

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

THIS WEDNESDAY, THE 23RD DAY OF NOVEMBER, 2022.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

PETITION NO: PET/156/2022

BETWEEN

MRS CHIOMA U. ARUKWE PETITIONER

AND

MR. NATHAN O. ARUKWE RESPONDENT

JUDGMENT

By a Notice of Petition dated 21st March, 2022, the petitioner prays for the following Reliefs:

- i. A Decree of Dissolution of the marriage on the ground that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.**
- ii. That the parties have lived apart for over five years.**
- iii. That the marriage has broken down irretrievably.**
- iv. And such other orders and decree as are deemed fit by the Honourable court.**

The Respondent was duly served and he filed in response a Respondent's answer to the Petition on 19th August, 2022. Interestingly, the Respondent also prayed for **“An Order of Dissolution of the marriage on the Ground that parties have lived separately for 5 years.”**

The case here was happily not bitterly contested as is often the case in matters of this nature. The obligation of husband and wife to live together is mutual and negotiable. Parties here have agreed to live apart; so the case and the hearing was conducted to achieve the desires of both parties.

At the hearing, the petitioner testified in person as **PW1** and the only witness. She stated that she got married to the Respondent on 12th September, 2015 at All Saints Anglican Church, Abacha Barracks. After the marriage, they cohabited in Kubwa and that on 15th February, 2017 due to irreconcilable differences she left the matrimonial home and since then parties have lived apart in the last 5 years independent of each other and that cohabitation and contact has effectively ceased.

She prayed the court to dissolve the marriage since parties are clearly not interested in the marriage. Counsel to the Respondent chose not to cross-examine petitioner and the petitioner then closed her case.

In response, the respondent equally gave evidence as **DW1** and the only witness. He admitted that they got married in 2015 but due to irreconcilable differences, the petitioner left the matrimonial home on 19th February, 2017 and since then, a period of nearly 5 years parties have ceased cohabitation and contact. He stated that he concedes to the marriage been dissolved.

Counsel to the petitioner equally elected not to cross-examine respondent and with his evidence, the respondent closed his case.

At the close of the trial, Counsel to both parties briefly addressed the court and they both urged the court to dissolve the marriage contracted in 2015 since the parties have been staying apart for over five years now and both have clearly evinced and stated their intention for the marriage to be dissolved.

Having carefully considered the petition, the evidence led on both sides of the aisle and the address of counsel, the narrow issue is whether the petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of this petition. It is on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

ISSUE 1

Whether the petitioner has on a preponderance of evidence established/satisfied the legal requirements for the grant of the petition.

I had at the beginning stated the Reliefs sought by Petitioner. The pivot of the petition is that parties have lived apart for over five (5) years preceeding the presentation of the petition. The Respondent in his Reply or Response to the petition wholly agrees with this ground for dissolution of the marriage. Parties were thus essentially ad-idem with respect to the complete breakdown of the marriage relationship.

The burden to prove the contested assertions hardly arises here in view of the interplay of admitted facts to ground the dissolution.

Let me just perhaps state that the burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings. Indeed **Section 82(1) and (2) of the Matrimonial Causes Act** (the Act) provide thus:

- 1. For the purposes of this Act, a matter of fact shall be taken to be proved, if it is established to the reasonable satisfaction of the court.**
- 2. Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.**

Now in the extant case, the petitioner from her petition seeks for the dissolution of the marriage with respondent on the ground that the marriage has broken down irretrievably and essentially predicated the ground for the petition on the fact that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

It was also further averred as a ground that due to this state of affairs, the Petitioner left the matrimonial home on 10th February, 2017 due to irreconcilable differences and since then, a period of nearly 5 years, cohabitation and communication has since effectively ceased between the parties. The Respondent as stated earlier agrees that parties have indeed lived apart for nearly 5 years and is not opposed to divorce been granted. It is doubtless therefore that the petition was brought within the purview of **Section 15 (1) (c), (e) and (f) of the Act**. It is correct that **Section 15(1) of the Act** provides for the irretrievable breakdown of a marriage as the only ground upon which a party may apply for a dissolution of a marriage. The facts that may however lead to this breakdown are clearly categorised under **Section 15(2) (a)**

to (h) of the Act. In law any one of these facts if proved by credible evidence is sufficient to ground or found a petition for divorce.

Now, from the uncontroverted evidence of the Petitioner and the Respondent before the court, I find the following essential facts as established to wit:

- 1. That parties got married on the 12th September, 2015 vide Exhibit P1.**
- 2. That the Petitioner left the matrimonial home on 15th February, 2017 due to irreconcilable differences.**
- 3. That since 2017, a period of over five years now, cohabitation and communication has ceased between the parties.**
- 4. That parties have since moved on with their lives independent of each other.**
- 5. That both parties have agreed on their own that the marriage be dissolved as expressed in the unchallenged evidence of both parties.**

The above facts clearly are common grounds in this case. Indeed they are not contested facts. The court is thus bound to act on these accepted agreed and uncontested evidence before it. These facts situate that the marriage between parties have broken down irretrievably and that they have lived apart for over 5 years.

By a confluence of these facts, it is clear that this marriage exists only in name. As stated earlier, any of the facts under Section **15 (2) a-h of the Matrimonial Causes Act**, if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for more than five years show clearly as stated earlier that this marriage has broken irretrievably and parties have no desire to continue with the relationship; this fact alone without more can ground a decree of dissolution of marriage. If parties to a consensual marriage relationship cannot live any longer in peace and with mutual respect for each other, then it is better they part in peace. This clearly is the earnest desire of parties as supported by the evidence elicited on both sides of the aisle. The Petition here supported by the Respondent thus has considerable merit.

In the final analysis and in summation, having carefully evaluated the petition and the evidence of the parties, I accordingly make the following order:

An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on the 12th September, 2015.

Hon. Justice A.I. Kutigi

Appearances:

- 1. C.A Ukauzo, Esq., for the Petitioner.**
- 2. Jason Shaw, Esq., for the Respondent.**