IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON TUESDAY THE 9TH DAY OF NOVEMBER, 2020.
BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO: FCT /HC/PET/366/2019

GODSTIME EDET ANTAI ----------PETITIONER

AND

KINGSLEY ETIM OKPO ----------RESPONDENT

JUDGMENT

On 10th of September, 2019 petitioner filed a petition against the respondent praying for a decree of dissolution of the marriage between her and the respondent contracted and celebrated at Marriage Registry Oron Nigeria on the 4th of December, 2012. Specifically, petitioner prayed for:

> "A decree of dissolution of the marriage between the Petitioner and the Respondent on the grounds that the marriage has broken down irretrievably".

The Petitioner at the trial adopted her witness statement on oath dated 29th June, 2020 and tendered a copy of the Marriage certificate as Exhibit A. the Petitioner in summary deposed that upon celebration of their marriage on 4th of December, 2012, they lived together at their apartment at No. 15, Idua Street, Oron, Akwa-Ibom State from 12th December 2012 to 26th December, 2012. That the Petitioner moved to her place of work at Kastina State whiles the Respondent moved to Port Harcourt where he

worked. That pursuant to the arrangement between both of them, the Respondent travels to Kastina State every 2weeks in a month when he is off work to be with the Petitioner. That on the 18th February, 2013 due to a minor misunderstanding the Respondent descended upon her and beat her severely which resulted in several severe cuts and bruises. That as she was being taken to the hospital by neighbours the Respondent packed all his belongings and left. That since that day they have lived apart till date. That a meeting was held on the 11th of June 2013 by both families at the residence of one Mr. Edet Uwak Anwana to save the marriage. But at the meeting the Respondent stated clearly and equivocally that he was no longer interested in the marriage and invited her parents to come and retrieve any of her belongings at his family residence. That they only related as husband and wife for about three (3) months. That since the botched reconciliation of 11th June, 2013 about seven (7) years ago, she has not set eyes on the Respondent. That there are no children from the marriage and that she has lost any love, trust or affection she may have had for the Respondent during the marriage. That the marriage has broken down irretrievably.

At the close of the Petitioner's case Ndubuisi Kalu Esq. learned counsel to the Respondent informed the court that they are not opposing the Petition and case was adjourned for adoption of final written address.

The petitioner in her final written address raised a lone issue for determination:

> "Whether the Petitioner is entitled to the sole relief sought from this Honourable Court as contained in her Petition for dissolution of this marriage".

Summarily, learned counsel submitted that it is settled law that the only ground upon which a divorce petition can be based under the Matrimonial Causes Act is that the marriage has broken down irretrievably. Learned counsel submitted that relying on **Sections 15 (2) (a) and (d) of the Matrimonial Causes Act** this Honourable Court can grant an order for dissolution of the marriage. Finally, counsel emphasized on the fact that the Respondent was served with all processes and duly represented by a counsel but failed to file any answer to the petition. Counsel cited the cases;

i. **MEGWALU V. MEGWALU (1994) 7 NWLR (PT. 359) at Pg. 730**
ii. **HARRIMAN V. HARRIMAN (1989) 5 NWLR (Pt 119) Pg. 6 at Pg. 15**
iii. **NANNA V. NANNA (2006) 3 NWLR (Pt. 966) Pg. 1**
iv. **DAMULAK V. DAMULAK (2004) 8 NWLR (Pt. 874) Pg. 151 at 165-166**
v. **SODIPO V. SODIPO (1990) 5 NWLR 98.**

Haven taken into account the averments in the petition and the evidence led in support. What is clear to me is that the marriage between the parties has broken down irretrievably owing to the fact that parties have lived apart from each other without co-habiting for a continuous period of seven (7) years preceding the filing of this petition.

There has been no child of the marriage and the petitioner is not claiming for alimony or maintenance or a share in any property. Indeed learned counsel to the Respondent has declared that the respondent is not opposed to the grant of a decree of dissolution of the marriage. It is not in dispute that the Respondent has deserted the Petitioner. The law is certain that where evidence before a trial court is unchallenged, it is the

duty of that court to accept and act on it as it constitutes sufficient proof of a party's claim in proper cases. See **KOPEK CONSTRUCTION LTD V. EKISOLA (2010) LPELR-1703 (SC)**.

It is also settled law as submitted by the Petitioner in their written address 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 **Sections 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act, 2004.**

The Court of Appeal in **AKINLOLU V. AKINLOLU (2019) LPELR-47416 (CA)** held on conditions for the grant of dissolution of marriage as follows;

> *"Instructively, a petition by a party to a marriage for a decree of dissolution of that marriage may be presented to the Court by either party thereto, upon the ground that the marriage has broken down irretrievably. The Court seized of the petition for a decree of dissolution of a marriage shall adjudge the marriage to have broken down irretrievably upon the petitioner satisfying the Court of one or more of the following conditions: (a) That the Respondent has willfully 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. (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 a part 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 continuance 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".

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 (a) That the Respondent has wilfully and persistently refused to consummate the marriage; (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; & 2 (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 nisi being granted and for that, the marriage celebrated between the parties ought to be dissolved.

Consistent with this admission and findings, I am satisfied that the Petitioner has established a case sufficient to justify the grant of a decree of dissolution of the marriage between her and the Respondent on the

ground that the marriage has breakdown irretrievably, in that the respondent has deserted the petitioner and the parties have been living apart without co – habitation for a continuous period of about seven (7) years, immediately preceding the filing of this petition. And given that the Respondent has neither filed a defence nor controverted the petitioner's averments in cross-examination, the law is that the court is bound to accept the petitioner's narrative as true and act upon it. In **EN C. 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".*

I find this petition as having been proved. It has merit and it succeeds. I hereby dissolve the marriage and make the following orders:-

i. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **GODSTIME EDET ANTAI**, and the Respondent, **KINGSLEY ETIM OKPO** at the Marriage Registry, Oron, Nigeria on the 4th of December, 2012.

ii. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) 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: Absent

Appearances: No legal representation for either party.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
9TH NOVEMBER, 2020