

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO COURT 31
BEFORE: HIS LORDSHIP HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE
COURT CLERKS: DAUDA A. ABUBAKAR & OTHERS
DATE: 9/07/2021**

SUIT NO: PET/531/2020

BETWEEN:

LYNDA IFEDILI ONOCHIE PETITIONER

AND

FELIX OGECHUKWU ONOCHIE..... RESPONDENT

JUDGMENT

By a notice of petition dated 4th of November 2020 and filed the same day, the petitioner who is lawfully married to the respondent sought for the dissolution of their marriage on the ground that the marriage has broken-down irretrievably. The factual grounds upon which the petitioner relied upon as constituting the grounds for the dissolution of the marriage are stated in paragraph Nine (9) of the petition.

Consequently, the petitioner sought for the following orders

An Order for dissolution of the marriage contracted between the petitioner and the respondent on the 30th day March 2015 at the Marriage Registry, Obio-Akpor

Local Government Area Council, Rumuodomaya, Port Harcourt Rives state Nigeria on the ground that the marriage has broken down Irretrievably.

B: AND FOR SUCH FURTHER ORDER (S) that this Honourable court may deem fit to make in the circumstance.

The notice of petition was supported by a 10 paragraph affidavit verifying the facts of the petition. The content of the verifying affidavit are contained the record.

The petitioner also filed a witness statement on Oath of 12 paragraphs, the content of which is also in the records.

Thereafter, the notice of petition and other originating processes were served on the respondent as per the order of this court made on the 3rd day of March, 2021 granting leave to the petitioner to serve the originating processes of this petition on the respondent by courier mail. This order was fully complied with by the petitioner.

However, upon service of the notice of petition and other originating processes, the respondent never appeared in court, but only sent a legal representation.

At trial, the petitioner, as Pw1 adopted her witness statement on Oath deposed to on the 4th of November, 2020. Also, the petitioner, as Pw1 stated that she got married to the Respondent on the 30th of March, 2015 according to the Marriage Act and tendered a Marriage Certificate issued on the 30th of March 2015 to this effect. The petitioner further stated that she lived together with the respondent at No. 14 Marcus Lane Rumudomaya, Port Harcourt Rivers State after their marriage. She added that in December 2016, they had misunderstanding at the

respondent's family house at Ojoto, Idemili South Local Government Area of Anambara State and she had to return to the flat both of them earlier rented at No. 4 Alhaji Adekule Adelani Street Ejigbo Lagos State, with the hope that the respondent would return home to her at the end of the Christmas festivities.

The petitioner further deposed that on the 5th day of January, 2017, while she was preparing for work, the respondent secretly entered their flat in Lagos and as soon as she left for work, he packed all their belongings and deserted her to an unknown destination. Pw1 added that when she came back from work that day and met a completely empty house, she was constrained to spread the cloth she wore to work on the bare floor and pass the night there. Pw1 further stated that she subsequently reached her relatives who called the Respondent and that it was their deluge of phone calls that compelled the Respondent to call her and informed her that he had packed all their belongings back to Port-Harcourt, Rivers State. The petitioner also stated that the respondent also told her on the phone to resign from her work and join him in Port-Harcourt at the end of the month and that he would call her back on phone latter to discuss further. Pw1 said that to date, the Respondent has never called her or communicated to her in any other way or manner. The petitioner stated that she and the Respondent have lived apart for a continuous period of more than three years and that the respondent has deserted her for more than three years. The petitioner finally concluded that the respondent has behaved in such a way that she cannot reasonably be expected to live with him and that the marriage has broken down irretrievably

After the testimony of the petitioner as Pw1, on the 6th day of June, 2021, the court called on the Respondent's counsel to cross examine the petitioner as Pw1. The learned counsel to the Respondent informed the court that the Respondent has no intention of cross examining the petitioner or to defend the petition.

The court then asked both counsel for the petitioner and the respondent to agree on a date for adoption of final written addresses and both counsel stated that they do not intend to file written address and urged this court to adjourn for judgment

I have carefully considered the facts of this petition and the submissions of learned counsels on both sides and I am of the considered view that the only issue that call for determination in this petition is *WHETHER THE PETITIONER HAS SATISFIED THE COURT THAT HER MARRIAGE TO THE RESPONDENT HAS BROKEN DOWN IRRETRIEVABLY TO BE ENTITLED TO THE RELIEFS SHE SEEKS?*

Section 15 (2)of the Matrimonial causes Act provides that a petition under this Act by a party to marriage for a decree of dissolution of the marriage may be presented to court by either party to the marriage upon the ground that the marriage has broken down irretrievably. It went further to provide in paragraphs "a-h" that the court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably, if the petitioner satisfies the court of one or more of the following facts, see *Ibrahim V. Ibrahim (2007) 1NWLR (pt 1015) 383 and Dr. Joshua Omotunde V. Mrs. Joshua Yetunde Omotunde (2001) 9 NWLR (Pt 718)525*

Essentially, the Matrimonial Causes Act provided for eight (8) factual grounds upon which a court presented with a petition for dissolution of a marriage can

hold that the marriage has broken down irretrievably and one or more of these eight (8) factual grounds can validly and properly ground dissolution of that marriage see **NNANNA V. NNANNA, I(2005) IpeI-7485 (CA) BRAHIM V. IBRAHIM (2007) INWLR (PT 1015) 385.**

