petitioner's counsel, the court ordered the foreclosure of the right of the Respondent to cross-examine DW1 and adjourned for the Respondent to open his defence.

Again the case came up, Respondent was absent and was not represented by counsel, the court ordered the foreclosure of the right of Respondent from defending the Petition following an application by Petitioner's counsel. The court thereafter adjourned for adoption of Final Written Address.

On 17/3/2020, C. Ezeokwuora Esq, Petitioner's counsel adopted their Final Written Address filed on 20/1/2020 as oral argument in support of the Petition. In the said Address, Petitioner's counsel formulated a sole issue for determination that is;

“Whether from the materials presented before this court a case has been made out for the grant of the prayers sought in the instant Petition”

Submit that the Petition has given evidence in proof of the grounds relied on for the Petition and which evidence remained unchallenged, urged court to deemed the said unchallenged evidence as admitted and that facts

admitted need no further proof. Refer to the cases of Oshafunmi & Anors Vs Adepoju & Anos (2014) LPELR 23073 (CA) and Sanusi & Ors Obafunwa & Anor (2006) LPELR 11863 (CA).

Finally, urge court to grant the reliefs of the Petitioner.

Having carefully considered the unchallenged evidence of PW1 – the Petitioner, the submission of counsel and the judicial authorities cited, the court finds that only one (1) issue calls for determination that is;

“Whether the Petitioner has successfully made out a case to warrant the grant of the relief sought”.

Firstly, Respondent did not file an Answer to his Petition and did not challenge the evidence of the Petitioner, the implication of this is that the court will deem the unchallenged and uncontroverted evidence of the Petitioner as true and correct and act on it. See the case of CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. In the case of Afribank (Nig) Ltd Vs Moslad Enterprises Ltd (2007) ALL FWLR (PT. 421) 879 @ 894 Paras e – F Akaahs JCA (as he then was) had this to say;

“Where a Defendant does not produce evidence or testify, slight or minimum evidence, which can discharge the onus of proof would be required to ground the Plaintiff’s claim”.

I am, however, quick to add that, that minimum evidence must be credible enough for court to grant the claim of the Petitioner, see Zenegal Ltd Vs Jagal Pharm Ltd (2007) ALL FWLR (PT.387) 950 Para F – G.

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 dissolved once a court is satisfied that the marriage has broken down irretrievably and to come to that conclusion, the Petitioner must prove to the reasonable satisfaction of court any of the facts as prescribed by Section 15 (2) of the Matrimonial Causes Act, categorized in sub-section (a) – (h).

In the instant case the Petitioner place reliance upon the grounds of Section 15 (2) (c) (d) and (f) of the Matrimonial Causes Act, as gleaned from the pleadings and evidence adduced before this court, the Section 15 (2) (c) reads;

“That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent”.

To succeed under this head, the Petitioner must lead evidence to the reasonable satisfaction of court of such particular acts or conduct of the Respondent which would warrant the grant of the relief sought. And such acts must be weighty and grave in nature to make further co-habitation virtually impossible. See the case of Ibrahim Vs Ibrahim (2007) ALL FWLR (PT.346) 474 @ 489 Paras H – B. See also the English case of Katz Vs Katz (1972) ALL E.R. 219.

In proof of this ground, Petitioner testifying as PW1 informed the court that;

“Immediately after my marriage to the Respondent, we started having issues as a result of the violent nature of the Respondent, who as a result inflicted domestic violent on my person at every slight excuse as well as his refused to take care of the financial, emotional and other need of me and the children of the marriage”.

PW1 further told the court that;

“However after the said meeting as I wanted to greet the Respondent’s step mother, the Respondent felt I wanted to see the children of the marriage that had been taken away from me and as a result the Respondent violently grabbed me and dragged me on the floor and pushed me into an oncoming vehicle on the road that almost ran over me and I sustained serious bruises all over my body”.

PW1 stated;

“Throughout the period of the marriage with the Respondent I live in constant state of apprehension and fear for my life as the Respondent would turn violent and abusive at the slightest provocation.

The Respondent smokes Indian hemp and this aggravates his violent behaviour, hostility and domestic violent against me”.

PW1 also recounted how the Respondent came to her in Abuja where she took residence after fleeing from the Respondent, picked up a fight with her beat her to the extent that she lost consciousness and was only revived by her neighbours after the Respondent fled the scene. That the whole

period of the marriage was marked by acrimony, quarrels, violent behaviour, lack of love, care and harmony.

From the evidence of the Petitioner, which remained unchallenged, the court finds that the behaviour or conduct of the Respondent as stated by the Petitioner are grave and weighty to make further co-habitation impossible and this court having found the said evidence satisfactory therefore holds that the marriage has broken down irretrievably.

On the second leg of the Petition that is, the ground of, Section 15 (2) (d) of the Matrimonial Causes Act, which reads;

“That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition”.

In proof of this ground Petitioner testify as PW1 told the court that;

“Sometime in 2011, the Respondent without any justifiable cause abandoned and constructively deserted me and the children of the marriage and co-habitation between us ceased from that date”.

