

**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. 13**

**CASE NUMBER : PETITION NO: PET/475/2021**

**DATE: : WEDNESDAY 6<sup>TH</sup> NOVEMBER, 2024**

**BETWEEN:**

**NGOZI STELLA ARIAMA ..... PETITIONER**

**AND**

**CHIMAIJEM IVAN ARIAM ..... RESPONDENT**

## **JUDGMENT**

By a Notice of Petition for the decree of dissolution of Statutory Marriage dated and filed on the 10<sup>th</sup> day of February, 2022. Petitioner approached this Honorable Court for the following reliefs against the Respondent:-

- a. A Decree for the dissolution of marriage on the grounds of cruelty and adultery committed by the Respondent.
- b. A Decree that the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him anymore.

The grounds upon which the petition is brought are as follows:-

Cruelty, Adultery and intolerable behavior and that the Respondent has also behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent.

The petition was filed along with 4 paragraphs verifying affidavit deposed to by the petitioner.

The testimony of the Petitioner is that her and the Respondent had their traditional marriage rites with at Awka, Anambra state on the 17<sup>th</sup> day of October, 2017 and they were lawfully married

at the Marriage Registry, Awka South Local Government Anambra State on the 2<sup>nd</sup> day of July, 2018. Copy of the Marriage Certificate issued by the Marriage registry, Awka South Local Government dated the 2<sup>nd</sup> day of July is hereby attached and marked Exhibit A.

Petitioner states in her testimony that she was born in the year 1978 at Awka, Anambra State and she is now 43 years old, while the Respondent was born in the year 1967 at Isuikwuato, Abia State and he is now 54 years old respectively.

Petitioner testified that prior to the Marriage they both lived at No 25 Lingu crescent, Wuse 2 Abuja and there after moved into the apartment at No C29 Same Global Estate Dakwo Abuja until on the 3<sup>rd</sup> April, 2021 when the Respondent physically assaulted her to the extent that he mistakenly strangled her wherein she kicked the Respondent and ran for her safety. She added that the Respondent is arrogant, rude, ill mannered, always full of himself and does not give her respect she deserved as wife.

Petitioner further testified that they were living happily as husband and wife until she discovered that the Respondent started withdrawing from her even when there was no quarrel.

That sometimes in early 2021, she started suspecting that the Respondent was having extra marital affairs but could not have concrete evidence to nail him.

Petitioner stated further that the Respondent makes love to her just once in 2 or 3 months and even when she inquired to know the reason, the respondent would tell her that he was not interested.

Petitioner stated that on the 9<sup>th</sup> of February, 2021 that she caught the Respondent sleeping with their house help and when she confronted him to know how long this incident was going on, the Respondent bounced on her, beat her up and attempted to strangle her wherein she managed to kick the Respondent and ran for her safety.

That she moved out of the matrimonial home on the 3<sup>rd</sup> of April, 2021 due to fear of being harmed by the Respondent as he resorts to beating her at the slightest provocation and threatened to kill him.

Petitioner further testified in her testimony before the court that since this ugly act, the Respondent has not shown any form of remorse whatsoever, but has been taunting her.

That her family has since called the Respondent to come and collect the bride price he paid for the traditional rite, but to no avail and that the Respondents behavior is callous, vexatious, irritating and should be condemned by this Honorable court.

That her marriage with the Respondent has broken down irretrievably as she has no love and feelings anymore for the Respondent.

That she cannot afford to live with the Respondent again and would not want to wait till when things gets out of hand to dissolve this marriage.

That she has not condemned, connive or colluded with the Respondent on any of the grounds specified above, and she is not guilty of collusion in presenting this petition.

The Petitioner tendered their Marriage Certificate and it was admitted in evidence and marked as Exhibit "A".

The case was adjourned to 5<sup>th</sup> day of March, 2024 for cross-examination of PW1, the Petitioner.

On the date fixed and scheduled for cross examination of PW1, neither the Respondent nor his counsel was present in court.

