

**BETWEEN:IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO COURT 31**

BEFORE: HISLORDSHIP HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE

SUIT NO: PET/018/2021

BETWEEN:

Mrs. IjeomaAmucheAniekanAttai..... PETITIONER

AND

Mr. Aniekan Daniel Attai..... RESPONDENT

JUDGMENT

The petitioner, a banker by profession, by a notice of petition dated 18th January 2021 and filed the same day sought for the dissolution of her marriage with respondent on the ground that the marriage has broken down irretrievably. The marriage between the petitioner and the respondent was contracted on the 2nd of December 2004, at the Calabar municipal local government council Cross River state. The factual grounds upon which the petitioner is seeking for the dissolution of this marriage are as contained in paragraphs 6(a) and 10 of the notice of the petition.

Consequently the petitioner sought for the following reliefs “a-b” (a) A decree of dissolution of marriage on the ground that the petitioner and

the respondent have lived apart for a continuous period of five years immediately preceding the presentation of the petition. (b) An order of this Honorable court granting joint custody the children of the marriage to the petitioner and the respondent on mutually acceptable terms to be agreed between the parties. The notice of petition and other originating process were served on the respondent field an answer dated 5th July 2021 and field the same day.

At trial, The petitioner as pw1 adopted her witness statement on oath dated 27th June, 2021 and field on 29th June 2021, wherein the petitioner testified that she was lawfully got married to the respondent at the calabarmunicipal local government council cross river state on the 2nd day of December 2004. She added that they cohabited together at 1b new secretariat road diamond hill calabar from 02/12/2004 to 18/07/2013, before the respondent moved out of the matrimonial home and started living in Abuja for about 6 year now and without the intention of reuniting with petitioner and the children in calabar. The petitioner as pw1 further averred that owing to disagreements between her and the respondent over the years their relationship has broken-down to the point that it has affected their ability to communicate effectively as a couple. She added that even normal conjugal relations between them as couple ceased many years ago and that is that the reasons the respondent relocated to Abuja in 2013, the

petitioner insisted that their marriage has broken down irretrievably and that all intervention from family members and friends failed and that even the respondent family has instructed the respondent to dissolve their marriage.

However the petitioner also stated that despite the obvious broken-down of their marriage every effort has been made to maintain civility for the sake of their children and that to the extent that the maintained telephone calls and other forms of communication to discuss and agree on welfare of the children and that the respondent visits occasionally and that the children are allowed to visit the respondent at Abuja as the occasions demands the petitioner prayed that the court can grant them a shared custody in the circumstance.

After the testimony of the petitioner as pw1 she was cross –examined by the learned counsel to the respondent and this petitioner was adjourned for defense on 07/07/2021, when the petitioner came up for defense, the respondent through his counsel stated that he does not intend to defend the petition and both counsel opted to file written address and urged this court to adjourn for judgment.

In his own adopted written address dated 12/07/2021, and filed the same date, learned counsel to the petitioner E D Moi wuyep formulated a lone issue for determination that is **whether in the peculiar**

circumstance of this case the petitioner is entitled to decree of dissolution of marriage between the petitioner and the respondent.

Arguing this issue, the learned counsel submitted that the respondent has failed to controvert the facts stated in the petition the depositions and oral testimonies of the petitioner learned counsel further submitted that in the circumstance, this court must act on the uncontroverted facts and depositions of the petitioner and consider same as truth. Learned counsel insisted that the legal implication of the respondent not controverting countering challenged facts and depositions is that this court can Act on such unchallenged fact counsel referred to **cajov.Gharoro(199) 8 NWHR(pt.615) 374 at 393 Adamawa state ministry of land V. Salisu (2021) NWHR (pt.1759) 30 eye V. FRN (2016)15 NWHR (pt..1534)1 at 31 chairman EFCC V. little child (2016)3 NWHR(pt.1498)72 at 9,Unguvegede V. Asadu (2018) 10 NWHR (pt.1628)460 at 482** learned counsel added that the respondent in his answer to the petitioner did not deny paragraph 10 (a) of the petitioner and paragraph p1 6 to the witness statement on the oath learned counsel insisted that these facts are therefore deemed admitted by the respondent counsel also submitted that it is an elementary principles of law that facts admitted need no further proof. He cited section 123 of the Evidence Act and **Nigeria social insurance trust fund management board v. klifco Nigeria ltd (2010) 13 NWHR (pt. 1211) 307 at 332,**

Akunboye v. adeko(2011) 6 NWHR(pt. 1224) 415 at 441, ogbiri V.N.A OC ltd (2010) 14 NWHR (pt. 1213) 208 at 224.

