

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : PETITION NO: PET/493/2021
DATE: : WEDNESDAY 13TH DECEMBER, 2023

BETWEEN:

SARAH AMOKO	PETITIONER
AND		
OLUWOLE AMOKO	RESPONDENT

JUDGMENT

On 30th day November, 2021, the Petitioner took out a petition seeking for a decree of dissolution of marriage against the Respondent. She seeks for the following reliefs:-

- a. An Order of the Honourable Court declaring the purported order of the customary Court of Appeal in the Television Area of Kaduna State on 4th January, 2016 and by which it purportedly dissolved the marriage between the Petitioner and Respondent, a nullity for lack of jurisdiction, not being the proper forum to determine same.
- b. An Order of the Honourable Court dissolving the marriage celebrated between the Petitioner and Respondent on 28th November, 2012 on the ground that the Respondent has willfully deserted the Petitioner and their matrimonial home since late 2015 till date.
- c. Other or further Orders as the Honourable Court may deem fit to make.

The ground upon which the petition is brought is as follows:-

That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceeding the presentation of this petition.

The Petition was filed along with 8 paragraph verifying affidavit deposed to by Sarah Amoko, the Petitioner. Certificate of Reconciliation was also filed.

By the records of the court; as per the court's bailiff's affidavit of service... the notice of petition, witness statement on oath, and hearing notice were served on the Respondent on 17th February, 2023 by substituted means as directed by the court. The Respondent responded by sending a letter to the Registrar of this court dated the 27th January, 2023 of his non objection to the Petition against him by the Petitioner.

On the 20th February, 2023, following the Petitioner's counsel application, the court set the petition down for trial. Trial commenced on that day with the Petitioner testifying for herself as PW1 by adopting her witness statement on oath deposed to on 30th November 2021 as her evidence in chief.

The testimony of the Petitioner is that she as a spinster was married to the Respondent then a Bachelor at the Marriage Registry in Kaduna on the 28th of November, 2012.

That upon her marriage on the 28th of November, 2012, the Respondent and Petitioner both cohabited at 14 Amina Yakowa Road, Kaduna State and thereafter at No. 8 Pastoral Centre Road, South Ibie Edo State and that in the course of the relationship, they had lingering irreconcilable differences over what was perceived as flirting with persons of the opposite sex in consequence of which Respondent then deserted her and moved to Auchi in Edo State where he later settled down and carried on with his life.

It is further her evidence that she approached the Customary Court of Appeal in Television Area of Kaduna for the dissolution of the Union and to which the Respondent then consented to, and upon which that court thinking that it had jurisdiction, wrongly made an Order which it purportedly dissolved the union between the Respondent and the Petitioner and retained the Original Certificate from the marriage registry in consequence.

That upon the rejection of her recent travel application by the American Embassy, she sought legal advice that her marriage to the Respondent was subsisting as same was not determined at the proper forum, and that her present situation is not such as would permit her to go back into the relationship, especially as

the Respondent has also moved on with his life as she now resolved to set the records straight by properly determining the said marriage.

She further testified that the Respondent deserted her since late 2015 and has moved on with his life, hence her prayer for all reliefs sought to be granted as she knows for a fact that the Respondent will not challenge her claims in this petition.

The Petitioner tendered their Marriage Certificate in evidence.

The case was adjourned to 30th March, 2023 for cross-examination of PW1.

On the 30th March, 2023 which was scheduled for cross – examination of PW1, neither the Respondent nor his counsel was present in court to cross – examine PW1 who was present in court. Upon application to foreclose the right of the Respondent to cross – examine PW1, the Court granted the said application and discharged PW1.

The Right of Respondent to defend the petition was similarly foreclosed upon application made on the 6th November, 2023 when the suit came up for defence... suit was adjourned for adoption of final written address.

Respondent was again absent from court on 20th November, 2023 for adoption of final written addresses.

Learned counsel for the Petitioner who had filed Petitioner's final written address with the leave of court, adopted his final written address on the said 20th November, 2023.

Learned counsel for the Petitioner formulated sole issue for determination to wit;

"Whether the Petitioner is entitled to the reliefs sought."

