

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS THURSDAY THE 7TH DAY OF JULY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/PET/17/22
FCT/HC/GWD/M/163/22

BETWEEN:

EMMANUEL AYODELE OMOKERE.....PLAINTIFF

AND

ELIZABETH IFEOMA NWOKOLO OMOKORE..... DEFENDANT

JUDGEMENT

By a notice of petition dated 30th day of June, 2022, the petitioner claims the following reliefs against the respondent:

- 1. A decree of the dissolution of the marriage between the petitioner and the respondent on the following grounds:**
 - a. That the marriage has broken down irretrievably.**
 - b. That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.**

From the record, the petitioner first brought a motion expert for an order granting leave to the applicant to institute proceedings for the decree of

dissolution of marriage between the applicant and the respondent which was contracted on the 14th day November, 2020 within a period of less than two years after the marriage dated the 4th May, 2022, the said motion expert having been moved was granted dated the 14-0602022 and the notice of motion was served on the respondent which was acknowledged by personally by one **Nwaokolo Elizabeth of PykasaLugbe** dated the 6-7-2-022.

On this dated being 6-7-2022 both parties were in court i.e. the petitioner was represented by one **Barr. Irene Ominike Esq** of suit 2 SDP Junction CornershopGwagwalada-Abuja while the respondent informed the court that, she just received the petition this morning hence could not make any arrangement for a counsel. The petitioner counsel informed the court that he understood that⁵ the Brede price has been returned to the respondent and what is left is the issue of --refrigeration.

This case was then stood down for 30 minute to allow parties explore settlement on the issue of the refrigerator.

On resumption counsel to the petitioner informed the court that parties have agreed that the³ issue of the refrigerator be settled and that on order. Nisi be enlured as per the petition before the court as a traditional the bride price or dowry has been refunded and received and draw the attention of the court to clause 8(1) of the cohabitation which states as follows:

- i. Attempts made by the respondent to poison the petitioner few months into the marriage been withdraw with the consent of both parties.**

and therefore urge the court to enter a decree Nisi of marriage having been broken irretrievably.

Having carefully considered the petition, and the grounds upon which the said petition is based the narrow issue is whether the petitioner evidence has satisfied the legal requirement for the grant of this petition? In law, it is now an accepted principle of general application that in such circumstance, the respondent is assumed to haven agreed in the deposition in the verifying affidavit as true, and the trial court is entitled is at liberty to act on the petition unchallenged evidence. Or deposition as true.

Notwithstanding the above, it is the duty of this court to examine the established fact. Of the entitled the petitioner to the reliefs he seeks. I find support for this

in the case of **NnamdiAzikiwe University V Nwafor (1999) 1 NWLR (PT. 585) 166 AT 140-141** where the court of Appeal Per Solani 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 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 established or prove the claim or not. In this vein, a trial court is of no time relieved or the burden as ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant---”

Now in instant case, the petitioner from his petition seeks for dissolution of the marriage with respondent on the ground act the marriage has broken down irretrievably and essentially predicted the ground for the petition on the fact that since the marriage the respondents has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent and that the respondent has deserted the petitioner for more than one year without any reason, that the respondent have negative altitude to the marriage and both parties have found it difficult to live in peace with each other and that attempt at reconciliation failed as the respondent through her family head has returned the bride price to the petitioner.

By a confluence of their facts it is clear that this marriage exists only in name. it is doubt of therefacts, it is clear that this marriage exist only in name. its doubtful therefore that the instant petition was brought within the purview of sections 15(1)(c), (e) and (g) of the Act.

It is correct that section 15 (1) of the Act provide for the irretrievably breakdown of a marriage as the only ground upon which, a party may apply for dissolution of a marriage. The facts that may however lead to this breakdown are clearly categorised under sections 15(2) a-h of the Act in law as one of the there facts if proved by credible evidence as sufficient to ground or found a petition for divorce.

Now from the uncontroverted deposition of the petition in its affidavit I find the following essential facts as established to wit:

1. **That parties got married on the 14th November 2020**
2. **That the marriage is not blessed with a child.**
3. **That the marriage lasted for about Four (4) months after he celebration of the marriage.**
4. **That the respondent deserted the petitioner on the 29th day of March, 2021, when she told the petitioner that she was visiting her, parent, which she never returned back to the matrimonial home.**

The above as stated on facts which was not challenged by the respondent who was given all the opportunity of doing so.

The law has always been that where evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seized of the proceeding. To act on the unchallenged evidence before it. See **Agagu V Dawodu (1990) NWLR (PT. 160) 169-170.**

Thus is so because, in civil cases, the only criteria to arrive at a final decision at all time is by deforming on which side of the scale the weight of evidence felts. consequently, where a defendant chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G. Oyo State V Fair Lakes Hotels Ltd N:2 (1989) C NWLR (PT.121) 255.**

Failure of the respondent to respond to his petition confirms in all material particulars that the fact that the marriage has broken down irretrievably and that they have lived apart now for one year.

As the respondent stated that, they have agreed that the marriage be dissolved.

In law marriage is legally sanctioned contract between a man and woman entering into a marriage contract changes the legal status of both parties, giving husband and wife new right and obligation, the marriage having been broken down irretrievably that legal status of both parties given husband and wife new right and obligation is no more.

In the final analysis and in summation, I accordingly hereby make the following order:

An order of decree. Nisi is granted dissolving the marriage order granted between the petitioner (**Emmanuel Ayodele Omokore**) and Respondent (**Elizabeth IfeomaNwakolo Omokore**) on 14th day of November, 20

APPEARANCE:

- 1. Irene Ominike for the petitioner.**