

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

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE: 11TH NOVEMBER,2022

FCT/HC/PET/84/2022

BETWEEN

MR. VALENTINE EZEKIEL HART.....

PETITIONER

AND

MRS. OYINDAMOLA HART.....

RESPONDENT

JUDGMENT

This petition is brought against the Respondent, Mrs. Oyindamola Hart, by the Petitioner Mr. Valentine Ezekiel Hart for a decree of dissolution of their marriage entered into on 10th March, 2014 at the Marriage Registry, AMAC, Abuja, on the ground that the marriage has broken down irretrievably. The grounds of the petition are as follows:-

- a. The parties have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the Respondent does not object to a decree of dissolution being granted.
- b. That parties last consummated the marriage in July 2019.

The record of this Court shows that Petitioner obtained an order for substituted service of the Petition on the Respondent on the 31st of March, 2022 to serve the Notice of Petition and all other processes of Court in this suit on the Respondent through substituted means. The Respondent subsequently filed an Answer to the Petition on the 29th day of April, 2022.

The Petitioner at the hearing of the Petition was the sole witness and adopted his statement on Oath dated 25th March,2022. The Petitioner tendered 1 Exhibit to wit:-

1. A copy of Marriage Certificate from Marriage Registry, AMAC, Abuja.

The case of the Petitioner in summary is that he contracted a marriage with the Respondent at the Marriage Registry AMAC, Abuja on 10/3/14. That the said marriage between the Petitioner and the Respondent has broken down irretrievably relying on the below grounds:-

- a. The parties have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the Respondent does not object to a decree of dissolution being granted.
- b. That parties last consummated the marriage in July 2019.

There is evidence before this Court to show that the Originating processes and hearing notices were served on the Respondent. The Respondent in defending this petition filed an Answer to the Petition dated 29th April,2022 wherein the Respondent admitted all material facts as contained in the Petitioner's petition. The matter was adjourned for hearing and the Petitioner testified himself and tendered one document which was admitted in evidence and marked accordingly. The Respondent did not testify nor call any witness during the hearing. The matter was adjourned for adoption of final addresses which the Petitioner has filed and served and the Respondent's Counsel also filed a final written address. Both Petitioner and Respondent's counsel raised a similar issue for determination in their final addresses thus:-

"Whether the Petitioner has proved his case in order to be entitled to the relief sought in his petition?"

Learned Counsel to the Petitioner and the Respondent both admitted in their written addresses that the marriage has broken down irretrievably and the Court can order a decree of dissolution accordingly.

They both submitted that the parties have lived apart for a continuous period of more than two years immediately preceding the presentation of the petition and the Respondent does not object to a decree of dissolution being granted. Counsel to the Respondent specifically argued that that where the case of the Plaintiff was admitted not challenged or contradicted, it ought therefore to be accepted, as there is nothing on the other side of the balance. Counsel cited the case of ***DIN V. AFRICAN NEWSPAPERS OF NIG. LTD (1990) LPELR-947 (SC)PP.14-15.***

In conclusion, Counsel submitted praying the Court to grant the relief sought by the Petitioner in this case, as the Respondent does not object to it being granted by this Honourable Court.

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, there is ample prove that the marriage between the Petitioner and the Respondent has broken down irretrievably. This marriage should therefore in the interest of both parties 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 prayers sought by the Petitioner for a decree of dissolution of his 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 10th March, 2014 between the Petitioner Mr. Valentine Ezekiel Hart and the Respondent, Mrs. Oyindamola Hart at the Marriage Registry, AMAC, Abuja, Nigeria.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of one month from the date of this order, unless sufficient cause is shown to the Court why the decree nisi should not be made absolute.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Lucky .E. Enakemere :- For the petitioner

Olabode A.:- For the Respondent.