

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT NYANYA- ABUJA

DATED THIS WEDNESDAY THE 30TH DAY OF OCTOBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/PET/108/2022

BETWEEN:

DR ATISI WOYENGIYE ASALAGHA..... PETITIONER

AND

BAR. WOYENGIYE EMMANUEL ASALAGHARESPONDENT

JUDGMENT

By a notice of petition under order 28 & 29 with PET/108/2022 dated the 1st day of December, 2022, seek the following orders:

- 1. A decree of dissolution of the Marriage between the petitioner and the Respondent.**
- 2. N15, 000,000 (Fifty Million naira) damages to be paid by the Respondent trauma and mental torture caused by his deceit.**
- 3. N100, 000 (One Hundred Thousand) naira for up keep and treatment which the petitioner is receiving from the mental therapist for a period of 1 year (12 Calendar) months.**

In compliance with the provision of MCR, the petitioner accompanied varying affidavit of 4 paragraphs, certificate relating to reconciliation and the certificate of marriage.

Upon service of the Petitioner's petition on the respondent, the Respondent filed the Respondent's notice of preliminary objection for an order striking out and or dismissing the petitioner's petition for a decree of dissolution of marriage dated December 2, 2022 for being incompetent, dated the 27th day of February, 2023.

The matter was fixed for mention to the 28-02-2023. On this date both parties were represented one Ikechukwu Odanwo represented the petitioner while one E. O. Okewu and Ambali Abdulwahab represented the respondent. The matter was

deemed mentioned and adjourned to 18-04-2023 for hearing/settlement out of court.

On the 18-04-2023 when the matter came up for hearing both parties were represented. The petitioner counsel informed the court that the petitioner had never been approached for settlement, but has before the court an application for regularization of their process which was duly filed and served on the respondent. Respondent in response stated that as regard settlement, the respondent is actually reposed to settlement. However, the respondent has been very busy but wants the parties to meet and settle the matter.

The petitioner's counsel who equally informed the court that they are ready to settle and is just that they have not reached them but the court should allow them to regularize their position and take a date for settlement. This the respondent counsel did not object.

The motion on notice with motion number M/4228/2023 seeking for the enlargement of time within which the defendant can file her settlement of defence in this suit, and the deeming, the statement of defence already separately filed in this suit as being properly filed and served was moved and the order sought therein was granted.

Upon the grant of the said motion on notice, the respondent counsel applied to withdraw the respondent's notice of preliminary objection dated the 27-02-2023, without objection, motion filed dated 27-2-2023 was struck out and the matter was adjourned to 14-06-2023 for report of settlement/hearing.

On the 14-06-2023 counsel to the petitioner one D. U. Oguche informed the court that the respondent is not in court but however parties are still exploring settlement and the matter was adjourned to 9-10-2023 for report of settlement/Hearing.

On the 9-10-2023 parties were absent in court, but were being represented by their counsel. On this date the petitioner counsel informed the court that the parties have open the channel towards resolving this matter and have long made their proposal to the Respondent through the counsel and awaiting their feedback the respondent in response informed the court that, it is the position and prayer for a little time. The matter was again adjourned to 20th November, 2023 for either report of settlement/or hearing.

On the 20th November, 2023 parties were absent but represented by their counsels. The petitioner's counsel informed the court that parties are yet to arrive at a concrete settlement position and asked for another date. But before they filed a motion to enable the evidence of the petitioner to be heard virtually and this matter

was again adjourned to 6-2-2024 for hearing of the motion filed by the petitioner counsel.

On the 06-2-2024 parties were absent but were represented by their counsel. The motion Number M/726/2023 seeking the evidence of the petitioner to be heard virtually was heard and granted.

Hearing was commenced virtually and PW1, one Dr. Atisi Woyengiye Asalagha of House Number D13, Harmony Estate Galadima-Abuja, in her evidence stated that she can recall filing a petition dated 1-December, 2022 whereof she deposed to a verifying affidavit and filed a response to the cross-petitioner on the 4/4/23 where she deposed to an affidavit on the 17-4-2023.