Arguing on the sole issue formulated, learned counsel submits and affirmatively answered that facts non-controverted are deemed admitted.

CITY BANK NIG. LTD. VS. IKEDIASHI (2020) LPELR 49496 (SC);

OSHODI & ORS. VS. EYI FUNMI & ANOR (2020) LPELR 2805 (SC) were cited.

Counsel for the Petitioner submits further, that throughout the pendency of this matter and despite being given the opportunity to so do, the Respondent refused to appear to answer to the

petition and neither did he cause an appearance to be entered for him.

The Respondent neither filed an answer to the petition nor did he do anything whatsoever to signify his objections to the proceedings.

This court is urged to find for the Petitioner who had to find a way to move on with her life ever since the Respondent deserted her in 2015, moved to Auchi in Edo State where he has again settled down and moved on with his life. ***NANNA VS. NANNA (2006) 3 NWLR (Pt. 966) 1 was cited.***

Learned counsel also argued, that where a Defendant/ Respondent has been availed the opportunity to present his defence but has purposefully failed, neglected or refused to do so, the facts pleaded against him are deemed admitted. ***OSHODI & ORS. VS. EYI FUNMI & ANOR. (Supra) was cited.***

Learned counsel relied on Order 21 Rule 9 of the extant Rules of this Court which provides that, where a Defendant (in this instance, the Respondent) defaults in filing a defence to a suit, the court is empowered to enter judgment in favour of the Plaintiff (in this instance, the Petitioner).

Counsel urged the court to accede to the prayers of the Petitioner as stated in paragraph 10 of the petition.

On the part of the Respondent, he did not file any process; instead, he brought a letter to the registry of this court admitting all the claims of the Petitioner.

COURT

I have considered the case of the Petitioner vis – a vis the entire evidence adduced and tendered by the Petitioner in prove of its case.

I have equally read through Petitioner’s final written address which encompasses the legal argument in support of the reliefs sought as contained in the Petition. The lone issue formulated by the Petitioner’s counsel as issue for determination seems most apt in the resolution of this Petition.

It is for above reason that same is hereby adopted as court’s issue for determination. The issue is;

“Whether the Petitioner is entitled to the reliefs sought.”

Relief 1 as endorsed on the body of this Petition seeks an Order of this court declaring the purported Order of the Customary

Court of Appeal in the Television Area of Kaduna State made on the 4th January, 2016 whereof the marriage between the Petitioner and Respondent was dissolved a nullity for want of jurisdiction, not been a proper forum to determine same.

Permit me to note at this juncture that a Customary Court of Appeal is a creature of the Constitution with clearly defined jurisdiction to hear and determine appeals in civil matters only involving questions of customary law from the decision of Upper Area Court. See ***NWAIGWE VS. OKERE (2008) 13 NWLR (Pt. 1105) 445.***

I similarly wish to note again, that the supervisory jurisdiction of the Customary Court of Appeal shall also be in respect of matters touching on customary law.

Jurisdiction is a threshold issue hence can be raised even viva – voce and at any stage of proceedings... this is in view of the fact that no matter how well considered a proceeding, same can easily be set aside for want of jurisdiction as you cannot put something on nothing and expect it to stand.

Jurisdiction is a matter of law which is often donated by the Constitution and statute establishing the court.. Section 282(1) of

the Constitution of FRN 1999 provides for the jurisdiction of the Customary Court of Appeal of States and FCT, Abuja.

I have decided to give above background for proper understanding of what the Petitioner seeks from this court in relief 1.

Eventhough statutorily speaking; once it is not a Customary Marriage, the Customary Court would not have the requisite competence to determine same jurisdictionally speaking. I am however minded to say again, that the FCT High Court is not equally clothed with the competence to determine whether or not what happened at the Customary Court in Kaduna was right or wrong for Territorial reason and subject matter reason. Sections 265 and 280 of the 1999 Constitution establishes FCT and States Customary Courts of Appeal

It is my very firm position, that this relief can conveniently be granted either by the same court or appellate court but certainly in Kaduna and not Abuja. This is notwithstanding the fact that there is nothing before this court to show which court allegedly dissolved the said marriage in Kaduna.

