

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN
THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON 5TH DAY OF JULY, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
SUIT NO: FCT/HC/GWD/PET/07/21

BETWEEN:

MRS. JOY OLOWOJOBA..... PETITIONER

AND

1. MR. SHANU P. OLOWOJOBA
2. ANITA AZUMI MAUZU }**RESPONDENT**

JUDGMENT

The Petitioner by a notice of Petition No FCT/HC/GWD/PET/07/21 dated 9th February, 2021 and filed on the 10th February, 2021 same prays this court for the decree of dissolution of marriage.

On the ground that same has broken down irretrievably on the ground of repeated adultery with the Co-responding MS. ANITA MUAZU thereby subjecting the Petitioner to severe emotional trauma and the Petitioner finds it intolerable to live with the 1st Respondent.

The Petitioner is verified by a 25 paragraphed affidavit dated and filed on the 10th February, 2021 and deposed to by the Petitioner herself. Petitioner also filed her evidence on oath and testified in court as PW1 in

addition thereto. She adopted same as her oral evidence before the court. In motion on notice no M/3477/21, Petitioner prayed the court to reopen her case so that she could give additional evidence wherein she tendered into evidence, Original copies of her marriage certificate dated 30th June, 2006. Registrar certificate dated 31st October, 2006 subsequently marked as Exhibit 1 & 2 respectively. In her written statement before the court petitioner avered that she lawfully married 1st Respondent at the Registry in Benin Edo State on the 26th August, 2010.

That during the subsistence of the marriage, the 1st Respondent enmeshed himself into an adulterous relationship with another woman name MS. ANITA AZUMI MAUZU the Co-defendant in this suit barely 5years into the marriage. That when she confronted the 1st Respondent, he initially denied committing adultery but later accepted without offering any explanation for his conduct. That ever since, the petitioner moved out of the matrimonial home in June, 2019, the co-respondent has been living with the Respondent and has four children by him with the ages of 10,8,5 & 2years respectively. That the persistent consortium of the Respondent and the co-respondent has greatly in-dignified Petitioner's marriage and dishonoured her. The marriage between the Petitioner and the 1st Respondent did not produce any children. Wherefore, the Petitioner adopts her written statement as her oral evidence before the court and prays the court to grant her prayer(s). There was no cross examination of PW1. The Respondents are not

opposing the Petition subsequently did not file or put up any defence. Wherefore, parties were granted leave to file their final written address, Petitioner final written address was dated and filed on the 16/6/21.

The Petitioner's counsel on his sole issue for determination viz:

Whether the Petitioner has proven her case to be entitled to decree of dissolution of her marriage with the 1st Respondent.

Counsel to the Petitioner submits that dissolution of marriage contracted under the statute guided Matrimonial Causes Act CAP MT LFN 2004 state that, the Petitioner married the Respondent at the marriage registry at Benin, Edo State and five years into the marriage, the Respondent started an adulterous relationship with two co-respondent which has led to the birth of few children. That neither the Respondent nor the co-respondent has contended or denied this fact.

Counsel submits that section 15 (2) of the MCA authorizes a court to hold that a marriage has broken down Irretrievably if the Petitioner can satisfy one or more of the facts named in the said section two of which the Petitioner has proved in the case before the court.

Section 15(2) (b): That since the marriage, the Respondent has committed adultery and the Petitioner finds it Intolerable to live the Respondent and 15(2)(c) that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent see **MARY BUNNI ADEPARASU VS.**

CHARLES ADEBOLA AREWA ADEPARASU (2014) LPELR41111 CA and see also **DAMULALE VS. DAMULALE (2004) NWLR (PT. 874) PG.151** to support his claim.

That all the evidence adduced by the petitioner in this suit stand uncontroverted and is deemed to have been proved under section 133 Evidence Act. Counsel also contended that the petitioner also joined the co-Respondent as a party in this Proceeding in compliance with section 32MCA and cited **CHARLES EGBE VS. AJOKI ELIZABETH EGBE (2012) LPEL 19690 CA.**

So as to support the Petitioner's Petition. Counsel further submitted that the Petitioner has established by her uncontroverable affidavit and oral testimony that the Respondent are in breach of section (5) (2) (b) (c) MCA. Counsel urges the court to grant the Petitioner's prayer by dissolving the marriage. On the other hand Respondent did not file any final written address. This is the position of the Petition in this suit. It is important to note that under the Matrimonial Causes Act, there is only one ground for the dissolution of all marriages and that is:

*That "the marriage has broken down Irretrievably" which is proved under section 15(1) MCA see also **BAKAN VS. BAKAN (2013) LPEL 22687 (CA).** Section 15 (2) (a) (b) of the MCR states in part 15(2). The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down*

irretrievably if a Petition satisfy the court of one or man of the falling facts:

- (a) That the Respondent has willfully and presently refused to consummate the marriage;*
- (b) That since the marriage the Respondent have committed adultery and the Petitioner finds it intolerable to live with the Respondent....*
- (c) The above mentioned section do not constitution separate ground or separation cause of action on the basis of which a dissolution of marriage can be granted thus there are various specis of break down. Consequently a petition who satisfy the court on any of those facts would be entitled to a finding that the marriage has irretrievably broken down and decree dissolving it see Pius Olorutein (2020) LPALR 49579 CA. in the present case the Petitioner has avered that the Respondent who is legally marriage to the Petitioner see exhibit J1 & J2 has been in an adulterous relationship with the co-respect and the liaison has produced 4 children see paragraph 12,14, 18 & 19 of Petitioner verifying affidavit and which is the solid reason why the Petitioner is seeking a decree of dissolution of marriage before the court. The Omus of Proof in divorce proceeding with regards facts set out in section 15 (2) (a) (h) of the Matrimonial Causes Act lies on the Petitioner. Success or otherwise of the Petitions depends largely on hard diligently and adequately this burden is discharged.*

*Under our adversarial system of jurisprudence and the law of evidence. The burden of proven a particularly fact is upon the party who Asserts it. See **AMAH VS. AMAH (2016) LPELR (41087) SEE ALSO SECTION 131 (1) & 2, 132 & 133(1) Evidence Act.***

However, the facts avered by the Petitioner in this suit were all uncontroverted by the Respondent perusing through the case file there is evidence that this Petition was served on and duly received by the Respondent or his representative. Respondent's counsel by the record of the court entered appearance and sat through proceedings. Respondent did not object to, challenging any facts or evidence raised by the Petitioner. In **EGUIN VS. ONUACHA (2019) LPELR 48026 CA.**

The court held that when a witness is not cross examined on a set of fact contained in the testimony of his adversary, the testimony becomes unchallenged and uncontroverted. The fact need no further proof and the courts are bound to accepts those uncontroverted fact.

See **ASAFA FOODS LTD VS. ALRAINE NIG LTD (2002) 52 WRN 1 AT 17. SEE ALSO DAGASH VS. BULOM (2004) ALL FWLR (PT 212) 1668 @ 1745.** Based on the uncontroverted and unchallenged fact that the Respondent has been in an adulterous relationship with the co-respondent and has had 4 children with her, see paragraph 12, 14, 18 & 19 at petitioners verifying affidavit. From the fact and condition of this

case I am of the opinion that such act of the Respondents are quite upsetting and have the capacity to unsettle the mind and can demonstrate that the Petitioner cannot reasonably be expected to live with see **UZOKWE VS. UZOKWE (2016) LPELN 40945 (CA)**. The provision of section 32 MCA is very clear on a person alleged to have committed adultery with a partner in marriage.

The law mandatorily requires he must be joined in the Petition to afford him the opportunity of defence to such allegation. Where such a person is not joined, adultery per say cannot constitute a ground for a decree for dissolving of such marriage joinder of adulteries is a must requirement of the law see **EIGBE VS EIGBE (SUPRA)** See **OKE VS. OKE (2006) 4 NWLR (PT 1008) 224 AT 242C CD**. In the case before the court, the Petitioner has joined the co-respondent see the title of the case file and the process of the Petitioner and the said co-respondent has not challenged or contravened any facts or evidence Adduced by the Petitioner in this case, thereby taking the same position as the Respondent.

Having satisfied all the requirements of the law regarding the dissolution of the marriage and make particularly the contravened or unchallenged evidence adduced by this Petitioner in this case. It became expedient on the part of this court to grand the Petitioner's prayers as contained in the Petition. The Petition must contain the affidavit sworn to by the Petitioner before it is, or can properly filed see **ODUSOLE VS. ODUOLE** No CA/A/95/2008.

Also cited in **(2012) 3 NWLR P. 478**. Pray the above reason I hereby grant all the prayers sought by the Petitioner.

Signed
Hon. Judge
5/7/21