

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

DELIVERED THE 15<sup>TH</sup> DAY OF DECEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF

FCT/HC/PET/480/2020

BETWEEN

CHIJOKE AUSTIN OKORONKWO ... .. PETITIONER

AND

IFEOMA NNEAMAKA ANIKA OKORONKWO ... .. RESPONDENT

### JUDGMENT

The Petitioner filed a Notice of Petition on the 5/10/2020; the Petitioner seeks for the reliefs:

- a). A Decree of dissolution of marriage celebrated between the Petitioner and the Respondent on the 25<sup>th</sup> day of October 2013 on the ground that the marriage has broken irretrievably as the Respondent has deserted the home for a period more than five years.

**THE FACTS IN SUPPORT OF THE PETITION ARE AS FOLLOWS:**

- A. The parties after their wedding cohabited at plot 30 Maroko Crescent Kubwa Abuja- FCT. Upon the parties living together in marriage the Respondent began to exhibit cruel character.
- B. Within the first quarter of 2015 the Respondent threatened that she will move out of the matrimonial home and relocates to Australia to fish for a better life. The Petitioner immediately ran to the Office of the Nigerian Immigration Service to make an oral complaint concerning the Respondent's threat to abscond from Nigeria so as to place same on record at the Office of Nigerian Immigration Service.
- C. Relations and friends tried to intervene and it seemed that the Respondent had made up her mind to relocate to Australia, therefore the effort of friends and relations proved abortive.
- D. Unfortunately, on the 9<sup>th</sup> day of June 2015 the Respondent deserted the home and relocated to Australia without the consent of the Petitioner.

- E. The Petitioner visited the Respondent's Parents to inform them about the ugly step their daughter had taken and that she should be called to order.
- F. That surprisingly, the Respondent's Parents called him to fix a date with his own parents to resolve the issue but only for the parents of the Respondent on the said date precisely decided to return the dowry the Petitioner paid on the Respondent when he married her traditionally on the 15<sup>th</sup> of October 2013.
- G. That in another occasion, even the bride price was refunded, the Petitioner alongside his parents visited the Respondent's parents in December 2015 only to discover that the Respondent was repatriated from Australia and she moved back to her parent's house at No. 19. Olocentre Street, Behind Berger Camp Kubwa Abuja-FCT without his knowledge.
- H. That when the petitioner began to make enquiry on what led to her repatriation and why she has come back to her parent's house, the Respondent openly informed them that she instructed her parents to return her dowry as she is no

longer interested in the marriage and that she has moved on and since then, all efforts to bring her back proved abortive.

- I. That since then, the Respondent has been with her parent and has not stepped her feet in the Petitioner's house. As a result of the Respondent's continuous absence for over a period of five (5) years, the Petitioner seeks for dissolution of marriage.

The Respondent was served the notice of petition and other processes via substituted service; she failed and neglected to respond to any of the court processes.

The petitioner as Pw1 adopted his witness statement on oath on the 1/7/2021 and urged the court to grant the relief sought. A certified true copy of the marriage certificate issued to parties was admitted in evidence and marked as exhibit A.

After the close of the petitioner's case, counsel for the Petitioner C. Dim Izunobi Esq. filed a final written address on behalf of the petitioner. Counsel formulated an issue for determination, to wit;

**WHETHER THE PETITIONER HAS BEEN ABLE TO PROVE THAT HIS MARRIAGE TO THE RESPONDENT HAD BROKEN**

DOWN IRRETRIEVABLY AS TO BE ENTITLED TO A DECREE OF DISSOLUTION OF THE MARRIAGE

Learned counsel for the Petitioner submits that it is trite that he who asserts must prove with cogent and credible evidence. She relied on section 82(1) Matrimonial Causes Act; Order v rule 27 Matrimonial Causes Rules to support her argument that the petitioner herein proved his case. She argued that the Respondent deserted the home for over 5 years before proceeding with this petition thereby proving one of the grounds for dissolution of marriage as enumerated in section 15 (1) and (2) Matrimonial Causes Act.

Counsel further argued that the Respondent was given the opportunity to be heard but she failed to appear before the court. Counsel referred to IJEBU ODE L G V ADEDEJI (1991) LPELR SC 22/1989 AT PG 38 PARA A-D, NEW WATCH COMMUNICATION LTD V ATTA (2006) 12 NWLR (PT 993) 144 AT 171, 179, OGUNYADE V OSHUNKEYE (2007) 12 MJSC 157 (a) 160 and urged the court to dissolve the marriage under section 15(2) (f) Matrimonial Causes Act.

The matter was adjourned at various times for the Respondent to cross examine the Pw1 and also put in her defence; as stated earlier hearing notices were served on her, she however chose or refused to appear in court. The Respondent was foreclosed from cross examining the Pw1 as well as defending the matter.

I must state that the failure of the Respondent to challenge the evidence of the Petitioner will not shift the burden of prove from the Petitioner. Section 82 provides the Matrimonial Causes Act.

