

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 10TH DAY OF DECEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/PET/154/19

BETWEEN:

ZIMUZO TOCHUKWU

.....

PETITIONER

AND

OGOMA AMARACHUKWU

.....

RESPONDENT

BENCH JUDGMENT

On every petition for dissolution of marriage the only reason which the Court wants to ascertain is that whether the marriage had broken down irretrievably. The other thing the Court looks out for is the facts upon which the petition is standing. These facts are as listed in Matrimonial Causes Rules (MCR). The S. 15 (1) MCR contains the issue of irretrievability of the marriage.

Again in any divorce proceeding the Court must ensure that the party on the other side was served.

In this case after all attempt to serve the Respondent personally failed, the Court gave an Order for substituted service. That Order was carried out on the 4th of March,

2020 for Substituted Service. That Order was carried out. There is evidence of the said Order as stated.

This petition was filed on the 26th of February, 2019. The Court had delayed hearing ensuring that the Respondent was notified. That was done by the Order of the Court. She had not responded to the petition and had left her matrimonial home with the consent of the Petitioner to spend a few months outside Nigeria but she had decided never to come back.

The Court had allowed the Petitioner to open his case today.

Since there is no response/answer to the petition there is no point ordering that the Respondent appear before the Court to present her case since she had not filed an answer since 2019 February when this matter was filed.

It is imperative to state that in any divorce proceeding for dissolution of marriage there are no Witnesses except the parties. Again it is not appealable. Moreover no Court has a right to force anybody to continue to live in a marriage which he is fed up with or which has broken down irretrievably. That is so even if the party on the other side had stated that he/she does not want the dissolution of the marriage.

Today the Petitioner had stated that he wants the marriage dissolved. He had stated that it has broken down irretrievably and there are irreconcilable differences which he cannot reasonably be expected to live with.

That Respondent had been in desertion from their matrimonial home for over 2 years before the action was

filed in 2019 February. And that she had stated that she had no intention to come back to the matrimonial home. Again that she does not object to the decree of dissolution being granted.

The Petitioner had testified that the Respondent has for over 2 years failed to comply with decree of restitution of conjugal right. That is that there has been severance of conjugal right as a result of her desertion.

It is the law and as provided under the MCR/MCA that once a partner is in desertion for one (1) year that it is a good ground for dissolution of marriage S.15 (2) (d) Matrimonial Causes Act (MCA). Again once there is severance of conjugal right for six (6) months it is also a ground for dissolution too. Both grounds are present in this case. Again the Respondent had not denied or answered to these facts which means that the facts are unchallenged.

This Court cannot therefore wait for the Respondent in perpetuity. The Court would have adjourned for Respondent to present their case if the Respondent had entered appearance in paper or had a Counsel in Court to represent her. Since she had not done any of this, this Court cannot therefore wait for her in perpetuity since the Court had followed all due procedure to ensure fair hearing. She had slept on her right.

This Court having looked and gone through the petition and the verifying Affidavit and having also listened to the Petitioner testify in this Court holds that there is merit in this case.

This Court therefore hereby Order that the said marriage celebrated between the Petitioner Zimuzo Tochukwu Azuogalanya and Ogoma Amarachukwu Iroku on the 10th December, 2016 is hereby DISSOLVED.

The marriage had broken down irretrievably and the Respondent is in desertion till today and had been in desertion for over 2 years preceding the filing of this petition. Again there has been severance of conjugal rights too for over 3 – 4 years after the marriage broke down.

This is the Order Nisi of this Court granted today.

If the parties do not get back together, this Order will be automatically made absolute after 90 days from today 10th December, 2020 which ordinarily should have been the 4th Anniversary of the marriage.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2020 by me.

K.N. OGBONNAYA
HON. JUDGE