

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON TUESDAY THE 3RD DAY OF DECEMBER, 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO. PET/302/2024

CHANIKA CHARLOTTE LA-TOYA OKOH -----PETITIONER

AND

EMEKA MARTINS OKOH-----RESPONDENT

JUDGMENT

The Petitioner on the 19th day of March, 2024 filed this petition against the Respondent on the ground that, the marriage has broken down irretrievably, praying the Court for the following reliefs:

1. A decree of dissolution of the marriage contracted between the Petitioner and the Respondent on the 14th day of October, 2022.
2. That the Petitioner be granted such other relief(s) as may be just in the circumstances.

Filed along with the petition, is a verifying affidavit, witness statement on oath and certificate of reconciliation. At the beginning of hearing the Petitioner by motion ex-parte filed 19/3/2024 prayed this Honourable Court for leave to present a petition for the dissolution of marriage between the Petitioner and the Respondent because the petition is within two (2) years of marriage and the application was granted. The Petitioner by motion ex-parte filed 3/7/2024 prayed this Honourable Court for leave to serve the originating process and other subsequent court processes on the Respondent by substituted means to wit by pasting and the said application was granted.

The Respondent was served with the Petition and consequently with hearing notices of adjourned dates. Respondent was never in court but was represented by counsel, S. C. Okonmah who only came to court once but failed to file answer to the Petition. The Court then set down the case for hearing. The Petitioner opened her case and testified as the sole witness in proof of her case. The summary of the evidence of the Petitioner on oath is as follows: That the Petitioner is domiciled in the UK and married the Respondent on October 14, 2022, in Abuja, Nigeria, according to the Marriage Act. That the Petitioner's surname before marriage was Gayle-Dore. That the Petitioner and Respondent lived together in the UK from December 8th, 2022, to January 20th, 2023, and in Abuja from February 1st to February 28th, 2023. That their cohabitation ended in early 2023 when

the Respondent deserted the petitioner and showed no intention of relocating to the UK, despite previous promise. There are no children from the marriage, and no prior court proceedings between the parties. That the Petitioner agreed to marry the Respondent on the condition that he would relocate to the UK, and spent months traveling between the UK and Nigeria, even losing a job due to this. That the Petitioner intended to stay in Nigeria for six months but left after only one month, fearing for her safety due to the Respondent's behaviour. That the Petitioner realized the Respondent had no intention of relocating to the UK and that they had irreconcilable differences. That since early 2023, they have not shared any emotional connection or cohabited, living apart for over a year before filing the petition. That there are no children in the marriage and several reconciliation attempts by the Petitioner and their family were unsuccessful. That the Petitioner has suffered emotional distress and has not condoned or colluded in any of the issues mentioned. The Petitioner in proof of her case tendered one (1) exhibit marked as follows;

"Marriage certificate No: 1907 dated 14/14/2022 marked as Exhibit A1".

Upon conclusion of the examination in chief of the Petitioner, the Court called for cross-examination of the Petitioner and Respondent counsel S. C. Okonmah submitted that they rest their case on that of the Petitioner. Hence the Petitioner was not cross examined. Parties closed their case and waived their right of filing final written address.

In this case, the Petitioner's depositions are without reply from the Respondent. The evidence of the Petitioner is therefore not challenged or contradicted by the Respondent. The effect is that the evidence of the Petitioner will be taken as accepted or established and the Court ought to act on it. The Supreme Court in the case of **CAMEROON AIRLINES V. OTUTUIZO (2011) LPELR 82-(SC) Per Rhode- Vivour J.S.C** held,

"it is well settled that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the Court ought to act positively on the unchallenged evidence before it"

However, notwithstanding the above general principle, the Petitioner is still duty bound to prove her case. I find in support of this the case of **Nnamdi Azikiwe University v. Nwafor (1999) 1 NWLR (Pt.585) 116 at 140-141** where the Court of Appeal **per Salami J.C.A.** expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence... the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establishes or prove the

claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant...”

