

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

Date:- 24/5/2022

FCT/HC/PET/160/2020

BETWEEN

OMACHONU OJOCHOGWU PRECIOUS PETITIONER

AND

OMACHONU KELVIN KENNETH RESPONDENT

JUDGMENT

This petition is brought against the Respondent, Omachonu Kelvin Kenneth, by the Petitioner Omachonu Ojochogwu Precious for a decree of dissolution of their marriage entered into on the 5th of October, 2011 at the Marriage Registry, Idah, Kogi State, on the ground that the marriage has broken down irretrievably. The grounds of the petition are as follows:-

- a. The Marriage has broken down irretrievably.
- b. The Respondent has behaved in such a way that the Petitioner is not reasonably expected to continue with the moribund marriage.
- c. The Petitioner and Respondent have lived apart for a continuous period of over two (2) years immediately preceding the presentation of this petition.
- d. The Respondent has at all material times during the marriage been violent towards the Petitioner.

- e. That the parties have been unable to live together and consistently quarreled and the Respondent attempted to use a cutlass on the Petitioner.
- f. The Respondent has failed in his duty to protect and provide for the Petitioner.

The record of this Court shows that Counsel for the Petitioner on 11th October, 2021 filed an Exparte Motion for an Order of Court to relist the Petition which was struck out on the 6th day of September, 2021 and for Leave to serve the Notice of Petition and all other processes of Court in this suit on the Respondent through substituted means to wit; pasting same on his last known address at House 5, 1F along New Redeemed Church of Babangida Market FHA Lugbe, Abuja. The Applications were granted on the 21st Day of October 2021, and the records shows that the Respondent was served accordingly. The Respondent did not appear in Court nor did a lawyer appear on his behalf despite service of processes and hearing notices on the Respondent. The Petitioner at the hearing of the Petition was the sole witness and adopted his statement on Oath dated 24th January, 2020. The Petitioner tendered 1 Exhibit to wit:-

1. A copy of Marriage Certificate from Marriage Registry, Idah, Kogi State.

The case of the Petitioner in summary is that she contracted a marriage with the Respondent at the Marriage Registry Idah, Kogi state on the 5th of October, 2011. That since the marriage, the Petitioner and the Respondent have lived apart for a continuous period of over two (2) years immediately preceding the presentation of this Petition, and that the Respondent has at all material times during the marriage been violent towards the Petitioner. That the Parties have been unable to live together and consistently quarreled and the Respondent attempted to use a cutlass on the Petitioner. That the Respondent has failed in his duty to protect and provide for the Petitioner. That the Respondent has also behaved in such a way that the

Petitioner is not reasonably expected to continue with the moribund marriage. And that in effect, the marriage has broken down irretrievably.

There is evidence before this Court to show that the Originating processes and hearing notices were served on the Respondent. The Respondent is not in any way interested in defending this petition. The matter was adjourned to enable the Petitioner file and adopt his final written address, which he did through Counsel and the final address was adopted on 31st March, 2022, Counsel to the Petitioner raised a sole issue for determination as thus:

"Whether the Petitioner has proved her case to warrant the Judgment of this Court".

Learned Counsel submitted that the evidence given by the Petitioner in support of her petition reveals that the petitioner no longer lives with the Respondent. Counsel further submitted that the law behind Section 15(2) (d) and (e) of the Matrimonial Causes Act is that as far as living apart is concerned, the law is not interested in the right or wrong or the guilt or innocence of the parties once the parties have lived apart within the time frame prescribed or recognized under the provisions of Section 15 of the Matrimonial Causes Act, the Court is bound to grant a decree of dissolution of marriage automatically. Counsel cited the case of ***DR. JOSHUA OMOTUNDE V MRS OMOTUNDE (2001) 9NWLR (Pt. 718, 252).***

Counsel further submitted relying on the case of ***AMAYO V ERINWINGBOVO (2006)11 NWLR (Pt. 992)*** that "the position of the law as regards unchallenged evidence is for any such evidence that is neither attacked or discredited and is relevant to the issues joined ought to be relied upon by a judge". Counsel similarly drew the attention of this Court to the case of ***ASAFI FOODS FACTORY LIMITED V ALRAINE NIGERIAN LIMITED & ORS (2002) 5SC (Pt.1)1*** where the Supreme Court held that "Where evidence given by a party to a proceeding was not challenged by the other side that has the opportunity to do so, it is always

open to the Court seized of the matter to act of such unchallenged evidence before it. Finally Counsel submitted that since the Respondent has since refused to oppose the petition for dissolution and by virtue of the Petitioner and Respondent living apart for a continuous period of two (2) years, the marriage has broken down irretrievably urging the Court to grant the reliefs sought by the Petitioner.

