

**THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 24**

**CASE NUMBER: SUIT NO. FCT/HC/PET/496/2022**

**DATE: 27<sup>TH</sup> APRIL, 2023**

**BETWEEN:**

**MRS. ADAOBI FAVOUR FRANK.....PETITIONER**

**AND**

**MR. ERNEST CHICHIEBEM FRANK.....RESPONDENT**

**APPEARANCE:**

Marko FrancisUbiEsq for the Petitioner.

Respondent absent

**JUDGMENT**

The Petitioner filed this Petition on the 14<sup>th</sup> day of September, 2022 and dated the 22<sup>nd</sup> day of August, 2022 seeking the following orders/reliefs:-

1. Decree of Dissolution of Marriage between the Petitioner and Respondent contracted at Federal Marriage Registry Abuja on the 16<sup>th</sup> May, 2015 on the ground that the marriage has broken down irretrievably in that the Respondent since after the marriage has behaved in such a way that the Respondent, and the parties have lived apart for a continuous period of at least 3 years preceding the presentation of this petition.

The Petition was settled by Onome Ebietomire Esq, legal practitioner to the Petitioner and is supported by a 4 paragraph Affidavit sworn to on the 14<sup>th</sup> day of September, 2022, by Petitioner herself Mrs. Adaobi Favour Frank.

The matter first came up on the 28<sup>th</sup> day of February, 2023 Counsel to the Petitioner notified the Court that the matter was slated for hearing and that the Petitioner was ready to proceed and also informed the Court that the Respondent had been duly served.

At trial the Petitioner testified as PW1, adopted her Affidavit evidence dated the 14<sup>th</sup> of September, 2022 and tendered in evidence an original marriage certificate which was marked as Exhibit A.

The matter was adjourned to the 13<sup>th</sup> day of March, 2023 for Cross-Examination of PW1 and the Court ordered hearing notice be served on the Respondent. On the next adjourned date, the 13<sup>th</sup> day of March for Cross-Examination, the Petitioner and her Counsel were in Court, Respondent was absent and unrepresented even though he was served. Counsel for the Petitioner further informed the Court that the Respondent at the point of service had told the Court Bailiff that he had no wish to defend the Petition. The Learned Petitioner's Counsel prayed the Court to forclose the Defendant's right to Cross-examine PW1 and also further prayed the Court to forclose the Respondent's right to defend the Petition following the fact that the suit was undefended and the Defendant's unwilling to defend it.

The Court after careful consideration granted the Application as prayed and forclosed the Respondent's right to Cross-Examination of the Petitioner as well as right to defend the Petition.

The Learned Petitioner's Counsel notified the Court that they were waiving their right to deliver an address and simply applied for a date for the Court's Judgment to be delivered. The matter was further adjourned by this Honourable Court to the 27<sup>th</sup> day of April, 2022 for delivery of Judgment.

Now, with respect to all that has happened during the course of this Petition, it is trite to begin by stating that the grounds upon which this Petition was predicated is that the marriage between the Petitioner and Respondent contracted at the Federal Marriage Registry Abuja on the 16<sup>th</sup>

day of May, 2015, has broken down irretrievably on the ground that since the marriage the Respondent that has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, and the parties have lived apart for a continuous period of at least 3 years immediately preceding the presentation of this Petition.

The law with regard to this is expressly settled as contained in Section 15(1), which stipulates that a Court hearing a Petition for dissolution of marriage shall hold that the marriage has broken down irretrievably if and only if the Petitioner satisfies the Court of at least one of the grounds contained in Section 15(2) (a-h) thereto.

On this premise, I refer to the cases of **PIUS VS OLOKUNFEMI (2020) LPERL-49579 (CA) where per the Learned Justice Shuaibu (JCA) (PP 9-10 PARA D-A)** the Court held as follows:-

***"I have also restated the legal position that a Petitioner under this Act by a party to a marriage for a decree of dissolution of marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably under Section 15(2) of the Act. The Court hearing a Petition for a decree of dissolution of marriage shall hold that the marriage to have broken down irretrievably if but only if the Petitioner satisfied the Court that one or more of the situations set out in Section 15(2) (a) – (h) of the Act has occurred."***

In the instant case, the Petitioner in her testimony as contained in her witness statement on Oath, particularly paragraphs 8, 10 and 13 deposed and which for the ease of reference, I shall reproduce same hereunder thus:-

Paragraph 8 reads thus:-

That throughout the marriage the Respondent and i cohabited at No. 4 Makeni Street, Wuse Zone 6, FCT-Abuja till sometime in November, 2018 when cohabitation ceased.

Paragraph 10 reads thus:-

The Respondent continually behaved in such a manner that I cannot reasonably continue to live with him.

Paragraph 13 reads thus:-

That I know as a fact that the Respondent and i have continued to live apart since November 2018 till date, a period of over 3 years immediately preceding the presentation of this petition.

From the records, this Petition was filed on the 14<sup>th</sup> day of September, 2022, and from the above depositions it becomes evident that parties therein have lived apart for a period of at least 3 years immediately preceding the presentation of this Petition and the Respondent from his actions and statements does not object to a decree being granted since the Petition is unchallenged.

See Section 15 (2) (f) of the Matrimonial Causes Act CAP M7 LFN, 2004, 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 is trite to point out that the evidence of PW1 is unchallenged and/or uncontroverted as the Respondent has not only failed or neglected to file an answer to this Petition, enter defence or lay any evidence but has expressly declared his lack of interest in this Petition but has gone even further to declare that the Court should foreclose his right of defence in this Petition. To this effect, the law is settled that where evidence adduced before the Court remains unchallenged and credible the Court is left with no option than to admit such evidence. This position was further reiterated by the Appeal Court on the case of **MR. FLORENCE CHIOM NWOKOLO AND MRS PATRICIA CHIBUZO NWOKOLO (2018) LPELR-45035 (CA)** where the Court held thus:-

***"A piece of evidence is said to be uncontroverted, unimpeachable and unchallenged when the opposing party led no credible evidence to contrary or discredited same as untruth under heard of Cross-Examination...."***

The Court on this point also further stated thus:-

***"...And it is trite law that when a piece of evidence is uncontroverted, the Court can act on same see also the case of OSHAFUNMI & ANOR V ADEPOJU & ANOR (2014) LPELR-23073 (CA) and OKEBOR POLICE COUNCIL (2003) 12 NWLR (PT. 834) 444."***

Taking into consideration all of the above, the Court, is of the firm view from the totality of the evidence adduced by PW1 (the Petitioner) which is unchallenged and uncontroverted, the Petitioner has successfully proved her case on the preponderance of the evidence adduced as required by law. I so hold.

To that extent, the Court is satisfied that the marriage between the Petitioner and the Respondent has broken down irretrievably.

This Court hereby grants a decree Nisi dissolving the marriage between the Petitioner Mrs. Adaobi Favour Frank and the Respondent Mr Ernest Chichebe Frank which was contracted at the Federal Marriage Registry Abuja on the 16<sup>th</sup> day of May, 2015. The decree shall become absolute if nothing intervenes within a period of three months from this date.

***Signed:***

***Hon. Justice S. U. Bature  
27/4/2023***