In the instant petition before this court, the petitioner who was lawfully married to the respondent is essentially relying on two out of the eight (8) factual grounds that can ground dissolution of marriage under the matrimonial Causes Act. A carefully study of the petitioner's petition clearly reveals that the petition is hinged on two factual grounds as provided for in section 15 (2) of the Matrimonial Causes Act. In other words, the petitioner's entire petition is alleging that:

(1) Since her marriage, the Respondent has behaved in such a way that she (the petitioner) cannot reasonably be expected to live with the respondent see Section 15 (2) C of the Matrimonial Causes Act and that:

(2) Since the marriage the parties have lived apart for a continuous period of at least three years immediately proceeding the presentation of this petition see **Section 15 (2)F of the Matrimonial Causes Act.**

At trial, the petitioner as Pw₁, testified that she has lived apart with the respondent for a period of 5 years. This piece of evidence of the petitioner remains unchallenged and un-contradicted. The law is trite that an un-contradicted evidence and an unchallenged evidence is deemed admitted. The law is also trite that where evidence given by a party to any proceedings was unchallenged by any opposing party to any proceedings who had the opportunity to do so. It is always open to the court seized of the proceedings to act on the unchallenged evidence before it. See **UMOH VS. TITA & CO. (1999) 12 NWLR**

(PT 631) 427 AT 434; AIGBODON VS. STATE (2000) 7 NWHR (PT 666) 686 AT 702-703, CAMEROON AIRLINES VS. OTATUIZU (2005) 9 NWHR (PT 929) 202 AT 224. IJEBUODE LOCAL GOVERNMENT AREA VS. ADEDEJI (1991) LPELR SC 22/1989. CHIEF SUNDAY OGUNYADE VS. SOLOMON OLUYEMI OSHUNKEYE & ANOR (2007) 7 S.C. (PT 11) 60, ODULAJA VS. HADDAD (1973) 11 S.C. 337 NIGERIA MARITIME SERVICE LTD VS. AFOLABI (1978) 2 SC 79

The evidence before this court is that cohabitation ceased between the parties sometime in December 2016 and that parties have thereafter lived apart for more than three years immediately preceding the presentation of this petition. As for the allegation of living apart it is clearly apparent from the state of pleadings and evidence in this case that the parties have lived apart from December, 2016, when the petitioner left the Respondent's family house at Ojoto in Anambra State to Lagos State till date the parties have lived apart. There is no controversy as to this fact which is reflected in the pleadings and testimonies of PWI. It is trite that from the wordings of the statutory provisions relating to living apart under section 15(2) e and f of the matrimonial causes Act, that the law on living apart is not concerned with the guilt or innocence or who is at fault among the parties . Rather, the law is that once it is established that the parties have lived apart for the required period stated therein, the court must proceed to grant a decree. See *IBRAHIM V. IBRAHIM (2007) NWLR(PT 1054) 383 AND DR. JOSHUA OMOTUNDE V. MRS. JOSHUA YETUNDE OMOTUNDE (2001)9 MWLR (PT 718)525*. Once more, it must be noted that the law on living apart is not concerned with the right or wrong of any of the parties. Once it is established that parties have lived apart for more than three years, the court is bound to hold upon the presentation of a petition to dissolve the marriage. I therefore hold the

view that the petitioner has established that the parties to this marriage have lived apart for a continuous period of more than three years immediately preceding the presentation of this petition.

As stated earlier, the factual grounds relied upon by the petitioner are those of intolerable conduct and living apart under Section 15 (2) C and d.

On the second factual allegation of the petitioner that since their marriage, the respondent has behaved in such a way that she is not expected to live with him. In an allegation of intolerable conduct under Section 15(2) C of the matrimonial causes Act, the petitioner can only succeed if he or she is able to establish to the satisfaction of the court a conduct of the Respondent which is grave and weighty as to make cohabitation virtually Impossible. In other words, the petitioner must establish a sickening and detestable behavior of the Respondent and the fact that he or she has found it intolerable to live with the Respondent. See ***BIBILARI VS. BIBILARIC (2011) LPELR-4443 CA, IBRAHIM VS. IBRAHIM (2007) 1 NWHR (PT.1015) 383, NANNA VS. NANNA (2005) LPELR- 7485 (CA) OR (2005) 3 NWLR (PT 966)1, DAMULAK VS. DAMALAK (2004) 8 NWLR (PT 874) 151***

In the instant case, the petitioner as PW₁ had told the court that after their marriage, they had misunderstanding at Ojoto in December 2016 and she travelled to their house in Lagos and the Respondent later came and packed all their belongings and moved to Port-Harcourt Rivers State. This is essentially the allegation of the petitioner against the Respondent on the second factual ground consequently. I hold the view that the petitioner by deposition in her witness statement on oath and oral testimony before this court has not been able to prove this allegation.

On the whole, this petition succeeds on the ground that parties have live apart for more than three years immediately proceeding the presentation of this petition.

Therefore, the marriage solemnized between Felix Ogechukwu Onochie and Lynda Ifedili Amekah on the 30th of March, 2015 at Obiakpor Local Government marriage Registry Rivers State is hereby dissolved.

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HON. JUSTICE **JUDE O. ONWUEGBUZIE**