

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 28 GUDU - ABUJA
ON TUESDAY THE 24TH DAY OF NOVEMBER 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO: FCT /HC/PET/406/2020

AYODEJI MICHAEL OGUNGBESAN -----PETITIONER

AND

RACHAEL AIMENDE UKPEBOR -----RESPONDENT

JUDGMENT

On 19th of August 2020 the Petitioner filed a Petition against the Respondent praying for the following: -

1. A decree of dissolution of marriage contracted on the 23rd of July 2018 between the Petitioner and the Respondent.
2. Any other order(s) as this Honourable Court may deem fit to make in the circumstance.

In addition, Petitioner filed his witness statement on oath. On the 10/11/2020 when the matter came up for hearing for the first time, the Respondent informed the court that she will be representing herself in person. The parties on the 17/11/2020 through the Petitioner's counsel informed the court that parties have filed a document of financial settlement which they want the court to incorporate same as Judgment but the Court advised that same be tendered as evidence and would be incorporated in the body of the Judgment.

The Petitioner at the trial adopted his witness statement on oath dated 19th August 2020 and tendered two (2) exhibits;

1. Terms of agreement between parties – Exhibit A.
2. Original Marriage Certificate No 1292 dated 23rd July 2018 - Exhibit B.

The Petitioner in summary deposed that since their marriage contracted on the 23rd of July, 2018 at Abuja Municipal Area Council, Marriage Registry (AMAC) he has not cohabited with the Respondent. That all his efforts to reconcile and his pleading with the Respondent's relatives to resolve issues proved abortive. That the Respondent has told him that he is free to go and remarry another person. That he cannot reasonably be expected to live with the Respondent. That the marriage has broken down irretrievably.

At the close of the Petitioner's examination in chief, the Respondent informed the court that she has no question for cross examination and Petitioner closed his case.

The Respondent opened her case, swore on Holy Bible and states that the Petitioner told her he had the "issue" of generational curse in his family, that they were spiritually incompatible and that she is not opposing to dissolution of their marriage. The Respondent deposed to an affidavit at the FCT High Court dated 29th September 2020 wherein she deposed in paragraphs 2 and 3 as follows;

1. I am the Respondent in a Petition for dissolution of Marriage filed in this Honourable Court with Petition number PET/406/2020.

2. I have been served a copy of the Petition and I wish to state that I have no objection to the Petition and will not object to it. She prayed the court that everything in Exhibit A before this Court be incorporated in the judgment. Case was then adjourned for adoption of final written address.

The Petitioner in his final written address raised a lone issue for determination:

“Whether or not the Petitioner has successfully discharged the burden of prove and establish desertion, incompatibility and that the marriage has broken down irretrievably”.

Summarily, learned counsel stated that it is trite law that the sole ground for instituting dissolution of marriage is that the marriage has broken down irretrievably in line with section **15(1) of the Matrimonial Causes Act 2004**. That **Section 15 (a-h) of the Matrimonial Causes Act 2004** states the particulars of facts that the Petitioner must prove upon which the grounds for dissolution of marriage can arise and the Petitioner is required to establish one of those facts. That relying on **Section 15 (2) (e) of the Matrimonial Causes Act 2004** the Petitioner by his witness statement on oath and exhibit B has shown that the marriage has lasted for a period of two years and counting, and they have since lived apart. Counsel submitted that the terms of settlement entered into by both parties provides adequate ground for the dissolution of marriage in line with **Section 15 (2) (e) of the Matrimonial Causes Act 2004**. In Conclusion, counsel submitted that based on the evidence adduced, cases cited, coupled with the statutory authority cited, the Petitioner has proven that they have been living apart for a period exceeding two years and the

Respondent has not objected to the Petition for a dissolution of the Marriage. He finally submitted that a decree for the dissolution of Marriage contracted between the Petitioner and the Respondent on the 23rd day of July, 2018 be granted and the marriage dissolved due to desertion, incompatibility as the marriage has broken down irretrievably. Counsel cited the case of **OYENUGA V. OYENUGA (1977) 2 C. C. H. C. J. 395.**

I have examined this application and the issue to be determined is **“whether this Court can grant the prayer of the Petitioner.”**

In this case, the petitioner’s depositions are without reply from the Respondent. The evidence of the Petitioner is therefore not challenged or contradicted by the Respondent. The effect is that the evidence of the Petitioner will be taken as accepted or established. The Court in **BAKAU V. BAKAU (2013) LPELR-22687 (CA) HELD** that

“where evidence given by a party to a proceeding was not challenged by the other party who had opportunity to do so, it is always open to the Court seised of the matter to act on such unchallenged evidence before it”

Having taken into account the averments in the Petition and the evidence led in support, what is clear to me is that the marriage between the parties has broken down irretrievably owing to the fact that parties have lived apart from each other without co-habiting for a continuous period of two (2) years preceding the filing of this Petition. There has been no child of the marriage and the Respondent has declared that she is not opposed to the grant of a decree of dissolution of the marriage.