Learned counsel further referred to section 15(1) and (2) of the matrimonial causes Act and the judicial decisions on the cases of **Ibrahim V Ibrahim (2007) NWHR (pt. 1015)397-398 and Bibilari V Bibilari (20011) 13 NWHR (pt. 1264)1207 at 24-225.**

On the assertion or contention of the respondent that it was the mutual agreement of the parties that the respondent and the petitioner should live apart for a long period to Enable the respondent find “greener pasture” in Abuja learned counsel submitted that the above assertion is immaterial to the issue in controversy as no Evidence was adduced by the respondent to support this allegation assertion. Learned counsel further submitted that it is trite law that whoever deserves any court to give any legal right or liability dependent on the existence of facts which he asserts must prove that those facts escist counsel referred to section II of the Evidence Act learned counsel finally urged this court to hold that this petition succeeds on the facts led by the petitioner.

On the ancillary relief sought by the petitioner of shared custody of children of the marriage learned counsel urged this court to grant same as prayed on sympathetic consideration.

Learned counsel concluded that the substantial justice of this petition is to dissolve the marriage.

Conversely, in his own adopted written address dated 07/03/2021 and filed the same day learned counsel to the respondent Adesola Frances Ajayi Esq formulated two issues for determination as follows

- (1) Whether the petitioner sufficiently proved that the respondent alleged moving out of their matrimonial home and started leaving apart as a ground of irretrievably breakdown of their marriage.
- (2) Whether the decree of dissolution of marriage should be granted based on the ground put forward by the petitioner.

Arguing the 1st issue learned counsel to the respondent stated that the crux of the respondent case is that after he lost his job in Calabar, the parties mutually agreed in 2013 that the respondent travel to Abuja in search of greener pastures with the aim of providing for his family and that while in Abuja, the respondent has pursued contract in different states such as Lagos, Kebbi, Kogi, Sokoto, Etc. and that during this period the respondent was in constant communication with the petitioner to discuss and agreed on well-being of their children whilst updating the petitioner on his efforts counsel added that the children oftentimes visited the respondent in Abuja and that sometime in 2015

and 2018, the petitioner herself also visited the respondent in Abuja while the respondent in turn regularly visited their matrimonial home in Calabar. Counsel added that at a point when the contracts were not being secured as expected, the respondent travelled back to Calabar in a bid to stay with the petitioner and the children till February 2020, when he travelled outside Calabar but could not return due to restriction of movement because of COVID-19 and could only return after the lockdown sometime in December 2020. Counsel stated that the respondent stayed until January 6th 2021, when the petitioner drove the respondent out of their matrimonial home. Counsel insisted that it was not the respondent that moved out of the matrimonial home and that it was the petitioner that compelled the respondent to move out of the matrimonial home and that the respondent has not willfully lived apart from his family. Counsel cited **Tabansi v Tabansi (2018) 18 NWHR (pt. 1651) 294**.

Learned counsel submitted that there are a lot of disparities and inconsistencies noted in the testimony of the petitioner as PW1 as to the number of years the parties have lived apart because she stated in the court that they have lived apart for 7 years and later said 6 years while in paragraph 10(a) of her petition she stated 5 years. Learned counsel insisted that these disparities discredit the testimony of petitioner's PW1.

Learned counsel further submitted that the same disparities and inconsistencies in respect of the occupation of the respondent when the petitioner in her testimony as pw1 on 29/06/2021 stated that the respondent is a banker and that the same petitioner during her cross examination as pw1 on July 5th 2021, told this court that the respondent is a tax consultant and a contractor pw1 to 2013, Counsel added that the marriage certificate tendered by the petitioner herself in this court shows that the respondent was a banker at the time of the marriage . learned counsel stated that while the fact that the respondent was at some time a banker, Tax consultant and a contractor is not in dispute but that the reason as to why the petitioner contradicts her facts and the facts that the petitioner stated that the respondent did not lose his job should be taken cognizance of by this court.

Consequently, learned counsel urged this court not to attach any evidential weight to the testimony of pw1 Counsel added cited section 134 of the Evidence Act and submitted that the petitioner has proved not her petition on the preponderance of evidence to warrant the grant of dissolution of marriage on the ground put forward by the petitioner Counsel further submitted that no evidential weight should be attached to the testimony of pw1 as her words varies or waves during her examination in chief and cross examination Counsel cited **Ibrahim V**

Ibrahim (supra), section 15(2) of the matrimonial causes Act, Bibari V Bibari (supra) and section 131 of the evidence Act.