Upon application to foreclose the right of the Respondent to cross-examine PW1, the court granted the application and discharged PW1.

The right of the Respondent to defend the petition was similarly foreclosed upon the application made on the 9<sup>th</sup> day of July, 2024 when the suit came up for defense. Suit was adjourned to 10<sup>th</sup> day of November, 2024 for filing and adoption of final written address.

On the day fixed and scheduled for adoption of final written address, Respondent was absent in court for adoption of final written address.

Learned counsel for the petitioner who had filed Petitioner's final written address with the leave of the court, adopted his final written address on the 24<sup>th</sup> day of October, 2024.

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

**Whether from the facts and circumstances of this petition, the petitioner has shown sufficient grounds to warrant the dissolution of the marriage with the Respondent.**

Arguing on the lone issue formulated, learned counsel submits that the law is trite that under the Matrimonial Causes Act, a marriage may be dissolved on the ground that marriage has broken down irretrievably. He refers the Court to section 15 (1) and (2) of the Matrimonial Causes Act.

It is the contention of the Petitioner that from the fact of this petition, the Petitioner has successfully proved that the Respondent was cruel to her and committed adultery in the marriage thereby necessitating the Petitioner to confront the Respondent on the 9<sup>th</sup> of February, 2021 when the Petitioner caught the Respondent sleeping with their house help in their matrimonial home.

Learned counsel submits that the Petitioner has sufficiently discharged this burden of proof by giving overwhelming evidence before this court that the Respondent had lived apart from the Petitioner and would not want the situation to get out of hand to have the marriage dissolved. The case of ***BAMGBEGBIN VS. ORIARE (2009) 13 NWLR (Pt. 1158)370 at 395 paragraphs D -F*** was cited.

It is further the submission of the learned counsel that it is trite law that in order to establish the fact that the parties have lived

apart to a marriage shall be treated apart unless they are living with each other in the same house hold. He cited section 153 of the Matrimonial Causes Act and the case of ***IBRAHIM VS. IBRAHIM (2007) 1 NWLR (Pt. 1015) 383.***

Learned counsel contends that the Petitioner has adduced overwhelming evidence in her affidavit to support the ground that the Respondents adulterous and violent behavior led her moved out of the matrimonial home thereby constructively deserted the marriage. It is therefore the submission of the learned counsel that the desertion does not only mean packing out of the matrimonial home, but some other compelling factors like incessant quarrels, adultery and violent acts as in the instant case are also determining factors. The case of ***TABANSI VS. TABANSI (2009) 12 NWLR (Pt. 1155) 415 paragraphs G - H*** was cited.

Learned counsel further submits that in civil case, the only way to reach a decision as to which arty is entitled to judgment is determining on which side the weight of evidence lay, this can only be done by putting the evidence called either side on an imaginary balance and weighting them together to find which side

the evidence preponderates. ***OLANIYAN VS. OYEWOLE (2011) 14 NWLR (Pt. 1268) 445 at 483 was cited.***

Learned counsel argued that the rule of pleadings is that facts asserted and not denied by the adverse party who has a duty to do so are deemed to be admitted by the adverse party and the court would be justified to rely on the facts and use it to settle the issue in controversy. Learned counsel therefore submits that the Respondent has not denied all the averments of the petitioner and same is deemed rightly admitted by this honorable court, need no further roof. The case of ***ERESIA EKE VS. ORIKOHA (2010) 8 NWLR (Pt. 1197) 421 at 444 Paragraphs F - G was cited.***

The court is urged to resolve this issue in favor of the petitioner and against the Respondent.