Under this ground all that Petitioner must prove is that the Respondent has deserted her for a period of one year before presentation of the Petitioner, from the unchallenged evidence of the Petitioner, the period of desertion began in 2011 a computation of time from 2011 till 2017, when the Petition was filed reveals a period of more than one year, thus the evidence of the Petitioner in proof of this ground is satisfactory and in conformity with the law and the court accordingly holds that this ground avails the Petitioner as ground for court to dissolve the marriage.

On the third leg of the Petition, that is on the ground of Section 15 (2) (f) of the Matrimonial Causes Act, which reads;

“That the parties have lived apart for a continuous period of more than three years immediately preceding the presentation of the Petition”

On what may amount to living apart in a Matrimonial Causes Act, the court held that;

“It is not enough to show that the parties have lived apart for a continuous period of two (2) years immediately preceding the presentation of the Petition, but that the desertion within Section 15 (2) (c) (f) 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”.

See Nnana Vs Nnana (2006) 3 NWLR (PT. 966) 1 @ 10 Ratio 5.

The Petitioner led evidence that both parties have lived apart since co-habitation between them ceased in 2011 and since then both parties have lived apart. Under this ground the court is not called upon to look into the cause of the “living apart”, all that the Petitioner must establish is that the parties have lived apart for more than three (3) years. And the evidence of the Petitioner is that the parties have lived apart for more than three years since 2011. The court also finds this unchallenged evidence supportive of the of this ground relied on for dissolution of marriage and therefore holds that the marriage between the parties have broken down irretrievably.

On relief (b) that custody of Michael Kosisochukwu Mban and Jackson Chukwuma Mbah born children of the marriage be granted to the Petitioner, what is of paramount consideration on the issue of custody is the interest and welfare of the children. Section 71 (1) of the Matrimonial Causes Act, which guides the court on the issue of custody provides as follows;

“In proceedings with respect to the custody, guardianship, welfare advancement, or education of children of marriage the court shall have regard to the interest of those children as the paramount consideration and subject thereto, the court may make such order in respect of those matters as it thinks proper”

In support of the relief, PW1 – Petitioner testified that;

“The Respondent does not take care of me and the children of the marriage and even when the children were in Respondent’s custody, having driven me away the Respondent will not take them to hospital even when they fall critically sick”.

She further stated;

“It was on one such occasion that I had to come down to Aba and on my own took the children who were malnourished and sick to the hospital and from there took them with me to Abuja where I live with them till date”

From the said evidence of the Petitioner and in view of the arrangement stated by the Petitioner in Paragraph 34 of her Witness Statement on Oath, I am of the firm view that the interest and welfare of both children of the

marriage will be better served if left in the care and custody of the Petitioner, I so hold.

On the reliefs 21 (c) (d) and 3 which bothers on the education and maintenance of both children of the marriage, it is trite law that the court has the power to make an order of maintenance of a party and child of the marriage but that exercise shall be subject to the facts stated in the case of Adejumo Vs Adejumo (2010) LPELR 35602 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 child of the marriage other than proceedings for an order of maintenance pending the disposal of proceedings make such orders as it thinks proper having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

In this instant, the Petitioner in her evidence gave a hint of the means and earning capacity of the Respondent, although this pieces of evidence were not challenged nor controverted by the Respondent, who had the opportunity to so do, I am, however, persuaded to grant these reliefs of the Petitioner as it is settled law that it is the duty of a father to provide for his children. In granting these reliefs, I shall take into consideration the said means and earning capacity of the Respondent; but without the limitation of time as claimed by the Petitioner.

From all of these, having considered the evidence of the Petitioner in support of the ground and fact relied on for the dissolution of the marriage

and the ancillary reliefs, which remained unchallenged and uncontroverted, the court finds them satisfactory and in conformity with the requirements of the statute and hold that the marriage between the parties have indeed broken down irretrievably, consequently this Petition succeeds and Judgment is entered as follows;

- (1) The marriage contracted under the Marriage Act at St Peter's Church Oba, on 17/8/2002 between the Petitioner - Peace Uju Mbah and the Respondent George Chukwuma Mba has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the parties. The said order shall become absolute after three (3) months from the date of this Judgment.
- (2) Custody of the children of the marriage Michael Kosisochukwu Mbah, male born on 10th January, 2003 and Jackson Chukwuma Mbah male born on 8th December, 2005 is hereby granted to the Petitioner until they attain 21 years of age or attain their 1st degree whichever occurs earlier with access and visitation rights to the Respondents during school holidays of the said children.
- (3) The Respondent shall be responsible for the school fees and ancillary educational expenses of the children of the marriage up to first degree level. During this period the Respondent shall also provide for the up keep and maintenance of the

children of the marriage by paying over to the Petitioner a monthly sum as follows:-

- | | | | |
|-----|---------------------------|---|------------|
| (1) | Michael Kososochukwu Mbah | - | ₦30,000.00 |
| (2) | Jackson Chukwuma Mbah | - | ₦30,000.00 |

The Respondent is hereby directed to make all payments due pursuant to the proceedings through Petitioner's Solicitors vide Account Name, LANCE & COOPERS LEGAL CONSULT Account NO:**1014252458**ZENITH BANK PLC

HON. JUSTICE O.C. AGBAZA

Judge

4/6/2020

C. EZEOKWUORA -FOR THE PETITIONER

NO REPRESENTATION FOR THE RESPONDENT