

IN THE HIGH COURT OF JUSTICE OF THE 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/327/2020

DATE: 8TH FEBRUARY, 2021

BETWEEN:

PETER OTEIKWU..... PETITIONER

AND

JULIET OMON OBOH.....RESPONDENT

APPEARANCES:

P.E. Idehen Esq with C. O. Anegebe for the Petitioner.

Bukola J. Oluwashino Esq. for the Respondent.

JUDGEMENT

Before this honorable court is a notice of petition dated and filed the 3rd day of July 2020. The petition was filed by Peter Oteikwu seeking a decree for dissolution of his marriage with Juliet Omon Oboh the Respondent. The petitioner was lawfully married to the respondent

then, a spinster under the marriage Act (Registry) Abuja Municipal Area Council (AMAC) within the jurisdiction of this honorable court.

The petitioner is seeking for:

An order for the dissolution of marriage contracted at the marriage registry, Abuja Municipal Area Council, Abuja (AMAC) on the 27th day of June 2011 between the Petitioner and the Respondent hereto as the marriage has broken down irretrievably.

The grounds upon which the petitioner brought this petition is that the marriage between the petitioner and the respondent has broken down irretrievably. The particulars for bringing this petition on the grounds that the marriage has broken down irretrievably are as set as follows:

1. That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent under one roof particularly as follows:
 - a) That the respondent abandoned the petitioner and moved out of the matrimonial home and has been involved in adulterous act as the respondent has found a new love and no longer gives the petitioner attention and care even when the marriage between the petitioner and the respondents is still subsisting.
 - b) That because of lack of love by the respondent to the petitioner, the parties have been living apart from each other for continuous period of over two years immediately preceding the presentation of this petition.

2. The respondent has deserted the petitioner for a continuous period of over two years immediately preceding the presentation of the petition:

a) That the respondent has deserted the petitioner for over two years and has finally moved from the petitioner's home and both parties have been living apart from each other since February 2017 to date.

b) That as a result of the lack of love and intolerable behavior of the respondent the parties decided to live apart and there is no sexual intercourse since then.

On the 19th day of October 2020, appearance was entered on behalf of the respondent by Anayo Adibe Esq. and in paragraphs 3 and 4 of the answer to the petition, the respondent averred that it was the petitioner who abandoned the matrimonial home and absconded from his marital responsibilities. And that she lived with the petitioner in Abuja for 4 years until she could no longer deal with the petitioner's abusive behavior. The respondent further averred in paragraph 11 and 12 that, she has never been engaged in any extra marital affair while the marriage subsists, but rather, it was the petitioner that has been behaved irresponsibly and intolerably, that the marriage in the first instance was based on lies, deceit and coercion; fraught with a lot of verbal and physical violence by the petitioner, who is a chronic alcoholic and womanizer, and finally, he's philandering lie style made it impossible for him to fulfill his conjugal responsibility and left the marriage without a child.

In the respondent's final written address, she raised a lone issue for determination, to wit:

1. **Whether the respondent's rest her case on that of the petitioner, entitles him to a decree of dissolution of marriage.**

In discussing the issue for determination, the petitioner urged this honorable court to note that during cross examination, the petitioner admitted that he never caught the respondent with any man and neither did he present the name of any man as a party. Thus contravening the provision of matrimonial causes rules which provides that where adultery is alleged in a petition, the third party must be joined as a party. Counsel cited section 15 of the matrimonial causes Act.

Furthermore, counsel cited the case of **NEPA Vs OLAGUNJU(2005)3 NWLR (PT 913)602 @632** Where it was held by the supreme court that, the implication where a defendant rest his case on that of the plaintiff may mean:

- a) That the defendant is stating that the plaintiff has not made out any case for the defendant to respond to, or
- b) The defendant admits the facts of the case as stated by the plaintiff, or
- c) That the defendant has a complete defense to the plaintiff's case.

Finally, the respondent averred that they admit the facts of the case as presented by the petitioner to the extent that the marriage has indeed broken down irretrievably on the grounds /facts stated except on the grounds of adultery which was

discredited during cross examination, they urged this honorable court to grant the relief sought by the petitioner and hold that the marriage had broken down irretrievably and beyond redemption. Counsel referred to the cases of **DOHERTY V DOHERTY (2010)ALL FWLR (PT 529)1145 @1164 MRS ADEYINKA OLUYEMISI ONABOLU V MR. BABASOLA MODUPE ONABOLU (2003)5 FR 150 and UGBAH V UGBAH (2009) ALL FWLR (PT 472)1103 @1124**

Lastly, counsel urged the court to hold that this petition succeeds and order the dissolution of marriage between the parties, they cited **OLU-IBUKUN V OLU-IBUKUN (1974)2 SC 41 @ 285 AKINSEYMOYIN V AKINSEMOYIN (1971)1 NMLR 272 @ 273 DOHERTY V DOHERTY (SUPRA @ 1165 AND ONABOLU V ONABOLU (SUPRA).**

The petitioner filed a final written address dated 30th November 2020 and filed same day, where the petitioner raised a sole issue for determination, to wit:

- 1. Whether by the unchallenged and uncontroverted evidence of the petitioner in this petition, this honorable court can grant an order for dissolution of marriage between the petitioner and the respondent?**

In addressing this issue, counsel argued that this honorable court is empowered to grant the decree of dissolution of marriage with regards to the evidence before it and the uncontested nature of the answer filed by the Respondent resting their case on that of the petitioner. That the parties have lived apart for a continuous period of over two

years which is the minimum requirement as regard the time frame for dissolution of marriage under the marriage Act. They further submitted that the petitioner has also not contested the dissolution of the said marriage. Counsel referred the case of **ANOIKE V ANOIKE (2013) AFWLR (PT 658) @ PARAS G-F** and argued that, the court is bound to hold that a marriage has broken down irretrievably if it is established that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.

