

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/356/2018

BETWEEN:

DEBORAH NAOMI SEGEV WUNDERMANN.....PETITIONER

VS

GONEN SEGEV WUNDERMANN.....RESPONDENT

JUDGMENT

By an Amended Petition dated 13/3/2019 and a Supplementary Petition dated same day, the Petitioner herein, Deborah Naomi Segen Wundermann seeks the court the following prayers;

- (a) A Decree of Dissolution of Marriage on the grounds of: the marriage has broken down irretrievably by virtue of the fact that;
 - (i) The Parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of this Petition.
 - (ii) That the Respondent has deserted the Petitioner for a

continuous period of at least two years immediately preceding the presentation of this Petition and

(iii) 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.

(b) An Order of the Honourable Court directing the Respondent to deliver the Petitioner's properties which are in his possession to her without delay.

(c) And the omnibus relief.

In the said Supplementary Petition, Petitioner prays for the following reliefs;

(a) A Decree of Nullity of the Marriage entered into between the Petitioner and the Respondent at the Abuja Municipal Area Council Marriage Registry on the 17th December 2010 on the (1) Nullity as consent by the Petitioner to the marriage with the Respondent is not a real consent because it was obtained by fraud or deceit.

The Amended Petition as well as the Supplementary Petition and other processes were served by substituted means to wit: through his Counsel Ladi C. Ochugboju-Abidoye Esq. Ochugbodi & Co. of No. 70 Usumo Street off Gana Street Maitama All Mall opposite Zenith Bank Abuja vide Order of Court made on 13/2/19. On the other hand Respondent did not file his

Answer to the Petition, was absent throughout trial, but was represented by C.C. Oworo Esq. of Counsel. The Petition thus proceeded as undefended.

The Petition proceeded to trial on 28/10/21 with the striking out of relief B of the Petition following the oral application of Petitioner's Counsel, Petitioner testified as PW1 and adopted the deposition in her Witness Statement filed on 13/2/2019 as oral evidence in proof of her Petitions. In the course of her examination-in-chief, the original copy of Marriage Certificate issued by Abuja Municipal Area Council Registry Abuja with No. 2240 evidencing marriage celebrated on 17th December 210 between the Petitioner and Respondent was admitted in evidence as Exhibit "A".

During cross examination by Respondent's Counsel PW1 informed the court that she was aware of a Petition for dissolution filed by the Respondent and not opposed to it. Also stated that she has proof that Respondent was a divorcee before they got married and both parties cohabited at Lephala Close Maitama Abuja. Further stated that Respondent left her without her consent at the time she was working temporarily outside Nigeria, when he moved to live somewhere else in Abuja. PW1 also informed court lastly that she has no proof that Respondent was sentenced to 11 years imprisonment but same fact is on the internet.

There was no Re-examination of PW1.

Respondent Counsel told the court at the close of the evidence of the Petitioner because it was difficult to reach out to the Respondent he will be unable to proceed to defend the Petition and elects to rest their case on

that of the Petitioner. The court thereafter adjourned for judgment upon the application of the Petitioner's Counsel who called on court to enter Judgment since both parties are not opposed to the dissolution of the marriage.

As stated in the course of this Judgment Petitioner ask for the dissolution of marriage in her Amended Petition and seek the court to pronounce same marriage a Nullity in her Supplementary Petition for the Nullity of marriage. It is the opinion of the court that the court should consider first the said Supplementary Petition for Nullity of marriage before considering the Petition for dissolution of marriage. I hold this view because if the marriage turns out to be a Nullity abinitio then there would be no marriage to be dissolved.