It is the law that a Petitioner who desires dissolution of a marriage must discharge the standard of proof stipulated by the Matrimonial Causes Act and establish in evidence one of the facts set out under S 15 of the Act.

Section 15(1) A petition under this Act by a party to marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for a decree of dissolution of a 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:

(a) that the respondent has willfully and persistently refused to consummate the marriage;

(b) that since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(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;

(d) that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;

(e) that the parties to the marriage have lived apart for a continuous period of at least two

Section 15(1)(2)(a)(b)(c)(d)(e)(h) of the Matrimonial Causes Act states thus;

(1). A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by

either party to the marriage upon the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for a decree of dissolution of a 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:

(a) That the respondent has willfully and persistently refused to consummate the marriage;

(b) That since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(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;

(d) That the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;



(e) 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 a decree being granted;

(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;

(g) That the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;

(h) That the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

Having carefully gone through the evidence before the court, I find that the sole issue which calls for determination is

**WHETHER THE PETITIONER HAS BEEN ABLE TO PROVE THAT HIS MARRIAGE TO THE RESPONDENT HAD BROKEN**

DOWN IRRETRIEVABLY AS TO BE ENTITLED TO A DECREE  
OF DISSOLUTION OF THE MARRIAGE

In determining the Petition for dissolution of marriage under s.15(1) Matrimonial Causes Act, once the court is satisfied that the marriage has broken down irretrievably, then the court can proceed to dissolve the marriage. The Petitioner must however prove one or any of the conditions earlier stated.

In the instant case, the Petitioner relied on the fact contained in **Section 15 (2) (f) of the Matrimonial Causes Act which provides;**

*“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.”*

It therefore means that for the Petitioner to succeed, she must lead evidence to the reasonable satisfaction of the Court that parties have lived apart for a continuous period of at least three years immediately preceding the presentation of this petition. See section 15(f) MCA

See LT. ADEYINKA A. BIBILARI (RTD) v. NGOZIKA B. ANEKE  
BIBILARI (2011) LPELR-4443(CA)

*The Matrimonial Causes Act ascribed a Section to the standard of proof in matrimonial matters or Causes. S.82 (1) and (2) of the Matrimonial Causes Act stipulates as follows: (1) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court. (2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact, or as to that other matter. From the above provision, the Court will pronounce a Decree of dissolution of marriage if satisfied on the evidence that a case for the petition has been made. Thus the matrimonial offence must be strictly proved once the Court is reasonably satisfied of the existence of a ground to grant the divorce. The Court will then proceed to hold the marriage has broken down irretrievably. The standard of prove is not on a balance of probabilities or preponderance of evidence as in general civil cases. The standard of proof is on the petitioner but taken as discharged*

*once it is established to the reasonable satisfaction of the Court...”*

In the case at hand, the petitioner stated that the Respondent deserted their matrimonial home since 9<sup>th</sup> June 2015. According to the Petitioner in his evidence before the court on the 1/7/2021, he stated thus;

*A. Within the first quarter of 2015 the Respondent threatened that she will move out of the matrimonial home and relocates to Australia to fish for a better life. The Petitioner immediately ran to the Office of the Nigerian Immigration Service to make an oral complaint concerning the Respondent threat to abscond from Nigeria so as to place same on record at the Office of Nigerian Immigration Service.*

*B. Relations and friends tried to intervene and it seemed that the Respondent had made up her mind to relocate to Australia, therefore the effort of friends and relations proved abortive.*

*C. Unfortunately, on the 9<sup>th</sup> day of June 2015 the Respondent deserted the home and relocated to Australia without the consent of the Petitioner.*

The law is that evidence neither challenged nor contradicted shall be deemed as admitted, true and correct. It is on record that the notice of petition was filed on the 5<sup>th</sup> October, 2020 and the evidence of the Pw1 is that the Respondent left their matrimonial home on the 9<sup>th</sup> June, 2015, that is 5 years before instituting this action. Also, it is in evidence that the Pw1 made efforts to reconcile with the Respondent, unfortunately parties were unable to reconcile. [See paragraphs 6, 8, 10 & 11 of the witness statement on oath].

From the evidence of the Petition, it seem the Respondent has no desire to continue with the marriage; it can also be gleaned from the records of the court, that the Respondent was given the opportunity to defend this case, she however failed to appear before the court. Thus, in the absence of any contrary evidence, I find as a fact that parties have lived apart for a continuous period of five years before the presentation of this petition.

I therefore hold that the marriage between the parties has broken down irretrievably. Consequently, I hold that the marriage celebrated between the Petitioner Chijoke Austin Okoronkwo and the Respondent Ifeoma Nneamaka Anika Okoronkwo at AMAC Registry Abuja on the 25<sup>th</sup> October, 2013 has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the Petitioner and the Respondent.

The Order Nisi shall become absolute after a period of three months from today.

ASMAU AKANBI-YUSUF

(HON. JUDGE)