

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON TUESDAY THE 27TH DAY OF FEBRUARY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/GWD/PET/29/2023

BETWEEN:

DR. FRANCIS CHIBUEZE ELEONU ----- PETITIONER

AND

MRS. NDIDIAMAKA JUDITH ELEONU ----- RESPONDENT

BENCH JUDGMENT

In this Petition for dissolution of marriage the Petitioner, Dr. Francis Chibueze Eleonu approached this Court for the dissolution of the marriage between him and the Respondent, Mrs. Ndidiamaka Judith Eleonu.

The marriage was contracted on the 9th of May, 2011 at the Abuja Municipal Area Council (AMAC) Registry. The Respondent has the original document. The Petitioner attached a copy of the Certificate of Marriage. The Respondent was Miss. Ozoude prior to the marriage. The marriage was blessed with 4 lovely Children born between 2011 and 2017.

The main point is that the marriage has broken down irretrievably and the Petitioner finds it difficult to continue with it. Again, the Respondent has been in desertion. She had taken away with her the Children of the marriage and had since the time the Petitioner paid for vacation trip for the Respondent and the Children, the Respondent had refused to come back or allow the Petitioner access to the Children of the marriage.

The Petitioner had listed the grounds upon which the Petition is premised and the facts and incidence upon which he relies on to file for this Petition for divorce.

The Petitioner wants the dissolution of the marriage. He also wants unrestrained and unrestricted access to the Children of the marriage. He also wants custody of the Children who are presently living with the Respondent in Texas USA and he is still ready to perform his fatherly role to the Children of the marriage.

Because the Respondent lives in Texas USA, personal service was not possible. So this Court granted an Order for substituted service and she was served with the Notice of Petition as per Order of this Court. The evidence of service is before this Court. She engaged a lawyer – Uba Esq. who filed Memorandum of Appearance and served the Petitioner's Counsel. He had stated in Court on record that his client is not challenging the Petition. That she has no intention to file an Answer or Cross-Petition. That she wants the marriage dissolved so that parties can find their way and forge ahead with their lives.

The Court had earlier gone through the length and breadth of the Petition and the grounds and supporting facts. The Court had spoken at length to the Petitioner on the last adjourned date and had deliberately adjourned the matter for long to see if the marriage can be salvaged. But today, given what has transpired, it is evidently clear that the parties cannot reconcile especially as the Respondent's Counsel – Uba Esq. had stated on record. Hence, this Court has no reason not to do the needful as the circumstance warrants.

It has been held in an old English case by Lord Atkin that once a marriage has broken down irretrievably and parties come to Court to seek its dissolution and Order Nisi is granted that the bottom has dropped off the marriage and it is only the shell that is remaining.

To that I add that once a party in a marriage had filed a Petition in Court for dissolution of marriage and the other party had not challenged same, that there is already a big crack on the egg of the marriage and that the content of the egg had started gushing out. And that upon the pronouncement of the Order Nisi that the remaining content has been emptied and the only thing is the empty shell which the parties want to crush in the presence of all persons and witnessed by the Court.

Today, going by the gory details of what propelled the Petitioner to come to Court and what had happened when and after he paid for holiday trip for his wife – the Respondent and Children to USA, he realized that the wife

had used that as a means to permanently relocate to USA with the Children. I felt that actually that his marriage had broken down irretrievably and the Notice of Petition for its dissolution was the right thing to do in this circumstance. It is important to note that where that is the case, the Court has no power to force any of the parties especially the Petitioner to continue with the marriage. The wide power of the Court does not extend to that.

This Court feels that since the marriage has broken down irretrievably and the Respondent has been in desertion with no hope of coming back to her matrimonial home, that the best thing is to dissolve the marriage *in toto*, where the Respondent does not challenge same.

Based on that this Court hereby DISSOLVES the marriage between the Petitioner – Dr. Francis Chibueze Eleonu and the Respondent – Mrs. Ndidiamaka Judith Eleonu which was contracted on the 9th day of May, 2011 today the 27th day of February, 2024.

This is the Order Nisi of this Court.

On the Relief sought, this Court Orders as follow:

That the Petitioner should have very unrestrained and unrestricted access to the Children of the marriage who are:

- (1) Eleonu Victor Chiagoziem
- (2) Mmesomachukwu Clare Eleonu
- (3) Mitchell Miracle Chisimdi Eleonu

(4) Somkenechukwu Francis Eleonu

There should be shared custody of the Children between the parties to wit:

Given the ages of the Children, the Children shall spend $\frac{3}{4}$ of the holiday period with the Petitioner while they will continue to stay with the Respondent during the school days.

At the age of 18 the Children can decide on which of the parents they can stay with.

The Petition should support the Children within his means as situation warrants and should, if he can afford same, visit them during school periods.

If after 90 days the parties fail to come together as husband and wife this Order Nisi shall be made automatically made absolute on the 91st day from today.

This is the Bench Judgment of this Court.

Delivered today the ___ day of _____ 2024 by me.

K.N. OGBONNAYA
HON. JUDGE