It is further the argument of the learned counsel that where the facts of a case are uncontroverted and the case is not contested, only a minimum roof is required. It is therefore the learned counsel's submission that the law is trite where evidence is unchallenged or uncontradicted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side. He cited

***MOBIL OIL NIG. LTD. VS. N.O.C.M. CO. LTD. (2000) 9 NWLR (Pt. 671) 44 at 52 Paragraph H.***

Learned counsel submits that where party is indulging in delay tactics, it cannot be said that such party is aiming at fair hearing rather, the party is using the due process of the court to defeat justice being done to the opposing party. It is apparent that the Respondent was employing delay tactics which the court seriously frown at in dispensing justice. The position of the law is that a party who has been given an opportunity to be heard must also realize that such an opportunity is not forever. ***LATISCO PET. NIG. LTD. VS. UBN LC. (2009) 3 NWLR (Pt. 1127) 22 at 26 was cited.***

Learned counsel further submits that the failure of the respondent to appear in the court during trial is fatal to his case as the Respondent had no body but himself to blame. The Respondent in this instant case had every opportunity to defend this action but he failed, neglected and or refused to attend the sittings of the court, the Respondent is therefore deemed to have abandoned his case and have also conceded to the evidence adduced by the petitioner before this court. The case of

***SIGBENU VS. IMAFIDON (2009) 13 NWLR (Pt. 1158) 231 at 253 Paragraph C - D was cited.***

In conclusion, learned counsel submits that in the light of the above submissions made, the Petitioner has sufficiently established through credible evidence that she is entitled to the reliefs sought in this case and the court is urged to resolve this issue in favor of the Petitioner and against the Respondent.

The Petitioner adopted her witness statement on oath and tendered the following in evidence, and was admitted and marked Exhibit "A".

1. Marriage Certificate.

**COURT:-**

I have considered the case of the Petitioner vis a vis the entire evidence adduced and tendered by the Petitioner in prove of her 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 the above reason that same is hereby adopted as court's issue for determination. The issue is;

**Whether from the facts and circumstances of this petition, the petitioner has shown sufficient grounds to warrant the dissolution of the marriage with the Respondent.**

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.

It is settled that Matrimonial Causes matters are in a league of their own. The procedure for the dissolution of marriage under the Act is provided under the Act. No marriage will be dissolved merely because the parties have agreed that it be dissolved.

Indeed marriage is the foundational relationship for all of society. Good marriages are the bedrock of strong societies, for they are the foundations of strong families.

The position of the law therefore, is to preserve the sanctity of the institution of marriage. Hence the reason for not dissolving the marriage on agreement of the parties to it.

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

A Decree for the dissolution of marriage would be granted only if the Petitioner has proved that the marriage had broken down irretrievably and that the Petitioner finds it intolerable to live with the Respondent. Section 15 of the Matrimonial Causes Act.

See ***DOMULAK VS. DOMULAK (2004) 8 NWLR (Pt. 874) 651.***

The Act stipulates that 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.

Section 15(2) of the Act enumerates conditions which a Petitioner must satisfy, to convince the Court hearing the petition for a decree of dissolution of a marriage to hold the marriage to have broken down irretrievably. The conditions are as follows:-

- 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 preceding 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 live 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 Petitioner for such time and in such circumstance as to provide reasonable grounds for presuming that he or she is dead.

Any of the aforementioned conditions under Section 15(2) Matrimonial Causes Act (MCA) is sufficient to enable the Court to hold that the marriage has broken down irretrievably. Making reference to the decision 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 marriage has broken down irretrievably, which is provided for under Section 15(1) of the Act.

Certainly, the foundation of a good marriage starts with having open, honest and ongoing communication about feelings, needs, expectations, goals, interests etc. It is important to put forgiveness at the centre of it all because naturally to err is human. It is easy to take each other for granted when you have

been married for a while. As change is constant whether in age, family and or life generally you need to continue to grow together and not apart.

There are however circumstances where couple would become intolerant and wish to go their separate ways.