That he wants the court to adopt the affidavit and her response to the petition as her evidence before the court. That in condition, informed the court when she left the Respondent's house realised that most people are aware of the respondent's sexual orientation that the respondent is a guy and homosexual including his lawyer Barr. Emmanuel Okewu who happened to be their family friends. That she prays to the court to dissolve the marriage, considering the health challenges she faced by virtue of being in such a deceitful marriage and wants the respondent to pay her money for compensation and for the damages he has caused.

Under cross-examination by the respondent. Question and answer.

Q do you know you just defamed my personality, it's a good ground for cause of action against you.

A I am very sure.

Q that is it true that she got married to the respondent in June, 8 2019 and that you got pregnant and had a miscarriage

A yes I did.

Q your alleged husband got you pregnant

A yes he did and that was after several pleas for him to sleep with me or get intimate with me.

Q there is no child of the marriage

A there is no child in the marriage.

Q you were 28 years old when you married the respondent

A yes

Q and your consent was sought before you agreed to marry him

A yes of course.

Q you got married to him on June, 8 2019 and in November, 2019 you left for your house keeping in Port Harcourt.

A yes

Q You came back after a year sometimes in December.

A I came back in October.

Q on March, 27 2022 you left your matrimonial home and and packed everything.

A yes I did but I did not pack everything that belongs to me and I went back home as the parents are worried about my safety.

Q you have been away from your matrimonial home for 18 months?

A I am not counting, I have been away since March because I need to stay alive.

Q and the Respondent is not even aware you left the country.

A yes I did not inform him

Q what date did you travel to the United State.

Q did you sign the verifying affidavit dated December, 2 2022.

A yes I was still in the country.

Q since you travelled out have you been back?

A no, am not.

Q you also signed a further affidavit in reply to the cross petition dated April, 17 2023

A I have been communicating with the lawyer and gave my Approval

Q how did you sign the affidavit the one of April, 2023 while you were in United Kingdom? Reference to the signature dated the 2-December, 2022 and that of 17-04-2023.

A I don't remember what happened on the 2-December, and the signature does not look like the first one. That even if I signed it could be in 14. The second signature dated 14 or 17-04-2023 is not mine.

Q paragraph 4 of the affidavit in support of the motion on notice dated Nov, 17-2023 it was stated that parties explore settlement and agreed to certain terms which is yet to be complied with by the Respondent, one of the terms is that, the Respondent must pay you the sum of N15 million on or before the last adjournment date.

A yes it is correct.

Q did you ever physically saw the Respondent having intercourse with a fellow man?

A I didn't see him but saw messages that implies such and he confirmed to my Father that he is gay and the friend confirmed it that he is gay but did not see him physically having sex with a man.

Q do you know the Respondent total net pay put together in four years cannot amount to N15 million?

A I don't know about that, as it is inconsequential compared with my life.

Q do you want the marriage dissolved?

A yes, I want the marriage dissolved?

Q do you know that I am married with a son?

A I know you are married

Q and you know I am not a gay and cannot never be a gay?

A I have never mentioned that you are a gay.

There was no re-examination. The petitioner then closed it's case and the matter adjourned to 23-04-2024, for defence.

On the 23-04-2024, petitioner not physically in court while the respondent is .

The defence counsel before proceeding on his defence applied to the court to make an oral application for correction in their further affidavit. The petitioner counsel

on the other hand informed the court that that have a motion for regularization which is not ripe for hearing as the counsel intends to oppose the said motion.

In response counsel to the Respondent applied to withdraw the motion filed by them for regularization and also withdrawing the Respondent's additional answer and cross-petition which was filed on the 15-04-2024. This the petitioner counsel did not object.

The said motion with No. M/6533/2024 dated 11-04-2024 filed dated 15-04-2024 together with the Respondent's additional answers and cross-petition to petitioner's petition for dissolution of marriage dated the 8-December, 2022 and are hereby withdrawn and strike out.

Upon the striking out of the two processes, the Respondent proceeded with his defence.

DW1, one Barrister Adiyengiye Emmanuel Asalgharesides at No. 716 off redeemer Street/way off, News Engineering layout, Dawaki Abuja a public Servant.