Therefore, from the above point the burden of proof lies on the plaintiff or petitioner in this case to establish his case on a balance of probability by providing credible evidence to sustain his claim irrespective of the unchallenged evidence.

Having examined the evidence of the Petitioner, the issue that is germane in this case is;

“Whether the Petitioner from the evidence before the court satisfied the requirement of Section 15 (2) of the Matrimonial Causes Act for the dissolution of their marriage”.

The law is now settled that, there is only one ground upon which the Court could be called upon to decree for dissolution of marriage, i.e., that the marriage has broken down irretrievably; and the Court on hearing the petition can hold that the marriage has broken down irretrievably if the Petitioner can satisfy the court of one or more of certain facts contained in Section 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act, 2004 as held in *PIUS v. OLORUNFEMI (2020) LPELR-49579(CA)*. Under Section 15 (2) of the Matrimonial Causes Act, categorized under paragraphs A – H. It states:

“(2) The court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts-

(a) that the respondent has wilfully 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 presentation 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 a decree being granted;

(f) that the parties to the marriage have lived apart for a continuous period of at least three 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 restitution 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 circumstances as to provide reasonable grounds for presuming that he or she is dead.

Therefore, upon proof of any of the factors stated above to persuade the court that the marriage has broken down irretrievably, the court shall grant a decree of dissolution of the marriage if it is satisfied on all the evidence adduced as held in **UZOCHUKWU V. UZOCHUKWU (2014) LPELR-24139 (CA)**.

In this petition, the Petitioner has adduced evidence to the fact that cohabitation ceased between the parties in early 2023 when the Respondent deserted the Petitioner. Hence parties have lived apart for a period of one year preceding the filing of this petition. That the Petitioner and Respondent have consistently had irreconcilable differences that they cannot be expected to live with each other. That both parties have lost any kind of emotional feelings for each other.

These facts were not challenged, contradicted nor controverted by the Respondent as he failed to file an answer to the Petition or cross examine the Petitioner but rather rested his case on that of the Petitioner. The law is trite and enjoins a Court to act on unchallenged evidence. The Court in the case of **MATAZU V. MAZOJI (2014) LPELR-23071 (CA)**, Per ABIRU JCA in P. 70, paras. D-F held

“The law is that where evidence of a witness is credible and it is not challenged under cross examination or met by contrary evidence, it is tantamount to an admission and should be relied upon by the trial Court”.

Also, in **ENC. EMODI & ORS V. MRS. PATRICIA C. EMODI & ORS(2013) LPELR-21221(CA)** it was held that;

“Where therefore a plaintiff files his statement of claim raising an allegation of fact against the defendants or one of them, such defendant(s) who do/does not admit the truth of the allegation must file a defence to contradict, controvert, challenge or deny the allegation. Where no defence is filed, the defendant is deemed to have admitted the assertion and the court may peremptorily enter judgment against the defendant.

From the totality of the evidence of the Petitioner, she is fed up with the marriage, and she has found it intolerable to live with the Respondent. The Respondent not opposing this application and resting his case on that of the Petitioner in my view is also fed up with the marriage. It would not be in the interest of the parties for them to remain married.

In my considered view, the evidence of the Petitioner has satisfied the requirement of the **Matrimonial Causes Act, 2004, in Section 15 (1) and (2) (d)** that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition and for that, the marriage celebrated between the parties ought to be dissolved and **IT IS ACCORDINGLY DISSOLVED.**

Consequently, I hereby order as follows;

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, CHANIKA CHARLOTTE LA-TOYA OKOH, and the Respondent, EMEKA MARTINS OKOH at the Marriage Registry, Abuja Municipal Area Council (AMAC), Abuja on the 14th of October, 2022.
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.

Parties: Petitioner is present. Respondent is absent

Appearances: U. P. Egolum appearing with A. Fadumila for the Petitioner. Respondent is not represented.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
3RD DECEMBER, 2024