I need to also mention that the only evidence before the court as it relates to the said marriage is the marriage certificate which

was tendered and admitted in evidence as Exhibit "A", and from the said marriage certificate, the couple registered their marriage on the 28th November, 2012 at the Marriage Registry at Kaduna, Kaduna State. Section 2 (3) of the Matrimonial Causes Act allows any person who is domiciled in any state of the Federation to institute proceedings under this Act in the High Court of any state whether or not he/she is domiciled in the particular state. See ***AWONUSI VS. AWONUSI (2015) LPELR 25704 (CA) per DENSON WEST JCA (as he then was).***

For the reasons advanced, I shall then proceed to consider relief No. 2 as sought for by the Petitioner which is predicated on the fact that the said Respondent willfully dissented the Petitioner and their matrimonial home since 2015 till date.

It is worthy of note, that Respondent who was served the said petition and indeed hearing notices failed and or ignored to respond to the said petition.

I have taken note of the fact that the grounds for dissolution of marriage are clearly spelt out under section 15(1) and (2) of the Matrimonial Causes Act.

The standard of proof in matrimonial causes matters such as the present one, is embodied in section 82(1) of the Act. See

***OMOTUNDE VS. OMOTUNDE (2001) 9 NWLR (Pt. 718)
page 252 at page 274 – 245 paragraphs G-A.***

I shall dwell on the requisites for the dissolution of marriage but not after I would have considered the effect of Respondent in this case, resting in case on that of the Petitioner, and the attendant implications in law.

Dissolution of marriage contracted pursuant to our marriage law is guided by Matrimonial Causes Act, Cap 220 LFN 1990.

Under the said Act, specifically section 15(1), a Petition 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 that the said marriage has broken down irretrievably.

Under section 15(2) of the Act, 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 pending the determination 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 the decree being granted.
- f. That the parties to the marriage have lived apart for a continuous period of at least 3 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 registration of conjugal rights made under this Act,

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

For emphasis, one or more of the conditions enumerated under section 15(2) Matrimonial Causes Act (MCA) suffice to hold the marriage has broken down irretrievably.

In ***HARRIMAN VS HARRIMAN (1989) 5 NWLR (Pt. 119) 6 UCHE OMO, JCA (as he then was)*** held that under the Matrimonial Causes Act, 1970, there is only one ground for the dissolution of marriages, and that is that the marriage has broken down irretrievably, which is provided for under Section 15(1) of the Act.

In prove of its petition, petitioner gave evidence to the effect that the marriage between her and the Respondent has broken down irretrievably in view of the following:-

The Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of this Petition.

The philosophy of Christian marriage is vividly captured in the first chapter of the book of Genesis when man first saw a woman created from his rib by Yaweh and he concluded; this at last is bone from my bone and flesh from my flesh.

She is to be called woman because she was rather from man, that is why the man leaves his father and mother and joins himself to his wife and then become one body. See Genesis 2; 18-24.

As stated earlier in the preceding part of this judgment, any one condition for dissolution under Matrimonial Causes Act (MCA) established, can sustain dissolution of marriage.

Petitioner has clearly been able to show by evidence that Respondent deserted their marriage and left their matrimonial home... this has been corroborated by the letter dated the 27th January, 2023 which Respondent sent to this court stating he was not opposed to the reliefs sought by the Petitioner. The court shall not look elsewhere for any better reason to agree or disagree with the Petitioner.

Both couple are adults and cannot be forced into any marriage.

They loved themselves and have now found reason (good or bad), to go their separate ways.

The court cannot force the couple to stay in the marriage.

The case of the Petitioner is established on ground of desertion.

Consequently, it is hereby ordered that the marriage contracted on the 4th day of March 2005, at Abuja Municipal Area Council (AMAC) Marriage Registry, Abuja between Petitioner and Respondent shall be and is hereby dissolved on the ground that the marriage has broken down irretrievable by reason of the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her and clearly supported the dissolution of the marriage.

Decree Nisi will issue forthwith and shall be made absolute after three months from the date hereof if there is no cause to the contrary.

***Justice Y. Halilu
Hon. Judge
13th December, 2023***