That he can remember making a witness ststement on oath on the 27-02-2023. That the said witness statement on oath has his signature on it, that he adopts the said Respondent's witness statement on oath as his oral submission and evidence in this case in urging the court to grant his prayers.

Under cross-examination by the petitioner, Question and answers.

Q when did you get married to your wife?

A 8th June, 2019.

Q was she ever pregnant for you

A yes she was.

Q When Exactly

A In the Year 2020

Q when did she leave your house?

A in the year 2022, March

Q when did she first accuse you of being homosexual?

A in the year 2019

Q and she stayed back since 2022 before she left?

A yes

Q did you ever have session with your church

A yes we did counseling

Q counseling over what?

A for the marriage issue.

Q did your wife ever have session with therapy?

A yes she did.

Q did you ever join her in the session

A yes I did

Q did your parents ever interfere in uniting both of you?

A yes they did, they came down to Abuja to see that we get to reconcile but she ignored their invitation that she wasn't interested in the marriage.

Q did she ever show you the discovery she made in your phone that you are actually a homosexual.

A yes she did show me a communication.

Q did you ever call her to take her or come back to the marriage?

A We have a communication that she will be coming back to the marriage.

Q will you be surprised to hear the recorded conversation between both you that you admitted that you are homosexual.

A I will not be because he has explained everything to her based on the communication she showed him on his phone.

Q did you physically abuse her?

A no rather she did physically abuse me.

Q you are aware that she was planning to further her education?

A I am not aware. All that he can say is that she was having an online education and not travelling outside the country.

Q I will be right to say that you did not contribute anything towards her travel.

A I did not

Q I guess you are not also paying for the therapy session?

A I am not aware that she was undergoing any therapy.

Q were you aware that she attempted suicide in your house?

A I am not aware that she attempted suicide in my house?

Q but you are aware that she was depressed?

A I was not aware.

Q why then were you paying to see a therapy.

A we both saw it that she needed a therapy and to save the marriage.

Q did her parents ever approach you ?

A no they did not.

Q did the Father ever call or chat

A no he didn't

No re-examination.

The respondent then closed it's case and the matter adjourned for parties to address the court to the 1-07-2024.

The Respondent filed it's final written address dated 20th day of June, 2024 where in the written address formulated two issues distilled for determination to wit:

- 1. Whether the petitioner has proved her case as required by law to be entitled to the reliefs sought.**
- 2. Whether where facts deposed to by a petitioner in a further affidavit dated the April, 17, 2023 can be relied upon by court where the petitioner fails to swear on oath and sign the further affidavit before a commissioner for oath.**

In response the petitioner also filed it's final written address same dated the 25th day of June, 2024. Where in it's written address formulated two issues for determination to wit:

- 1. Whether the Honourable court can rightly make an order for dissolution of marriage.**
- 2. Whether the petitioner has made out any case entitling her to the relief sought in this suit.**

On the 23-July, 2024. The respondent moved a motion on notice No. M/350/2024 which seeks for the extension of time within which the Respondent/Applicant file his final written address dated June, 20 2024 and a deeming order. The said order moved and the reliefs sought therein was granted.

The respondent counsel then adopted its written address wherein relied on all of its contain and pray the court to grant all the prayers as contained in all the processes before the court.

The petitioner counsel also adopted its final written address dated 25-5-2024 filed on the 26/5/2024 wherein two issues were formulated and relied on their argument for the court to grant their reliefs ads contained in the petition.

I have carefully gone through the issues formulated by both counsels adopt same as mine with modification:

- 1. As to whether the Honourable court can rightly make an order for dissolution of the marriage?**
- 2. Issues No. 1 of that of the Respondent will be discussed with issues No.2 of that of the petitioner, that is a to whether the petitioner has proved his case as required by law to be entitled to the reliefs sought.**
- 3. Whether where facts deposed to by a petitioner in a further affidavit dated April, 17 2023 can be relied upon by court where the petitioner fails to swear an oath.**

On the first issue as to whether the Honourable court can made an order for dissolution of the marriage?