It is also settled law as submitted by the Petitioner’s Counsel in their written address 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; and 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 **Sections 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act, 2004.**

The Court of Appeal in **AKINLOLU V. AKINLOLU (2019) LPELR-47416 (CA)** held on conditions for the grant of dissolution of marriage as follows;

"Instructively, a petition by a party to a marriage for a decree of dissolution of that marriage may be presented to the Court by either party thereto, upon the ground that the marriage has broken down irretrievably. The Court seized of the petition for a decree of dissolution of a marriage shall adjudge the marriage to have broken down irretrievably upon the petitioner satisfying the Court of one or more of the following conditions: (a) That the Respondent has willfully and persistently refused to consummate the marriage; (b) That since the marriage the Respondent has committed adultery and the petitioner finds it intolerable to live with the respondent. (c) That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with. (d) That the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition; (e) That the parties to the marriage have lived a part 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; (f) That the parties to the marriage have lived apart for a continuance period of at least three years immediately preceding the presentation of the petition; (g) That the

other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act; (h) That the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead”.

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) (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 nisi being granted and for that, the marriage celebrated between the parties ought to be dissolved.

Consistent with this admission and findings, I am satisfied that the Petitioner has established a case sufficient to justify the grant of a decree of dissolution of the marriage between him and the Respondent on the ground that the marriage has broken down irretrievably, in that parties have been living apart without co – habitation for a continuous period of about two (2) years, immediately preceding the filing of this petition. And given that the Respondent has neither filed a defence nor controverted the Petitioner’s averments in cross-examination, the law is that the court is bound to accept the petitioner’s narrative as true and act upon it. In **EN C. EMODI & ORS V. MRS. PATRICIA C. EMODI & ORS (2013) LPELR-21221(CA)** it was held that;

“Where therefore a plaintiff files his statement of claim raising an allegation of fact against the defendants or one of them, such defendant(s) who do/does not admit the truth of the allegation must

file a defence to contradict, controvert, challenge or deny the allegation. Where no defence is filed, the defendant is deemed to have admitted the assertion and the court may peremptorily enter judgment against the defendant”.

I find this Petition as having been proved. It has merit and it succeeds. I hereby dissolve the marriage as follows:-

- i. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **AYODEJI MICHAEL OGUNGBESAN**, and the Respondent, **RACHEAL AIMENDE UKPEBOR** at the Abuja Municipal Area Council, Marriage Registry (AMAC) Nigeria on the on the 23rd of July, 2018.
- ii. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.

Consequent upon the Terms of Agreement (Exhibit A) executed and filed by both parties which is guided by the conditions of agreement as contained therein and having been adopted before this Court, it is hereby ordered as follows;

- iii. That Racheal Aimende Ukpebor and Ayodeji Michael Ogungbesan agree to get into a monthly monetary payment plan of which Racheal Aimende Ukpebor is the sole beneficiary.
- iv. That Ayodeji Michael Ogungbesan would make payment of the sum of ₦500, 000.00 naira to Racheal Aimende Ukpebor.

- v. That pursuant to agreement by both parties, Ayodeji Michael Ogungbesan is under the obligation to make instalment payments of the sum of ₦100, 000.00 naira for 5 months, from the month of November, 2020 to the month of March, 2021 of which an instalment payment sum of ₦100, 000.00 naira has already been made for the month of November 2020 by Ayodeji Michael Ogungbesan to Racheal Aimende Ukpebor.
- vi. That by the end of March 2021 the total sum of ₦500,000.00 (Five Hundred Thousand Naira) only would have been paid from Ayodeji Michael Ogungbesan to Racheal Aimende Ukpebor following the instalment payment plan as stipulated above.

Parties: Petitioner is present. Respondent is absent.

Appearances: M. M. Usman representing the Petitioner, No legal representation for the Respondent.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
24TH NOVEMBER, 2020**