Section 33 of the Matrimonial Causes Act prescribes grounds for the decree of Nullity of marriage it states thus;

“Subject to the following Provisions of this part of this Act, a Petition under this Act for nullity of marriage may be based on the ground that the marriage is void or on the ground that the marriage is voidable at the suit of the Petitioner”

Sections 3(1) a-(e) and 5(1)(a) – (d) of the same Act prescribes circumstances under which a marriage may be termed as void or voidable. In the instant suit, the Petitioner relies on the fact provided in Section 3(1)(d)(i)(ii) of the Matrimonial Causes Act, that the consent to the marriage was not real as same was obtained by fraud as he fraudulently misrepresented himself to the Petitioner as a person of good virtues and

law abiding citizen, which attributes the Petitioner relied on the give her consent to her marriage to the Respondent, but which attribute the Petitioner later in the course of cohabitation with the Respondent found out to be false or total deceit.

In proof of this ground Petitioner led evidence that she discovered that the marriage was based on deception and cheap opportunism. PW1- the Petitioner stated;

“The Petitioner discovered that the kind of person or character the Respondent represented to the Petitioner that he is, which endeared her to the Respondent and which made the Petitioner to consent to the marriage with the Respondent never existed”

“The Respondent hid his true character or personality from the Petitioner before the marriage. The Respondent showed the Petitioner he was loving, caring, truthful, honest, trustworthy, and faithful, but the Respondent however never showed the above attributes to the Petitioner after the marriage”

“The Respondent has been faithless to his marital vow and promise of marital fidelity and the Respondent demonstrated this when he told the Petitioner in 2016 that he was having an affair with another woman”

PW1 stated further that the above attributes of the Respondent made living or cohabitation with him very difficult and regrettable as they resulted to constant squabbles and disagreements making the two parties incompatible and irreconcilable.

These pieces of evidence were never challenged nor controverted by the Respondent who elected to rest his case on the evidence of the Petitioner. Now a decision not to call evidence and to rest on the case of the other party is a legal strategy albeit a calculated risk if the strategy succeeds, then it enhances the case of the other party, but where it fails it can be perilous. See *Akanbi Vs Alao* (1989) 3 NWLR (PT. 108) 118 @ 140. Since Respondent elected this path, he is bound by the evidence called by the Petitioner and the case must be dealt with on the evidence as it stands. See *Abdullahi Vs Military Administrator, Kaduna State* (2003) 28 WRN 50 @ 67. The proof of issues on civil matters is on the preponderance of evidence and where there is no evidence to put on one side of the scale of justice as in this case, the minimum of evidence on the other side of the scale fills the scale in satisfaction of the requirement. See *Ahmad Bello University Zaria Vs Molokwu* (2004) 2 WRN 166 @ 186. I am, however, quick to add that the minimum of evidence which can be taken to have filled the scale of justice is evidence that has probative value. The fact that the Respondent did not lead evidence but Cross-examined PW1 and rested on the case of the Petitioner's case does not necessarily mean that the Petitioner's case will succeed. The evidence adduced by the Petitioner may have been thoroughly challenged and discredited by Cross-examination that it has become bereft of probative value. See *Oforlete Vs State* (2000) LPELR 1 @ 34. Therefore for the Petitioner to be entitled to Judgment the evidence has to be of such a quality that preponderates in favour of the basic proposition which it seeks to establish, that is; proof of the reliefs sought.

In the instant case the Petitioner seeks the court a decree of nullity of the marriage between the parties on the ground that her consent was obtained by fraud based on the evidence summed up above. The pertinent question is whether the evidence of the Petitioner is sufficient for court to enter Judgment in her favour? Fraud implies some dishonest misrepresentation by a party to the marriage, by which the consent of the order was obtained. Therefore the party relying on this ground must prove to the reasonable satisfaction of court with material facts of fraud as alleged. The Petitioner in her evidence merely gave a catalogue of the character and attributes of the Respondent which endeared her to the Respondent upon which she gave her consent, without any material facts. This in, my opinion, is insufficient to ground a Decree of Nullity of the marriage.

This court having found the facts rely on by the Petitioner for the Decree of Nullity of Marriage insufficient accordingly holds that the Supplementary Petition for Nullity of Marriage lacks merit and is hereby dismissed.

I now turn to consider the Amended Petition for Dissolution of Marriage.