On this it is the submission of the learned counsel to the petitioner, where he submitted that this honourable court has jurisdiction to grant a decree of dissolution of marriage as presented in this case. Section 15 (1) of the MCA Cap M7 CFN 2004 provides that either party to a marriage may petition for divorce under the law. It is necessary to bear in mind the fact that although the MCA Created only one ground for divorce to wit: that one ground for divorce to wit: that the marriage has irretrievably broken down, in which the law specifies that the court are only able to determine that the marriage has irretrievably broken down in one or more of the following facts or perhaps reasons. Section 15(b) of the MCA.2004 i.e. S-ISCB (a-h).

The petitioner counsel went further to state that the law provides for criteria which may lead to the marriage breakdownirretrievably under subsection a-h of section 15(2), and section 3-5 talks about marriage which are void and voidab-intio where

a respondent misleads the petitioner into believing a fact which does not exist. Furthermore that a court hearing a petition for divorce ought not to hold that the marriage has irretrievably broken down unless the petitioner or cross-petitioner satisfies the court on one or more of the facts. By the provision of section 15(1) of the MCA, 2004 hold that the court has the power to make an order for dissolution of marriage of both parties have complied with the laid down procedures as stipulated in section 15(1) 15 (2)(8) of the MCA, 2004.

I so hold.

On the second issue as to whether the petitioner has proved her case as required by law to be entitled to the relief sought.

On this, the learned counsel to the respondents in its written address submitted that for the petitioner to succeed in proving her case, she must establish her evidence on balance of probability section 131 and 134 of the E.A 2011 referred and the case of Ezinwe V Agwu (2003) FWLR. Furthermore submitted that in the petitioner testimony as contained in her witness statement on oath and elicited during cross-examination, she failed to prove her case, but rather relied on oral testimonies of some person living around the Respondent and what she heard from her Father as confession from the Respondent.

That the petitioner did not tender any exhibit or document to substantiate her claims against the Respondent. That the testimonies of the petitioner are purely hearsay which cannot hold water tight.

On this referred the court to the provision of section 37 and 38 of the evidence Act 2011 section 37 of the EA provides thus

“Hearsay means a statement

- a. Oral or written made otherwise than by a witness in a proceeding**
Or
- b. Contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter state in it.**

Section 38 of the EA 2011 provides this: Hearsay evidence is not admissible except as provided in this part or by or under any other provision of this or any other Act.

Hearsay evidence, oral or documentary is inadmissible and lacks proactive value see *Buhari V Obasanjo* (2005) 13 WLR (part 941) 1 and 317. Furthermore the learned Respondent counsel submitted that, the emotional trauma suffered by the petitioner erupted from her miscarriage experience. The Respondent being a caring, loving and responsible husband took the petitioner to a mental therapist for treatment and paid all her medical bills for the treatment. That it will amount to gross miscarriage of justice to award damages against the Respondent for paying his wife's medical bills who subsequently deserted her matrimonial home to further her studies without her husband's knowledge. That a wife who deserts her matrimonial home single handedly foots a foreign trip, in a foreign jurisdiction in a foreign land, without deeming it fit to inform her husband or ask for financial support is deemed financially stable and does not need any support from the Respondent who is a mere civil servant who feeds from hand to mouth. Moreso there is no child of the marriage to warrant the grant of the petitioner's reliefs.

In response, the learned petitioner counsel referred to sections 15(2) (a-h), section 3 & 5 that talks about marriages which are void and voidable. That where respondent misleads the petitioner into believing a fact which does not exist only those facts can suffice to file a petition for divorce. In other words, a court hearing a petition for divorce, ought not to hold that the marriage has irretrievably broken down unless the petitioner or cross-petitioner satisfies the court on one or more of the facts.

Further submitted that, the Respondent who is a homosexual deliberately deceived the petitioner into marriage knowing fully well the implication of his actions and the dangers he is exposing the petitioner to and yet proceeded to merely her. That the onus of proof lies on the petitioner who has the duty to satisfy the court that the marriage has broken down irretrievably.

