

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF
DELIVERED ON THE 22ND NOVEMBER, 2023

SUIT NO: FCT/HC/BW/PET/01/22

BETWEEN

MR ONITA OJO OLUWAFEMI PETITIONER

AND

MRS. OLUWOLE FUMILAYO RESPONDENT

JUDGMENT

By a Petition filed on the 14/11/2022, the Petitioner claims against the Respondent as follows:

1. Dissolution of the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably upon desertion by the respondent under Section 15(1) (2) (c) (d) and (e) of Matrimonial Causes Act.
2. And the parties to the marriage have lived apart for a continuous period of 2 years immediately preceding the presentation of the petition.
3. For such further order or orders as the Honourable Court may deem fit to make in the circumstance in Favour of the petitioner.

In support of the Petition, the Petitioner filed a verifying affidavit and certificate relating to reconciliation and witness statement on oath.

The Respondent on 20/01/2023 filed an Answer and cross Petition in response to the Petition filed by the Petitioner and claims the following:

1. An Order of this Honourable Court for the Dissolution of this marriage on the abovestated grounds.
2. An Order for the Sole/Full Custody of the two kids of the respondent/Cross Petitioner to wit; Blessing Isaacs and Favour Isaacs as they are still at their tender age and needs the tender loving Care of their mother (The Respondent/Cross Petitioner).
3. An Order for the Petitioner to pay a Maintenance Sum of Two Hundred Thousand Naira (#200,000.00) per a month to the Respondent/Cross Petitioner for Maintenance for life.
4. The sum of Seven Million Naira (#7,000,000.00) as General Damages against the Petitioner for the Psychological and emotional trauma suffered by the Respondent/Cross Petitioner in the hands of the Petitioner.
5. The sum of Five Million Naira (#5,000,000.00) as Special Damages against the Petitioner for the loss of Consortium she suffered due to the loss of her Conjugal right denied her by the Petitioner.
6. For such further Order or Order as this Honourable Court may deem fit to make in the Circumstance in favour of the Respondent/Cross Petitioner.

Also, the Respondent filed an affidavit verifying the cross Petition, written statement on oath, notice of documents to be used as evidence and list of witnesses.

The Petitioner on 23/5/2023 filed a reply to the cross petition and witness statement on oath.

Xxxevidence of parties{insert}

Having carefully considered the facts and evidence placed before the court and the processes of respective counsel, it is noteworthy to mention that Matrimonial Causes cases are provided for under the Matrimonial Cause Act. Section 15 (1) and (2) (a)-(h) of the Matrimonial Causes Act, 2004 made provisions for the dissolution of marriage. In the case of IBRAHIM V. IBRAHIM (2006) LPELR-7670(CA) Per ARIWOOLA, J.C.A in Pp. 16-17, paras. E-Fheld:

"The law also provides for the facts, one or more of which a petitioner must establish before a Court shall hold that a marriage has broken down irretrievably. It reads thus - Section 15(2) - "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 wilfully 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 preceding the presentation 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 a decree being granted; (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; (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 restitution of conjugal rights made under this Act; (h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead."

Therefore, upon proof of any of the factors stated in Section 15(2) (a) – (h) of the Matrimonial Causes Act, to persuade the Court that the marriage has broken down irretrievably, the Court shall grant a decree of dissolution of the marriage if it is satisfied on all the evidence adduced as held in *UZOCHUKWU V. UZOCHUKWU* (2014) LPELR-24139 (39).

Now, parties herein have asked the court to hold that the marriage between them has broken down irretrievably, therefore the court should grant a decree of dissolution of the marriage. See para 7 of the Petition. The Petitioner in his oral evidence prayed the court to grant his reliefs. Both parties placed reliance in section 15 (2), (c), (d) & (e) of the Matrimonial Causes Act as grounds for the court to hold that the marriage has broken down irretrievably.

It is an established fact that the Petitioner and the Respondent became husband and wife on the 8th July, 2019 [See exhibit R1]. See Paragraph 2 of the cross petition which states, “the Respondent/Cross Petitioner and the Petitioner went through a celebration of Marriage under the status at Bwari Abuja – FCT Marriage Registry on the 8th day of July 2019, within the Jurisdiction of this Honourable Court”.Also, the Petitioner while being cross examined stated thus;

Q: Are you now telling the Hon. Court the date of your wedding with the Respondent/ Cross petitioner is the 8th July, 2019;

A: Yes.

The Petitioner in his Petition stated in paragraph 4 of his Petition that the Respondent cohabited from the date of marriage on the 8th July, 2019 at Sabon Bwari after Government Secondary School FCT Abuja, before the Respondent deserted their marriage since the past two years. On the other hand, the Respondent in her answer and cross petition denied deserting the marriage. See paragraph 4 of the Answer rather she states in paragraph 6 of cross petition that “That the last time the Petitioner beat her up, he parked all his properties in their Matrimonial home and left the house thereby deserting the Respondent/Cross Petitioner with her two kids without disclosing his whereabouts.”

Gleaning from exhibit Rw1 i.e the marriage certificate, it states that parties got married on the 8th July, 2019, thus, the assertion of the Petitioner that he has been married to the Respondent for

eight years cannot be true. The Petitioner, equally failed to present a marriage certificate evidencing his assertion. In the instant case, the Notice of Petition was filed on 14th November, 2022 and by calculation, it is clear that prior to the presentation of the Petition, parties have been married for three years and four months or thereabout. Also, the Petitioner asserts that the Respondent deserted their marriage for the past two years. This assertion was denied by the Respondent. See paragraph 5 of the Answer, where the Respondent stated thus *“the Respondent/Cross Petitioner denies all the facts contained on Paragraph 7 a, b, & c of the Petition and wishes to make it clear that the marriage between the Petitioner and herself is not up to eight (8) years but rather the marriage is just three (3) years and seven (7) months as the Marriage was done on the 8th day of July 2019. A copy of the Marriage Certificate is hereby attached in proof of this.”* She further stated that she never abandoned her Matrimonial home, that rather it was the Petitioner that abandoned her with her two kids; that she has never failed to perform her marital or conjugal duties. From the evidence put forward by parties, it is crystal clear that, none of them stated the specific date, month and year that they started living apart. Also, it is glaring that parties have raised assertions and counter assertions, which they failed to substantiate with cogent and credible evidence. By virtue of s.82 MCA, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the court. The onus is on parties to adduce credible evidence in support of the Petition and/ or the Cross petition.

From the totality of the evidence placed before the court by the parties, I find and hold that none of the parties was able to establish any of the facts stated in s. 15 (2) (a-h) MCA. Parties having failed to prove the principal relief, the terms of settlement dated 9/10/23 cannot be countenanced.

Accordingly, suit FCT/HC/BW/FCT/01/2022 is hereby struck out.

ASMAU AKANBI – YUSUF

[HON. JUDGE]

APPEARANCE

Parties present;

A.U. Johnson, ESQ. for the petitioner;

D. Ndulue.N.V. ESQ for the Respondent/Cross Petitioner.