IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 23RD DAY OF FEBRUARY, 2021

BEFORE: HON. JUSTICE M. A. NASIR

COURT NO: 9

SUIT NO: PET/347/2015

BETWEEN

JOSEPH NWOSU ---- PETITIONER

AND

CHINYERE NWOSU ---- PESPONDENT

# JUDGMENT

The instant Petition was initially filed on the 19/10/2015 and by a transfer order made on the 7/02/2018, the Petition was re-assigned to this Court to start denovo. By an order of this Court made on the 12/03/2020, the Court granted leave to the Petitioner to amend his Notice of petition.

By the Amended Notice of Petition filed on the 20/11/2020, the Petitioner Mr. Joseph Nwosu is praying this Court for the dissolution of his marriage to the Respondent Mrs. Chinyere Nwosu, celebrated at the Marriage Registry Awka, Anambra State on the 6th day of January, 2004.

The Petitioner relied on the ground that the marriage has broken down irretrievably, parties having lived apart from each other for a continuous period of seven years preceding the presentation of this petition.

In proving his petition, the Petitioner testified on the 19/02/2019 as PW1. His testimony in support of the petition is that immediately after the marriage parties cohabited at No.28 Arthur Eze Avenue, Awka, Anambra State and later relocated to Zone 5, Lugbe, FCT Abuja. PW1 further stated that parties lived together as husband and wife until 2008 when they separated. According to the

Petitioner, sometimes in 2008, the Respondent left the matrimonial home when she built her own house in Kuje and since then they have been living apart. As there are no children of the marriage, PW1 prayed the Court to dissolve the marriage. The witness was cross-examined by the Respondent's Counsel.

Though the Respondent filed an Answer to the petition, his counsel Abu Samson Adaweno Esq. was not in Court on the 18/6/2020 when the matter came up for defence.

Upon the application of the Petitioner's Counsel, the Respondent was foreclosed from defence and the case further adjourned for adoption of written addresses.

Despite the service of hearing notice on the Respondent, no written address was filed by her Counsel. Learned counsel for the Petitioner Nneka Uchendu Esq. filed the Petitioner's written address dated 20/11/2020.

Learned counsel submitted that the grounds for dissolution of marriage under the Act in Nigeria is well enunciated in Section 15 of the Matrimonial Causes Act. That a Petitioner who seeks the dissolution of marriage under the Act must satisfy one or more conditions as contained in Section 15 (2)(a-h) of the Matrimonial Causes Act.

Counsel further submitted that the law is trite that where it is shown that the marriage between the Petitioner and Respondent falls under any of the facts contained under Section 15(2)(a) – (h) Matrimonial Causes Act, it then becomes sufficient ground(s) upon which a decree for dissolution is granted.

Counsel went on to submit that the evidence of the Petitioner before this Court is that parties have lived apart for over seven years and this evidence has remained unchallenged and uncontroverted. Counsel also submitted

on the trite position of the law that where a party does not contradict the evidence led which is before the Court, it is strong point in favour of the other.

Counsel finally submitted that the Petitioner has discharged the burden placed on him by the law to be entitled to the grant of the order sought and urged the Court to so hold. Counsel cited and made reference to the following cases:

1. Okosi vs. State (1989)1 NWLR (Part 100) 642
2. Cappa & D'Alberto Ltd. vs. Akintilo (2003)9 NWLR (Part 824).
3. N.B.C. Plc. vs. Ubani (2014)4 NWLR (Part 398) 421 SC @ page 470 – 471.
4. Woluchem vs. Gudi (1981)5 SC 291.
5. Alechenu vs. Oshoke (2002)9 NWLR (Part 773) 521 @ 535.

The Matrimonial Causes Act has laid down the provisions guiding dissolution of marriage contracted under the Marriage Act. Section 15(1) Matrimonial Causes Act provide that:

> *"A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented by either party to the marriage upon the ground that the marriage has broken down irretrievably."*

The trial Court seized of the petition shall hold that the marriage has broken down irretrievably if the Petitioner has satisfied the Court by evidence with regard to either of the facts set out under Section 15(2)(a) – (h) of the Act. Where he/she is unable to satisfy the Court as to the existence of at least one of the facts, the Court will dismiss the petition notwithstanding the desire of either or both parties to opt out of the marriage. See: Ekerebe vs. Ekerebe (1999)3 NWLR

(Part 569) page 514. It is not required from the Petitioner to prove that the marriage has broken down irretrievably but to satisfy the Court that the Respondent is guilty of any or more of the facts listed under Section 15(2)(a)-(h). See: Nwankwo vs. Nwankwo (2014) LPELR - 24396 (CA). It is only when any of those facts has been pleaded and proved that the Court will pronounce that the marriage has broken down irretrievably. See Damulak vs. Damulak (2004)8 NWLR (Part 874) page 151.

The Petitioner in the instant case relied on Section 15(2)(f) of the Act, which provide as follows:

*"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…*

*(f) that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition."*

The evidence of the Petitioner before this Court is that parties in this petition have lived apart since 2008 and the instant petition was filed in October, 2015 which is a period exceeding three years preceding the presentation of the petition.

On when parties to a marriage will be treated as living apart, Section 15(3) of the Act states that

*"the parties to a marriage shall be treated as living apart unless they are living with each other in the same house hold."*

The test of what amounts to living apart is whether there is any kind of communal living between the parties. Where the answer is negative, then there is living apart as envisaged

under the Act. See **Fuller vs. Fuller (1973)1 WLR 730.** Separation or living apart *"is undoubtedly the best evidence of break – down and the passing of time, the most reliable indication that it is irretrievable."* See **Pheasant vs. Pheasant (1971)1 ALL ER 587.**

By Section 82(1) of the Matrimonial Causes Act, the standard of proof required in proving a matter of fact is to the reasonable satisfaction of the Court. It is noteworthy, that the term reasonable satisfaction has not been defined in the Act. Nevertheless, it connotes adducing evidence in support of the averments before the Court and reasonably and satisfactorily too. See: **Anioke vs. Anoike (2011) LPELR – 3774 (CA).**

The Petitioner has testified that parties cohabited after the marriage until 2008 when the Respondent parked out of the matrimonial home and never returned. Parties have been living apart from each other since then. The

Petitioner's testimony was not challenged or controverted by the Respondent. In situations like these, where cohabitation has completely collapsed and parties lived apart for a continuous period of three years or more, the Court should not be invited under Section 15(2)(f) of the Act to inquire into why the parties have so lived apart. Once there is evidence that parties have lived apart for a continuous period of three years before presentation of the petition, it is not necessary to prove any other matrimonial offence.

The Courts rarely keep up a marriage which had obviously broken down completely. See Sowande vs. Sowande (1969)1 ALL NLR – 487. The purpose of the law in this regard is to give a marriage which is already dead a decent burial without necessarily apportioning fault. See: Santos vs. Santos (1972)2 WLR page 289. In this instance, I hold that the evidence presented by the Petitioner

adequately satisfied Section 15(2)(f) of the Matrimonial Causes Act.

The petition succeeds, and I order a decree nisi to issue. As there are no children of the marriage, the Decree Nisi shall become absolute upon the expiration of three months from today.

**Signed**
**Honourable Judge**

**Appearances:**

Nneka Uchendu Esq – for the Petitioner

Abu Samson Adaweno – for the Respondent