The Court of Appeal in ***UGBOTOR VS. UGBOTOR (2007) LPELR 7612 (CA)*** re-echoed the case of ***TIMMINS VS. TIMMINS (1953) 2 AER 187 where*** Lord Denning L.J observed at page 191 thus:-

***"In considering whether one party has good cause for leaving the other much depends on whether the conduct complained of is of a grave and weighty character or not. Conduct which is of a grave weighty character may sometimes fall short of cruelty because it lacks the element of injury to health... but nevertheless, it may give good cause for leaving... On the other hand, conduct which is not of a grave and weighty character and it is for that reason not cruelty, does not give good cause for leaving."***

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.***

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.

It has been held that where a party fails to contest an issue, he is deemed to have conceded to it.

***C.D.C VS SCDA (2007) 6 NWLR (Pt. 1030) 300.***

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 2<sup>nd</sup> day of July, 2018 at the Marriage Registry Awka South Local Government Area Anambra 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).***

In prove of her 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 behaved in such a way that the petitioner cannot reasonably be expected to live with him anymore by reason of cruelty and adultery committed by the Respondent.

That the Respondent is arrogant, rude and ill mannered, always full of himself and does not give the Petitioner the respect she deserves as a wife.

Indeed, the Respondent had the whole time to puncture the evidence of the Petitioner, but decided not to.

A marriage bereft of respect is an indication that the bedrock of the society is permeable.

The evidence of the Petitioner on the reason she requested to leave the marriage remains unshaken and good evidence to be used by this Court.

See ***SUSAINAH (TRAWLING VESSEL) VS. ABOGUN (2007)***  
***1 NWLR (Pt. 1016) Page 456.***

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.

Petitioner who was married to Respondent under the Marriage Act evidenced by Exhibit "A" i.e Certificate of Marriage, has given evidence on the mental and psychological torture she's been through as wife to the Respondent.

Respondent does not seem to oppose the claims of the Petitioner.

A man who exhibits sour attitude towards his wife and matrimonial home is no man to live with. That is a man of questionable integrity.

This has to end, and shall so end today and now.

Petitioner could not have been expected to remain with the Respondent in view of the evidence adduced...she is a human being with feelings and has the right to move on to a better situation where she will be treated with utmost respect by her partner.

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.

Indeed, life is like a story by an idiot; full of sound and fury, but signifying nothing.

It is instructive to note that any one condition for dissolution of marriage under Matrimonial Causes Act (MCA) established, can sustain dissolution of marriage.

Petitioner has clearly been able to show by evidence that Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him anymore on the grounds of cruelty, and Adultery committed by the Respondent. The court shall not look elsewhere for any better reason to agree or disagree with the Petitioner.

Suffices to say that two (2) of the conditions stipulated in section 15(2) of the Matrimonial Causes Act have been met, which is more than enough to dissolve the marriage between Petitioner and Respondent.

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 that the marriage has broken down irretrievably by reason of cruelty and Adultery committed by the Respondent.

I have no difficulty reaching a conclusion that the Petitioner has clearly established the fact that this marriage has broken down.

How better is Petitioner expected to show that her marriage with Respondent has not just broken down, but broken down irretrievably!

Consequently, it is hereby ordered that the marriage contracted on the 2<sup>nd</sup> day of July, 2018, at Marriage Registry Awka South Local Government in Anambra State between Petitioner and

Respondent shall be and is hereby dissolved on the ground that the marriage has broken down irretrievably by reason of the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him and clearly supported the dissolution of the marriage.

In consequence whereof, and by the Power conferred on me as Judge of the High Court of the Federal Capital Territory, Abuja, I hereby issue a Decree Nisi for the dissolution of that marriage between Petitioner and Respondent duly registered at Marriage Registry of Awka South Local Government, Anambra State on the 2<sup>nd</sup> day of July, 2018.

May God Almighty bear me witness. Amin.

***Justice Y. Halilu***  
***Hon. Judge***  
***6<sup>th</sup> November, 2024***

## **APPEARANCES**

C.S. Dalu-Obele, Esq. with Victor Ogbonna, Esq. – for Prosecution.

Respondent not in Court and not represented.