

**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: 10

SUIT NO: FCT/HC/BW/PET/02/2017

BETWEEN:

BINTA MASI GARBA.....PETITIONER

VS

FESTUS NNAMDI CHUKWU.....RESPONDENT

JUDGMENT

Binta Masi Garba (hereinafter referred to as the Petitioner), filed by an Amended Notice of Petition on 18/5/2018, seeking for dissolution of the marriage, celebrated at the Abuja Municipal Area Council Marriage Registry, Abuja according to the Marriage Act, along with other reliefs set out in the Petition in Paragraph 11.1 – 11.3.

The Petition was presented on the grounds that;

- (a) The parties to the marriage have lived apart for a continuous period of more than three (3) years immediately preceding the presentation of the Petition due to irreconcilable differences.

(b) The marriage between the Petitioner and the Respondent has therefore broken down irretrievably.

Upon service of the Petition, on the Respondent, the Respondent with leave of court filed an Answer to the Petition on 8/10/19.

In the evidence before the court, the Petitioner PW1, told the court that she got married to the Respondent at the Abuja Municipal Area Council Registry, Abuja on 22/9/2006 and a Marriage Certificate issued, which is Exhibit "A". That the marriage produced a child – Joshua Dlama Nonso Nnamdi Chukwu, male born on 8/2/2007. She stated that the relationship between the parties have been frosty with irreconcilable difference, which culminated to threat to her life by the Respondent holding out a knife to kill her on 14/12/2012, but managed to escape out of the house and never returned. That since that date, she has stayed out of the matrimonial home, she also gave evidence of the welfare of the only child of the marriage, who presently reside withher and in school. That she has been responsible for the upkeep and welfare, school fees of the child and will continue to do so. And pray the court to grant the reliefs sought.

At the close of the evidence of the Petitioner – PW1, the Respondent Counsel, prayed the court that they have instruction of their client not to cross-examine the PW1, and rest their case on that of the Petitioner. Consequently, the Petitioner Counsel, at that stage, prayed for an adjournment to enable file Final Address and this prayer was granted by the court and case was adjourned to 10/7/2020 for Address.

The implication of the Respondent, not leading evidence in proof of their pleadings, Answer to the Petition, is that the said pleadings, is deemed abandoned, as this is the position of the law and therefore of no consequence. See *Oshafunmi & Ors Vs Adepoju & Ors* (2014) LPELR-23073 (CA). Also the evidence of the Petitioner – PW1 remained unchallenged and uncontroverted. It is law that the court in that circumstance should deem the evidence as true and correct and act on it. See *Muomah Vs Enterprises Bank Ltd* (2015) LPELR – 24832 (CA).

In the Written Address of the Petitioner settled by Esther Uzoma, three issues were distilled for determination;

- (1) Whether court is vested with jurisdiction.
- (2) Whether from the evidence adduced by the Petitioner, the marriage between the parties could be held to have broken down irretrievably.
- (3) Whether the Petitioner has met the required standard of proof in proving her Petition.

The Respondent did not lead any evidence in his Answer to the Petition, the Petition is deemed undefended, having rest his case on that of the Petitioner. By a combined reading of Sections 15 (2) and 82 (1) of the Matrimonial Causes Act, provides for the standard of proof required of the Petitioner and which is to reasonable satisfaction of the court. See *Egbuna Vs Egbuna* (1982) FNR, 52.

In this instant case, the Petitioner has led evidence as to the marriage, and events leading to their living apart since 2012. These facts were not challenged. By the Provisions of Section 15 (1) of Matrimonial Causes Act, provide only one ground for the presentation of a Petition for the dissolution of marriage, that is, the marriage has broken down irretrievably and for the court to so hold, it must be proved by establishing one of the grounds stated in Para (a – h) of the Section 15 (2) of the Matrimonial Causes Act.

In this instant, the Petitioner, relies on 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 three (3) years immediately preceding the presentation of the Petition”.

From the unchallenged evidence of the Petitioner, the Petitioner has satisfied this requirement under Section 15 (2) (f) of the Matrimonial Causes Act. A simple calculation from 14/12/2012 to the time of filing this Suit is more than five (5) years. It would be inconceivable to allow the parties to continue to live under the apprehension that a marriage still subsist. I therefore hold that the marriage has broken down irretrievably.

On the issue of custody, the Petitioner, lead evidence of how she has been solely responsible for the upkeep, welfare and school fees of the only child of the marriage, who has and still in her custody and ready and willing to continue to do so. This piece of evidence was never challenged.

In consideration of the issue of custody of the child of the marriage, the courts are guided by the Provisions of Section 71 (1) of the Matrimonial Causes Act, which provides and enjoins the court in dealing, having regard to the interest of the children of the marriage. It is the evidence of PW 1—Petitioner that the child is presently with her and has agreed to continue to bear the responsibility of the welfare, upkeep and education of the child. In the circumstance, I find that the custody of the only child of the marriage Joshua Dlama Nonsa Nnamdi Chukwu, would be best in the hand of the Petitioner until he becomes an adult to be decided, with reasonable access to the Respondent.

In conclusion, I hold that the Petitioner succeeds and judgment is hereby entered as follows:-

- (1) The marriage celebrated at the Abuja Municipal Area Council Marriage Registry, Abuja on the 22nd September, 2006, under the Marriage Act, between the Petitioner and the Respondent has broken down irretrievably and hereby pronounce a Decree Nisi dissolving the marriage. This Order shall become absolute after (3) three months from today.
- (2) Custody of the only child of the marriage – Joshua Dlama Nonso Nnamdi Chukwu born 8th February, 2007 is hereby granted to the Petitioner, with reasonable access to the Respondent agreed by the parties.

This is the judgment of court.

HON. JUSTICE O.C. AGBAZA

Judge

16/7/2020

ESTHER UZOMA FOR THE PETITIONER.

W.I. CHIME FOR THE RESPONDENT