Lastly, they submitted that, what is required of the petitioner is minimal proof which has already been established by the petitioner as there is nothing to place on imaginary scale of justice on the other side as the respondent resting her case on that of the petitioner which is to the effect that the marriage has broken down irretrievably, that this court is bound to hold same has broken irretrievably. Counsel urged this honorable court to grant the decree for dissolution of marriage between the petitioner and respondent. They referred the court to the case of **NEWBREED ORGANIZATION LTD V ERHOMOSELE (2006)2. S.C PT 1 P. 136 @ p 150.**

I have gone through the notice of petition for the decree of dissolution of marriage and the affidavit in support of the petition, I have equally gone through the respondent's answer to the petition and the affidavit in support as well as both parties' final addresses. In this regard, I have raised a lone issue for determination, to wit;

- 1. WHETHER FROM THE ARGUMENTS OF PARTIES THE MARRIAGE HAS BROKEN DOWN IRRETRIEVABLY TO ENABLE THIS COURT DISSOLVE THE MARRIAGE.**

Firstly, the respondents in this case did not controvert any paragraph of the petitioner's affidavit, except paragraph 12(1)(a) where the Respondent averred that the petitioner has abandoned her home and has been engaged in adulterous act. However, during the cause of cross examination, the respondent applied the paragraph be struck out.

It is trite law that a party who avers to facts must prove. I refer to the case of **MANA V PDP (2012)13 NWLR PT 1318 @ PG 612 PARAS D-F)** where NWODO JCA held thus:

"...A party who avers to facts must adduce evidence to establish same. Once issues are joined on any averment in an affidavit in support of originating summons, the plaintiff must lead credible evidence to support such averments in prove of his claim. When he fails to do so his claim cannot succeed..."

Considering the above position of the law and the petitioner's failure to adduce any evidence, it is my humble opinion, that the paragraph be struck out. I so hold. In that regard, paragraph 12(1)(a) of the petitioner's statement on oath is hereby struck out.

Going back to the main issue, both parties in this suit argued that the marriage has broken down irretrievably and urged this honorable court to hold so. However, on what a petitioner must prove to succeed in petition for dissolution of marriage I refer to **IBRAHIM V IBRAHIM (2007)1 NWLR PT 1015 @ P 402, PARAS G-H)** where the court held that

"... in Nigeria, a court cannot dissolve a marriage or declare a marriage to have broken down even though it appears the marriage has broken down irretrievably unless one of the facts in section 15(2) of the matrimonial causes Act is established by the petitioner..."

Furthermore, on the relevant considerations for granting dissolution of marriage under Section 15(2)(e) the court held in the case of **IBRAHIM V IBRAHIM (2007)1 NWLR PT 1015 @ (PG405 PARAS F-H)** that;

“...By virtue of section 15 (2) (e) of the Matrimonial Causes Act, 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 satisfied 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 the respondent does not object to the decree being granted. For the purpose of the subsection, the parties to a marriage shall be treated as living apart unless they are living with each other in the same household, petition and the respondent...”

In the instant case therefore, the petitioner averred in paragraph 12 (2) (a) that the parties have lived apart since 2017 to date, this has been affirmed by the respondent in paragraph 4 and 6 of her statement on oath. As seen above, this is a condition precedent to grant an order for the dissolution of marriage. I so hold.

Lastly, it is the position of the respondent to rest their case on that of the petitioner, the respondent during the cause of proceeding argued that they are not challenging the petition and are resting their case on that of the petitioner. With regards to the implication of resting a case on that of the plaintiff. I refer to the case of **ADMIN & EXEC. OF THE ESTATE OF ABACHA V EKE-SPIFF & ORS (2009) LPELR- 3152 (SC) (PP. 59 – 60. PARAS C-D)** where **OGBUAGU JSC** held thus:

“...the appellants rested their case on that of the Plaintiff/ Respondents. So, the evidence of the Respondents remained uncontroverted. It is now settled that the implication where a defendant rests his case on the plaintiffs case, it may mean that; a) that the defendant is stating that the plaintiff, has not made out any case for the defendant to respond to; b) that he admits the facts of the case as state by the plaintiff c)that he has a complete defense in answer to the plaintiff’s case...” See also AFROBELL (NIG) LTD & ORS V FIDELITY BAK (2018) LPELR – 45338 (CA)

In light of the above provision and in view of the unchallenged evidence of the petitioner, I hereby resolve the issue for determination in favor of the petitioner against the respondent. Consequently, I hereby make a decree nisi dissolving the marriage between the Petitioner and the Respondent contracted at the Marriage Registry, Abuja Municipal Area Council, Abuja, on the 27th day of June 2011. The Decree shall be made absolute if nothing intervenes within a period of three months from the date thereof.

Signed

HONORABLE JUSTICE S.U.BATURE

8th/2/2021