I have carefully studied this petition filed before this Court seeking to dissolve the lawful marriage conducted by parties to this petition. The dissolution of marriage contracted pursuant to our marriage law is guided by **Matrimonial Causes Act, Cap 22, Laws of the Federation 2004** and under the said law, a petition by a party to a marriage for decree of dissolution of marriage (as in this case), one or more facts of which the petitioner must establish before this Court shall be that the marriage has broken down irretrievably. See ***IBRAHIM V IBRAHIM (2006) LPELR-7670 (CA). In EKREBE V EKREBE (1999) 3 NWLR (PART 596) 514 at 517;*** Mohammed JCA held that for a divorce petition to succeed, the petitioner must plead one of the facts contained in **SECTION 15(2),(A)-(H) of the Matrimonial Causes Act**, and if the petitioner fails to prove any of the facts stated in law, the petition must be dismissed.

I have equally examined all the papers filed in this Court, and properly scrutinized the unchallenged testimony of the PW1 and the position of the law is always that for any evidence that is neither attacked nor discredited, and is relevant to the issue, it ought to be relied upon by a judge. This is a Supreme Court holding in the case of ***AMAYO V ERINWIN ABOVO (2006) 11 NWLR (PART 992) at page 699.*** It is trite law that where evidence given by another party to a proceeding has not been challenged by the other party who had the opportunity to do so, it is always open to the Court seized of the matter to act on such unchallenged evidence before it.

In view of all above, since there is ample proof that the parties have lived apart for a period beyond 2 years as well as other grounds making up this

petition. This marriage should therefore in my opinion be dissolved in order to release the petitioner from the oath of marriage, having satisfied the requirement of the Matrimonial Causes Act, 2004.

Therefore, flowing from the above, this Court hereby grants the prayer sought by the Petitioner for a decree of dissolution of her marriage to the Respondent accordingly. I so hold and I dissolve the marriage.

Consequently, it is hereby ordered as follows:-

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated on the 5th of October 2011, between the Petitioner OMACHONU OJOCHOGWU PRECIOUS, and the Respondent, OMACHONU KELVIN KENNETH, at the Marriage Registry, Idah, Kogi State, Nigeria.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three months from the date of this order, unless sufficient cause is shown to the Court why the decree nisi should not be made absolute.

It is also imperative to add in this judgment that Dissolution of marriage is otherwise known as divorce especially in ordinary man language. A party asking for a decree of dissolution of marriage is seeking for intervention of the Court in a marriage that is not working. It presupposes that there is a marriage in existence under the Act there is only one ground upon which an application for dissolution of marriage may be brought before the Court. The ground is contained in section 15(1) of the Act this can be seen above in this judgment. In order not to leave the issue of what amounts to irretrievable breakdown of a marriage to conjecture, sub (2) itemized a list of facts which the Court must satisfy itself about. It should be noted that it is the position of the law seems to be well settled that where a petition for divorces or dissolution of marriage fails to indicate that the marriage has broken down irretrievably, the petition will fail see ***EKEREBE VS EKEROBE (1999) 3 NWLR (PT 569) 514.*** The petition for dissolution of marriage omitted the phrase the marriage has broken down irretrievably

as required by section 15 (1) of the Matrimonial Causes Act. The Court held that irretrievable breakdown is the only ground upon which a petition for dissolution may be predicated. The Court held further that the fact that the petitioner alleged cruelty. Desertion and adultery would not save the petition as those were only parts of the relevant facts to be considered by the Court as analyzed in this judgment. I have gone through the petition and the evidence adduced by the petitioner in the cause of this trial I have concluded and enter judgment accordingly.

HON. JUSTICE M.S IDRIS
(Presiding Judge)