The counsel went further and submitted that, the gravamen and or sum total of the petitioner's case is founded on the claim that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent as such, that the marriage has broken down irretrievably as envisaged by sections 3(c), (d), 5 (a), 15(2) a-h of the Act. Furthermore that the conditions enumerated under sections 3, 5 & 15 of the MCA was satisfied by the practitioner surrounding her decision to leave the marriage because she discovered that the Respondent was an unrepentant homosexual and capable of inflicting her with disease. That this evidence which the Respondent never denied and even admitted when the petitioner confronted him with her discoveries which he never denied but promised to work on himself.

It is trite that where facts are admitted no evidence is admissible in proof of those facts. That in the instant case, the Respondent admitted that the petitioner confronted him and he admitted which prompted him to engage the services. If psychological therapist for both the petitioner and the Respondent.

Furthermore submitted that the Respondent during cross-examination admitted that they were also having marriage sessions in Church to work and also how they can resolve this issue in their church.

In conclusion, the learned petitioner counsel, submitted that in this present case, the petitioner/cross-respondent entered into what she believed to be a sacred union based on love, honesty and mutual respect. Little did she know that behind the façade of her husband's vows lay a calculated deception—a deception that has irretrievably altered her life.

That the respondent/cross-petitioner with true knowledge of his true sexual orientation, knowingly misled the petitioner/cross-Respondent into marriage under false pretense. He conceded a fundamental aspect of his identity. An identity that would have undoubtedly influenced the petitioner/cross-Respondent into matrimony. That the Respondent/Cross-Respondent breached this covenant/causing irreparable harm to the petitioner/cross-respondent, emotional wellbeing and her sense of security. That the betrayal she experiences is not just a breach of contract but a violation of herself—confidence and ability to make informed choices, about her life and her future.

That the law does not tolerate deceit, especially when it pertains to matter as intimate and profound as marriage. Fraud in any form undermines the very essence of justice and fairness upon which our loyal system is built. The petitioner/cross respondent trusted the Respondent with her heart, her future and her happiness only to have that trust callously shattered.

In summary urged this court to consider the gravity of the deception inflicted upon the petitioner/cross respondent. That she deserves justice that not only acknowledged the wrong committed against her but also upholds the principles of honesty and accountability that forms the bedrock of our society—in urging the court to hold that the marriage has broken down irretrievably.

I have carefully considered the submissions of both learned counsel and cases cited I am of the firm view that, this issue ought to be resolved in favour of the Applicant based on the following. Where the respondent admits to the fact that he is actually gay under cross-examination. The Respondent confesses to his

homosexually status when confronted by the Father of the petitioner and he promised to work on himself.

The petitioner however has not been cruel or rude to the Respondent prior to and after her discovery rather she made frantic effort to work with him. The emotional, mental and psychological trauma led the petitioner to depression, that which made her engage the service of a psychologist where she started receiving counselling and the cross-petitioner/respondent later joined in the counselling session.

Despite all these, the Respondent was still unrepentant in his act of homosexuality despite counselling.

Section (5)(2)(a)(b)(c)(d)(f)(g)& (h) of the matrimonial causes act falls within the claims of the petitioner hence I shall resolve this issue in favour of the petitioner.

So I hold.

On the last issue as to whether the facts deposed to by a petitioner in a further affidavit dated April, 17 2023 can be relied upon by court where the petitioner fails to swear an oath and sign the further affidavit before the commission for oath.

On this it is the submission of the learned Respondent's counsel that during cross-examination, the petitioner categorically stated that the signature on the further affidavit dated the April, 17 2023 is not hers as she was not in Nigeria when it was signed and filed on this the petitioner under cross-examination stated thus:

“I don't remember what happened with the signing of the second document (further affidavit dated April, 17 2023) but it does not look like it. This second signature is not mine but the first is mine.”