In the determination of the Petition for Dissolution of Marriage under Section 15(1) the Matrimonial Causes Act. It is competent for a marriage to be dissolved once a court is satisfied that the marriage has broken down irretrievably and to come to that conclusion, the Petitioner must prove to the satisfaction of court any of the facts prescribed by Section 15(2) of the Matrimonial Causes Act. It is competent for a marriage to be dissolved once a court is satisfied that the marriage has broken down irretrievably

and to come to that conclusion, the Petitioner must prove to the satisfaction of court any of the facts as prescribed by Section 15 (2) of the Matrimonial Causes Act categorized in Sub Section (a) – (h).

In the instant case the Petitioner places reliance upon the grounds of facts contained in Section 15(2)(c) (e) and (f) of the Matrimonial Causes Act as gleaned from the pleading and evidence of the Petitioner. Therefore the sole issue arising for determination from all of these is;

“Whether the Petitioner has proved the grounds alleged in seeking for the Decree of Dissolution of Marriage and therefore entitled to the reliefs sought”

In the course of consideration of the Petitioner’s Supplementary Petition for Nullity of Marriage the court have stated the implications of the Respondent not challenging the Petition and his electing to rest his case on the case of the Petitioner and same implication applies to this Petition as the case of the Petitioner remain unchallenged and uncontroverted. And it is trite that where evidence is neither challenged nor controverted, the court should deem the evidence as admitted, correct and act on it. See the case of Njoemena Vs Ugboma & Ors (2014) LPELR – 229494 (CA).

On the facts of Section 15 (2) (c) of the Matrimonial Cause Act, which reads;

“That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent”

To succeed under this ground, the Petitioner must lead evidence to the reasonable satisfaction of court of such particular acts or conduct of the Respondent which would warrant the grant of the relief sought, and such acts must be weighty and grave in nature to make further co-habitation virtually impossible. See the case of Ibrahim Vs Ibrahim (2007) All FWLR (PT. 346) 474 @ 489 Paras H –B. In proof of this ground Petitioner informed the court that the attributes of the Respondent which the court has summed up earlier, made living or cohabitation with the Respondent very difficult and regrettable as they resulted in constant squabbles and disagreements making the parties incompatible and irreconcilable and the Petitioner cannot be reasonably be expected to live with the Respondent in the same abode. The court having considered the unchallenged evidence of the Petitioner finds the behaviour or conduct of the Respondent as stated in the Witness Statement on Oath grave and weighty to make further cohabitation impossible and this court having found the said evidence satisfactory therefore holds that the marriage has broken down irretrievably.

On the grounds of Section 15(2)(e) and (f) of the Matrimonial Causes Act also reads;

“(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 3 years immediately preceding the presentation of the Petition”

The court have given meaning to the term “living apart” in the case of Nnana Vs Nnana (2006) 3 NWLR (PT. 906) @ 32 where it held thus;

“It is not enough to show that the parties have lived apart for a continuous period of two years. The desertion must be one where any of the parties have been abandoned or forsaken without justification thereby renouncing his or her responsibilities”

PW1 – the Petitioner led evidence that the parties to the marriage have lived apart for over three years before the presentation of this Petition. And by this admitted fact of living apart since 2011 when the Respondent deserted the Petitioner, the court finds that the marriage has broken down irretrievably. Thus established the grounds relied upon for the dissolution of marriage.

In all, it is the finding of this court as follows;

- (1) The Marriage celebrated at Abuja Municipal Area Council, Abuja on 17th December 2010 between the Petitioner – Deborah Naomi Segev Wundermann and the Respondent – Gonen Segen Wundermann has broken down irretrievably and hereby pronounced a Decree Nisi dissolving the marriage.
- (2) This order shall become absolute after three (3) months from the date of Judgment.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

19/1/2022

APPEARANCE:

PAUL ASIMIAPKPEOKHA FOR THE PETITIONER

C.C. OWOWO FOR THE RESPONDENT