

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 32
CASE NUMBER:	SUIT NO. FCT/HC/PET/278/19
DATE:	5TH OCTOBER, 2020

BETWEEN:

CHIDI JACOBPETITIONER

AND

ULOMA JACOB.....RESPONDENT

APPEARANCE

Ishaq Abdulraheem Esq holding brief for Elisha Elarinkonba.

JUDGMENT

The Petitioner Mr. Chidi Jacob has filed a Petition for the dissolution of his marriage to his wife Mrs. Uloma Jacob. The said petition is dated 6th day of June, 2019 and filed on the same date.

The facts relied upon by the petitioner as constituting the grounds for filing the petition are as follows:-

- a) The marriage has broken down irretrievably.

- b) That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot be expected to live with her.
- c) The parties have lived apart for a continuous period of over one year immediately preceding the presentation of this petition, that since and from the 29th day of December, 2017 when the Respondent moved out of her Matrimonial home and went away, and since the said date, the parties have never resumed cohabitation.
- d) That the petitioner has suffered exceptional hardship occasioned by exceptional Depravity, and that the marriage has broken down irretrievably, as the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and such refusal to grant this petition will impose on the petitioner further exceptional hardship.

The court has in its records the Affidavit of service of the notice of petition on the Respondent which was sworn to by one Akinwale Akinlolu, a court official of this Honourable Court and sworn to on the 30th day of August, 2019.

Likewise, the Respondent has acknowledged service of the Notice of petition as evidenced on the proof of service of the Notice of petition dated 30/8/19 at 12:18 pm signed by Uloma Jacob the Respondent in this suit.

Being satisfied that the Respondent had been duly served, the court set the suit down for trial.

At the trial the Petitioner gave evidence. He testified that the Respondent moved out of their home in February 2017. And that prior to that the married couple had issues that could not be resolved which led the Petitioner to file this petition.

According to the Petitioner, he and the Respondent got married outside this country in the U. S on July 12th 2008 and they later moved back to Nigeria in December 2010.

The petitioner testified further that although it was a planned move, it affected mostly the Respondent as Exhibited by her attitude which the petitioner says eventually led the married couple to grow apart.

According to the petitioner, in a bid to make the marriage work, he allowed the Respondent to move back to the U.S for sometime. And despite his efforts which included shuttling back and forth to the U. S and back and running two homes, they both realized that the Respondent just didn't want to remain in the marriage, after she returned to the country in 2016. He tried to bring in friends, family Pastors, counsel etc all to no avail.

That despite all the petitioner's efforts of doing things like the house chores and providing for the home financially, cooking, going to the market, the Respondent still didn't do what was required of a wife as she frequently shuts down and withdraws from him, sometimes for weeks.

The petitioner stated that he realized that no matter what you do if someone doesn't want to live in an environment, there's nothing one can do.

He also informed the court that the marriage did not produce any issue.

Their marriage certificate was tendered in evidence through the Petitioner and marked as Exhibit A.

The petitioner urged that the marriage be dissolved.

On the other hand despite being served with the notice of the petition and several hearing notices, the Respondent did not challenge this petition.

Learned counsel for the petitioner filed a written address dated and filed 8/7/2020, same was adopted and judgment was reserved.

In his address learned counsel formulated a sole issue for determination which is whether on the evidence before the court, the petitioner has established his case to be entitled to the reliefs sought in his petition? Learned counsel submitted that the petitioner has proved existence of the marriage between himself and the Respondent by tendering their certificate of marriage Exhibit A.

That the Petitioner has satisfied the provision of Section 2 (1) of the Matrimonial Causes Act on where the parties are domiciled.

That since the pleadings and evidence show that the Petitioner and Respondent are both domiciled in Abuja, this Honourable Court has the jurisdiction to grant the prayers sought in the petition.

Reliance was placed on the case of OMOTUNDE VS OMOTUNDE (2000) LPELR-10194 (CA).

Learned counsel submitted further that the petitioner by his pleadings and oral testimony before the court has established grounds upon which the court can grant a decree of dissolution as well as other reliefs sought in the petition in line with the provision of Section 15 (2) of the Matrimonial Causes Act.

Reliance was also placed on the case of OKERE VS OKERE (2017) LPELR-42160 (CA); as well as Section 15 (1) and 15(2) of the Matrimonial Causes Act, 1970.

That from paragraphs 1 and 8 of the petition dated 6th June 2019, the petitioner seeks dissolution of the marriage on the grounds that the marriage has broken down irretrievably, and that since the marriage, the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent, and that the Respondent had deserted him since February, 2017.

Learned counsel submits, that the Petitioner was not Cross-Examined by the Respondent, and that despite the service of the necessary processes on the Respondent, the Respondent did not put up a defence. That the law is trite that an unchallenged evidence is deemed admitted.

Reliance was placed on the case of MAITAMA VS DADA (2013) 7 NWLR (PT. 1353) 319 @ 336, paragraphs B-C, per FABIYI JSC (As he then was).

Learned counsel submitted that from the evidence of Pw1, the Petitioner, the Respondent moved out of her Matrimonial home and that before then the

petitioner had brought in friends, Pastors and family members all in a bid to have a peaceful home to no avail.