This the petitioner was given the two affidavits and the verifying affidavit and further affidavit where she admitted that the signature on the verifying affidavit dated December, 8 2022 is her own whereas the signature on the further affidavit dated April,17 2023 is not her signature. On this referred to the case of Aluko V the Chairman of EFCC (2022) LPELR-57518(CA) it was stated that

“When an affidavit is unsigned, it fails to serve its primary purpose of being a sworn statement by a deponent. As such any legal argument or motion that relies on an invalid affidavit is fundamentally flawed. The court thus deemed such an unsigned affidavit as a worthless document” with no evidential value”

Also in the case of Uzokwelu V PDP & ors (2018) LPELR-43267 (CA) the court of Appeal held that

“The law is settled that an unsigned document is a worthless paper. It is inadmissible and where admitted, it cannot be relied upon any contrary between the parties as no weight or probative valued can be attached to an unsigned document”

Reference to section 117(1) sub (4) of the Evidence Act,

Section 117(4) provides an affidavit when sworn shall be signed by the deponent or if he cannot write is blind, marked by him personally with his mark in the presence of the person before whom it is taken”

On this submits that the petitioner’s further affidavit dated April 17, 2023 is fundamentally incompetent, null and void”

In response, the Respondent counsel in his written address submitted that for an application of this nature, the court relied on the affidavit evidence hence the importance of affidavit and of course counter affidavit cannot be over emphases. Referred to the case of Ajomale V Yarduat (1991) 5 NWLR (pt191)282-283 Per NnaemekoAgu JSC stated thus:

“it is of course trite law that when in a situation such as this, facts are provable by affidavit and one of the parties deposes to certain facts, his adversary has a duty to swear to an affidavit to the contrary if he disputed the facts where as in the instant case, such a party fails to swear to an affidavit, to controvert such facts, the facts may be regarded as dully established.

On this I have carefully considered the argument and the submissions of the learned counsel to the petitioner and that of the Respondent, this court will agree with the submission of the learned Respondent counsel on the position of the law that an unsigned document is considered in law to be a worthless document. The law is settled that an unsigned document is a worthless paper. Inadmissible and where admitted, it cannot be relied upon by the court to resolve any controversy between the parties as no weight or probative value can be attached to an unsigned document.

The argument of the counsel is in respect of the further affidavit. Dated April 17, 2023 where the petitioner admitted under cross-examination that the signature is not hers. Clearly shows that the petitioner was not the person that signed the

further affidavit is to be noted that further affidavit is meant to answer new issues of facts raised in a counter affidavit and not by itself raise new ones.

I feel it is quite important to state from the onset my utter displeasure at the manner counsel to the petitioner filed the further affidavit in this case. While it is important to outline and argue their respective positions in this suit, they must also bear in mind the recognized rules of this court when filing processes. The court is no dumping ground for all manner of unnecessary application and for endless adjudication. It should be borne in mind that there is every possibility of misdirecting the court on what the justice of the matter before him should be. What is more, the court would have to spend the better part of its judgment in trying to sort out what documents are necessary and to jettison those that are wanton.

It is very clear that the petitioner did not sign the further affidavit hence I consider the said further affidavit as a worthless document before this court.

Hence the further affidavit dated April, 17, 2023 does not in any way worth to be considered by this court, as it is a worthless document haven't not been signed by the petitioner, as incompetent null and void, hence the further affidavit by the petitioner dated April, 17 2023 is incompetent. Hence this issue is resolved infavour of the respondent.

In in view of the foregoing, having ruled that the further affidavit dated April, 17 2023 is incompetent claim B, C, of the petitioner's relief is not grantable by this court. Hence relief B & C is hereby dismissed from the claims of the petitioner.

In the final analysis, I shall grant relief (i) being the decree of dissolution of marriage between the petitioner and the Respondent, while relief ii & iii is hereby dismissed, same being incompetent.

ORDER: A decree of dissolution of the marriage contracted on the 8th of June, 2019 at Port Harcourt Rivers State between the petitioner and the Respondent on the ground that the marriage has broken down irretrievably, in that the petitioner and the respondent have lived apart at least two years immediately preceding the preparation of the petition for decree of dissolution of marriage is hereby granted.

Relief ii & ii of the petitioner's claim is hereby dismissed.

This is my judgment.

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Hon. Justice A. Y. Shafa

Appearance:

1. E. O. Okewu with Oguche David for the Respondent.