Learned counsel further stated that it is trite law that he who alleges must prove and that the allegation of the petitioner that parties have lived apart for 6 years or 7 years or 5 years have been contradicted by the facts advanced by the respondent and by the petitioner herself, wherein she stated that the respondent visit occasionally and that the children visited the respondent in Abuja counsel added that even the petitioner visited the respondent in Abuja sometime in 2015 and 2018 and that the respondent was living with the petitioner and the children in their matrimonial home sometime 2020 and even in January 2021, when the respondent was forced by the behavior of the petitioner to move out of their matrimonial home Counsel insisted that these are contrary to petitioner allegation that the parties have lived apart for six (6) years or 7 years

Consequently, learned counsel submitted that the petitioner has not been able to discharge the burden of proof as it relates to her allegation that the respondent moved out of her matrimonial home with no intention to return to her and children.

Arguing issues two, learned counsel submitted that the respondent his family and friends of both parties made several concerted efforts to

resolve the issues between the parties but that the parties but that the petitioner seemed resolute and fixated on getting their marriage and dissolved hence all efforts to reconcile them proved abortive counsel added that the decree for dissolution of the marriage as sought and prayed for by the petitioner is obviously the petitioner 'swill and wish and not that of the respondent counsel added that the respondent is an however against the petitioner's will and wish to dissolve their marriage at all cost and that there is no need to keep someone against her wish in the marriage Counsel cited **Blunt V Blunt (1933) A C 5,7,5.2,4**

Learned counsel insisted that the respondent has made all efforts and that he **the respondent** is still willing **through considerable and affordable reconciliation mechanism to find a lasting solution to resolving the issues that led to the petition as the respondent still love and cherish the togetherness shared between the children and the petitioner.**

Finally the learned counsel submitted that the prayer for the dissolution of this marriage can only be granted at the instant of the petitioner willful intent to dissolve the marriage and not on the ground that the respondent moved out of their matrimonial home for six years without the intention to reunited with the family as the petitioner

could not discharge the burden of proof on the balance of probabilities couple with the wavering testimonies of the petitioner, as pw1 Counsel cited **Ibrahim V Ibrahim (supra)**

I have carefully considered the facts of this petitioner and the legal submissions of learned counsel of both parties and I am of the view that the only issue that call for determination in this petition is **whether the petitioner has proved that her marriage with the respondent has broken down to be entitled to the reliefs she seeks by section 15(1) of the Matrimonial causes Act the only ground for a court hearing a petitioner to dissolve the marriage is that the marriage has broken down to be irretrievably.**

Furthermore 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 but only if, the petitioner satisfies the court of one or more the following facts, see Ibrahim V. Ibrahim (2007) 1NWLR (pt. 1015) 383 and Dr. Joshua

omotunde V Mrs. Joshua yetundeomotunde (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, Ibrahim V. Ibrahim, menakaya V.

In the instant petition before this court the allegation of the petitioner is that the respondent has lived apart from the petitioner for six years.

In fact, a critical study of the petitioner's, petition her adopted witness statement on oath and oral testimonies before this court reveals that the entire petitioner's petition is hinged on one ground that is the parties have lived apart for six years. This is actually provided for in section 15(2) c of the matrimonial causes Act this to mind is all that the petitioner has hinged her petition for the dissolution of her marriage with the respondent on.

Although the respondent has stated that he is not objecting to the dissolution of this marriage at the instant of the petitioner , but he has also insisted through her counsel that the petitioner has not proved her

allegation that he the respondent has lived apart with the petitioner for a period of six years I have carefully considered the evidence of both the petitioner and the respondent as contained in the records of this court while the petitioner wants their marriage dissolved on the ground that parties have live apart for different number of years she mentioned on different occasions ranging from six years to 7 years to five years, the respondent has however countered that his movement to Abuja in search of greener pastures is based on the mutual agreement of himself and the petitioner He added that not only does he occasionally visits the petitioner and children, but the both the petitioner and the children also have also visited him in Abuja in fact it is on record that the respondent was with the petitioner and the children in their matrimonial home up to January 2021, before he moved out of the matrimonial home and this petition was filed on the 4th of November 2021.

In addition, the respondent still maintains that he still wants the marriage and that he is still amenable and willing to go through any considerable and affordable reconciliation mechanism to find a lasting solution to the issues that led to this petition and has also insisted that he (the respondent) still loves and cherishes togetherness shared between the children and the petitioner.

Although, the respondent also stated that he cannot be an obstacle to stop the (petitioner)

0 from praying for the dissolution of their marriage and that this court can dissolve his marriage with the petitioner based on her petitioner's willfully intent to dissolve their marriage at all cost but not on the ground that the respondent moved out of the matrimonial home and lived apart with the respondent for six years without the intention of reuniting with his family.

Signed:
Hon. Judge