

IN THE HIGH COURT OF JUSTICE
IN THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT ZONE 2, ABUJA
ON WEDNESDAY, 15TH FEBRUARY, 2023
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

SUIT NO.FCT/HC/PET/172/2022

BETWEEN:

DAVID NWACHUKWU OGUDU

(FORMERLY KNOWN AS MATHIAS N. OGUDU)

PETITIONER

AND

CAROLYN OLAJUMOKE OGUDU

RESPONDENT

JUDGEMENT

The Petitioner, David Nwachukwu Ogudu, commenced divorce proceedings against his wife, Carolyn Olajumoke Ogudu, the Respondent, by a Petition filed on the 25th March, 2022, seeking the following reliefs:

- a. A DECREE of Dissolution of the marriage contracted on 23rd day of February, 2002 between the Petitioner and the Respondent on the ground that the parties have lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the petition.
- b. ANY OTHER OR FURTHER RELIEF(S) as may be just and fair.

The case of the Petitioner in brief is that since 2015, cohabitation between the Petitioner and the Respondent had ceased. There are no children of the marriage and since 2015, the relationship between the petitioner and the respondent was gravely beset with lack of communication and threats to life. Sometime in December 2015, the respondent walked out of the matrimonial home at House 50, Covenant Garden Estate, Apo, Abuja. They have been living apart for over 6 years. Since the marriage the respondent has behaved in such a way that he

cannot reasonably be expected to live with the respondent. They have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition.

The Respondent to this suit was duly served with the petition by substituted means vide courier service at the last known address of the Respondent. But the Respondent did not file a reply to the petition or any process in opposition. She was also served with several hearing notices yet she did not appear in court.

The matter proceeded to hearing. In proof of his case, the Petitioner testified as PW1 and the only witness. The substance of the unchallenged evidence is that he got married to the Respondent on the 23rd February, 2002 at the Christosint'l Worship Centre Inc., Garki, Abuja in accordance to the Marriage Act and tendered a copy of the Marriage Certificate which was admitted in evidence as Exhibit A.

PW1 stated that from December 2015, they ceased to cohabit as husband and wife. The Respondent walked out of the matrimonial home and they have lived apart for over 6 years. Since the marriage the respondent has behaved in such a way that he cannot reasonably be expected to live with him and they have lived apart for continuous period of at least 3 years immediately preceding the presentation of the petition. There was no child of the marriage.

On the application of the Counsel to the Petitioner, the right of the Respondent to cross examine PW1 and defend the action was foreclosed and the Court adjourned for judgement.

The pertinent question I consider germane to this suit is, **'has the petitioner established his case to entitle him to judgment?'**

Section 15(1) of the Matrimonial Causes Act set out only one ground for divorce or dissolution of marriage. By the said Section 15(1) of the Matrimonial Causes Act, either party to the marriage may petition for divorce "Upon the ground that the marriage has broken down irretrievably". Section 15(2) states as follows: 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 satisfies the court of one or more of the following facts which include-

- (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;**

In the instant suit, the petitioner avers that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

The Petitioner's petition is in line with section 15(2)(f) of the Matrimonial Causes Act M7 Laws of the Federation of Nigeria 2004.

It is a well established principle in law that he who asserts must prove, see **AMAH V AMAH (2016) LPELR-41087(CA)** where it was stated thus: "The law is trite that under our adversarial system of jurisprudence and the law of evidence by sections 131(1) and (2), 132 and 133(1) Evidence Act, 2011 in particular; the burden of proving a particular fact is upon the party who asserts it and who would fail if no evidence is called on either side regard being had to the presumptions which might arise from the pleadings of the parties. It is also the law that the onus is not static as same oscillates back and forth on the pleadings until it rests on the party against whom judgment would be given if no further evidence were adduced before the court.

In the suit at hand, the assertions of the Petitioner were not challenged by the Respondent.

The law is trite on uncontroverted evidence; it was held thus in **Stanley K.C Okonkwo v Anthony Ezeonu & Ors (2017) LPELR-42785(CA)**, "The law is settled that the onus is on the plaintiff to prove his case with cogent and credible evidence. Where a defendant fails to file a defence or lead evidence to rebut or challenge the evidence led by the plaintiff, the onus on the plaintiff is discharged on a minimal proof". "The law is trite that where the affidavit of a party remains uncontroverted or unchallenged, the facts deposed to in the affidavit are deemed admitted by the adversary who had the opportunity but failed to file a counter affidavit to controvert the facts." Per *Bolaji-Yusuff, JCA (P.7, paras. C-F)*

I am satisfied that the Petitioner has been able to prove his case to entitle him to judgment in this suit; his depositions having remained uncontroverted and unchallenged.

I hereby make the following declaration and orders:

1. It is hereby declared that the Marriage celebrated between David Nwachukwu Ogudu, and Carolyn Olajumoke Ogudu at the Christo Int'l Worship Centre Inc., Abuja on the 23rd February, 2002 has broken down irretrievably and a Decree Nisi is made.
2. The Decree Nisi made herein shall become absolute at the expiration of 90 days from the date hereof.

**HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]**

Appearance of Counsel:

1. Maryann EKwe for Petitioner
2. Respondent absent and unrepresented