



- b. Both parties have found it difficult to live together as a couple with each other.
- c. Respondent has no love for the petitioner and has constantly expressed same resulting in extra-marital relationships by the respondent and both parties ceased to live together since 2017.
- d. Respondent has paid no sum as monthly upkeep of the petitioner

The Respondent to this suit was duly served with the petition by substituted means vide Bailiff of the Kaduna State High Court at the Navy Technology School, Kachia, Kaduna State but the respondent did not file a reply to the petition or any process in opposition. He was also served with several hearing notices yet he did not appear in court.

The matter proceeded to hearing. In proof of her case, the Petitioner testified as PW1 and she was the only witness. The substance of the unchallenged evidence is that she got married to the respondent on the 25<sup>th</sup> August, 2016 at the Redeemed Christian Church of God Rehoboth Model Parish Suleja, Niger State in accordance to the Marriage Act and tendered a copy of the Marriage Certificate which was admitted in evidence as Exhibit P1.

PW1 stated that after the marriage the petitioner has had 2 stillbirths and 3 miscarriages in which she was shown little or no care by the respondent. The respondent has engaged in extra-marital affairs and has had 3 children outside of the marriage of which petitioner discovered on her own. The respondent ceased staying in the matrimonial home since October, 2017 and has wilfully refused to provide or cater to her needs. Parties are incommunicado and petitioner is only seeking a certificate of divorce as her marriage has broken down irretrievably.

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 petitioner counsel adopted their final written address and matter adjourned for judgment.

In the Petitioner's written address, *Ayodeji Ibikunle Esq.* submitted a sole issue for determination, to wit:

***Whether the petitioner has the grounds for the dissolution of marriage under the law?***

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER:**

Ibikunle Esq. submitted that the petitioner has led cogent and credible evidence before the court to warrant the dissolution of the marriage. Petitioner has shown that the respondent deserted the home for more than 3 years without

caring towards her, the parties are incommunicado, respondent has behaved in a manner that demonstrate no love towards her. Counsel submitted that facts admitted need no further proof as the entire witness statement on oath is unchallenged Section 123 Evidence Act and ***OLUKOGA V FATUNDE (1996) 7WNLR PART 62 PAGE 516.*** Relying on **Section 15(2)© of the Matrimonial Causes Act M7 Laws of the Federation of Nigeria 2004 (MCA).**

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

**Section 15(1) of the MCA** sets 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-

- (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.

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) (C ) and 15(2) (e) of the MCA.**

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 her case to entitle her to judgement in this suit; her depositions having remained uncontroverted and unchallenged.

I hereby make the following declarations:

1. A Decree of Dissolution of the marriage between the Petitioner and the Respondent conducted at the Abuja Municipal Area Council, Registry, AMAC, Abuja, Federal Capital Territory, in accordance with

the provisions of the Marriage Act on 25<sup>th</sup> August, 2016 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.

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

**Appearance of Counsel:**

1. Ayodeji Ibikunle and Oluwadimisi Adenikinju for Petitioner
2. Respondent absent and unrepresented