Counsel cited Matrimonial Causes in Modern Civil Procedure Law, Dee-sage Nigeria limited, Lagos, 2007, By N. Tijani at page 439, wherein four elements were highlighted which must be present in a petition for dissolution of marriage where the Petitioner is relying on the grounds of desertion for at least a year as follows:-

- a) The defacto separation of parties.
- b) Animus deserendi, that is the intention to withdraw from co-habitation permanently.
- c) Lack of just cause for the withdrawal from cohabitation, and.
- d) Absence of the consent of the deserted party.

Learned counsel submitted that all these elements have been established in this case and reliance was placed on the case of UGBOTOR VS UGBOTOR (2006) LPELR-7612 (CA).

Counsel further submitted that since the Respondent did not file pleadings nor answer to the Petition, it has relieved the Petitioner of the burden of proof placed upon him in this petition.

Reliance was placed on the case of AGBI VS OGBEH (2005) 8 NWLR (PT. 926) 40 @ 134, paragraphs A-D.

It is submitted further that the grounds/categories of intolerable acts or behaviour under Section 15 (2) (c) are never closed.

Counsel cited the case of OGUNTOYINBO VS OGUNTOYINBO (2017) LPELR-42174 (CA).

That the habit of the Respondent shutting down for weeks, would not communicate with the petitioner and her refusal to do what is expected as a wife, the Petitioner cannot be expected to live with the Respondent. That this behaviour of the Respondent as captured in the evidence of PW1, which remains unchallenged before this court, falls under Section 15 (2) of the Matrimonial Causes Act and urged the court to so hold.

Counsel finally urged the court to hold that the marriage between the Petitioner and the Respondent has broken down irretrievably and to grant the reliefs sought in the petition.

I have considered the evidence herein and the submissions of counsel for the petitioner. As already observed above in this Judgment, the Respondent was duly served with all the processes in this petition but chose not to file any response. The inference that one can safely draw from this is that she does not seek to contest the divorce.

Under and by virtue of Section 15 (2) of the Matrimonial Causes Act cap M, 7, 2004, the Court is empowered to grant an order of dissolution of any marriage where it is satisfied that the marriage has broken down irretrievably. Before the court can come to such a conclusion, however, it must be satisfied that the alleged ground for dissolution of marriage falls within Section 15 (a) and(1) of the Matrimonial Causes Act.

The Petitioner has filed a verifying affidavit in support of the facts forming basis for grounds of filing this petition in which he alleges both intolerable behaviour and desertion by the Respondent. I refer to facts b and c contained in the Notice of Petition.

Wherein the Petitioner alleges that since the marriage the Respondent has behaved in such a way that the Petitioner cannot be expected to live with her.

In his evidence already reproduced earlier, such allegation of intolerability includes shutting down for weeks and not communicating with the Respondent and refusing to do anything in the home required of a wife, despite all the petitioner's efforts in that respect, by doing house chores going to the market, taking care of the home financially and even bringing in friends, counsel, family and Pastors to wade into the matter, all to no avail.

And in the facts as deposed and supported by the verifying Affidavit and supported by the Petitioner's evidence on Oath, it is alleged that the Respondent since February 2017 had moved out of their matrimonial home and that the parties have lived apart for a continuous period of over one year immediately

preceding the presentation of this petition. That since and from the 25th day of December 2017 when the Respondent moved out of her matrimonial home and went away, the parties have never resumed cohabitation.

All these pieces of evidence are unchallenged and uncontroverted.

Section 15 (2) (d) of the Matrimonial Causes Act Cap M7, 2004 provides that a decree of dissolution of marriage may be granted where the Respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.

The evidence of the Petitioner shows that he has been deprived of a normal marriage relationship with the Respondent despite all his efforts in that regard. And as such he cannot reasonably be expected to live with the Respondent.

Please see the case of EKREBE VS EKREBE (1993) 3 NWLR (PT. 596) 514. ONABOLU VS ONABOLU (2005)2 SMC, 135; ASUNI VSASUNI (2002)2 LHCR (PT. 22)2 LHCR (PT. 22) 103; NANNA VS NANNA (2006) 3 NWLR (PT. 966)1.

Likewise, in concluding that the Petitioner cannot reasonably be expected to live with the Respondent, the entire history of the marriage has to be considered in other words, the court must consider the totality of the marriage history of the parties to the petition.

On this premise, please see the case of IBEAWUCHI VS IBEAWUCHI (unreported) suit NO. 0/6D/72 of 19/2/73.

Furthermore, it is trite that the court is empowered to act on the unchallenged credible evidence of a witness, such as in this case. I so hold.

On this I refer to the case of NANNA VS NANA (Supra) where the court observed that evidence which is not challenged or discredited, which is relevant ought to be relied upon by the court.

See also the case of MORAH VS OKWUAYANGA (1990) 1 NWLR (PT. 125) 225.

Therefore, having reviewed the evidence led herein which I find to be credible, this court is bound to act on it since it is unchallenged and uncontroverted.

I hold that the petitioner has established the fact that he was deserted and that the behaviour of the Respondent is such that he cannot be expected to live with her.

I hold further that the Petitioner has satisfied the court pursuant to Section 15 (2) (c) (d) that the marriage has broken down irretrievably.

On this premise, I hereby make an order Nisi dissolving the marriage between Mr. Chidi Jacob and Mrs. Uloma Jacob celebrated at Prince George's County Maryland, United States, on the 9th of July 2007. The order shall become absolute, if nothing intervenes within a period of three months from the date thereof.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

5/10/2020.