IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 12TH DAY OF JANUARY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: PET/437/2017

**BETWEEN:**

IFEOMA IKEKEONWU ---- PETITIONER

**AND**

CHIMA IKEKEONWU ---- RESPONDENT

# JUDGMENT

The Petitioner Ifeoma Ikekeonwu an Accountant, Petitions the Court for decree of dissolution of marriage against the Respondent, a Medical Doctor, on the grounds that the marriage has broken down irretrievably as parties have continuously lived apart for at least two years immediately preceding the presentation of this Petition and the Respondent does not object to the decree being granted.

Petitioner got married to the Respondent at St. Andrew's Anglican Church, Trans Ekulu, Enugu State on the

29/11/2014 and then at the Marriage Registry at Enugu, in Enugu State. After the marriage, parties cohabited at No. 5, 14 Road, First Avenue Gwarimpa, Abuja. However, sometime in 2015 when the marriage took a down turn, and the Respondent informed the Petitioner of his intention to move out of the matrimonial home. He also informed her that he was not renewing the rent upon its expiration. The Respondent further advised the Petitioner to vacate the premises and look for an alternative accommodation for herself as he was no longer interested in the marriage. It was the Petitioner's further testimony that the Respondent eventually moved out of the matrimonial home, while she moved to an alternative accommodation. Since then, parties have lived apart without any communication between them.

After several reconciliatory meetings between both extended family members, the Respondent requested for a return of his bride price, which has since been returned to him.

The Petitioner testified as PW1 and tendered the marriage certificate which was admitted and marked as Exhibit A. Under cross examination, the Petitioner testified that the only time she spoke to the Respondent was when the bride price was returned to him.

The Respondent was served with the Notice of Petition on the 11/12/2017, and eventhough he was represented by counsel, the Respondent did not file an Answer to the Petition. Learned counsel to the Respondent **Samuel Osayande Esq** also did not address the Court. **Adetoun Akerele Esq** adopted the Petitioner's written address dated 24/1/2019. Learned counsel formulated a sole issue for determination as follows:

> *"Whether given the facts as presented, this Court can conveniently dissolve the marriage between the parties in this petition."*

Learned counsel for the Petitioner submitted that parties have lived apart for two years from October, 2015

to 30/10/2020 and that the Respondent does not object to a decree being granted. Counsel urged the Court to grant the Petition based on the Petitioner's unchallenged evidence and considering that the Respondent had moved on with his life. Reference was made to Okoro vs. Okoro (2011) All FWLR (part 572) 1759 at 1787 and Orere vs. Orere (2017) LPELR – 4160 (CA).

A Court hearing a petition for the dissolution of a marriage shall grant the relief if the marriage has broken down irretrievably. See Section 15 (1) of the MCA. Success or otherwise of a petition for decree of dissolution of marriage depends largely on how diligently and adequately the burden of proving one or more of the facts contained in Section 15(2)(a – h) is successfully discharged to the satisfaction of the Court. Failure in this regard will entail a dismissal of the petition. See Anioke vs. Anioke (2011) LPELR – 3774 (CA). Sub-section (2) of Section 15 sets out facts upon which the Court could hold that a marriage has

broken down irretrievably. Sub-section 2 (e) forms the crux of the Petitioners case. It states:

*"15(2) The Court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the Court of one or more of the following facts –*

*(e) That 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 being granted."*

The use of the word "shall" in the context of the Sub-section imports a mandatory meaning – a command. See Omotunde vs. Omotunde (2001) 9 NWLR (718) 252, 284, Ogidi vs. State (2005) 5 NWLR (918) 286, 327 and Amokeodo vs. Inspector – General of Police (1999) 69 LRCN 1084.

Section 15(2)(e) of the Matrimonial Causes Act is divided into two cumulative parts;

(i) The petitioner must satisfy the Court 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

(ii) The respondent does not object to a decree of dissolution of the marriage being granted.

The two conditions must be present to warrant the Court granting a decree of dissolution of the marriage under Section 15(2)(e) of the Matrimonial Causes Act. See Odili vs. Odili (1973) 3 ECSLR 62, 63.

Again, a petition for dissolution of marriage is not granted on the basis that the respondent admitted the same in his/her answer. The petitioner must lead satisfactory evidence to prove his entitlement to the decree. See Section 44(3) of the Matrimonial Causes Act and **Omotunde vs. Omotunde supra.** There is no doubt that the

respondent did not lead evidence in rebuttal of the case and the Respondent through his counsel told the Court that he was not leading evidence and not filing any pleadings.

The evidence before the Court that parties have lived apart since October, 2015 has not been challenged or controverted by the Respondent. This petition was filed on the 30/10/2017 thus satisfying the first requirement of Section 15(2)(e) of the Act. It is also in evidence that the Respondent despite efforts at reconciliation by family members requested for a return of the bride price. It is noted that the bride price has since been returned to him. Furthermore, the Respondent did not file any Answer to the Petition and the evidence of the Petitioner was not contradicted by way of cross examination.

Samuel Osayande Esq who appeared for the Respondent submitted that the Respondent has no objection to the relief sought in the petition. In my view, this goes to show that the Respondent has no objection to

the Petition being granted thereby satisfying the 2nd limb of Section 15(2)(e) of the Matrimonial Causes Act. Unless the Court sees any reason to the contrary in law, it is under a duty to accept and act on evidence which is not denied or controverted by the adversary and to deem same as admitted by the party. See Nanna vs. Nanna (2006) 3 NWLR (part 966) page 1, Hayes vs. Hayes 1 SMC page 207.

I must add that it is immaterial who has between the parties caused them to live apart as it seems to me that Section 15(2)(e) of the Matrimonial Causes Act does not permit the Court to go into a fault-finding expedition. See Uzochukwu vs. Uzochukwu (2014) LPELR – 24139 (CA), Ibeawuchi vs. Ibeawuchi (1974) UILR (103) 67 and Orugoh vs. Orugoh (1974) 4 UILR (1) 120.

This Court is satisfied that the parties in this petition have lived apart for a period of at least two years immediately preceding the presentation of the petition pursuant to Section 15(2)(e) and that the Respondent does

not object to a decree being granted. **I hold that the marriage has broken down irretrievably and a decree *Nisi* is granted for its dissolution. As there are no children of the marriage, it shall become absolute upon the expiration of three months.**

**Signed**
**Honourable Judg**

**Appearances:**

Adetoun Akerele Esq – for the Petitioner

Samuel Osayande Esq – for the Respondent