IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN ATGUDU - ABUJA
ON WEDNESDAY THE 13TH DAYOF NOVEMBER, 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO. PET/116/2023

BETWEEN

HON. AUSTIN OCHI OKWOCHE ---------- PETITIONER
AND
MRS. JANADA AUSTIN OKWOCHE ---------- RESPONDENT

JUDGMENT

The Petitioner by a Petition filed 19/12/2023against the Respondent claims the following:

a. A decree of dissolution of the marriage between the petitioner and the Respondent conducted at the AMAC Marriage Registry, Abuja on the 22nd January, 2009, in accordance with the Provisions of the Marriage Act on the ground that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;
b. AN Order granting Custody of the Three Children of the Marriage to the Petitioner and right of visit to be granted to the Respondent any time she wants to.
c. AND for such order or further Orders as this Honourable court may deem fit to make in the circumstance of this case, as though same was specifically sought for.

In support of the Petition, the Petitioner filed verifying affidavit and witness statement on oath. The Respondent was served with the originating processes and hearing notices. She did not file any answer or process in challenging the petition. Petitioner averred that he married the Respondent on the 22nd of January, 2009, at the AMAC Marriage Registry, Abuja.That he had constant conflicts with the Respondent since the beginning of their marriage, making it unbearable and harmful to their well-being. That despite repeated efforts to resolve these issues, the marriage remained strained, leading to health problems, including hypertension and the risk of stroke. That persistent disagreements and religious differences exacerbated tensions, often escalating into fights. That given the deteriorating situation, both parties agree that separation is necessary for their mental health and the welfare of their children.That the marriage produced three (3) children named Jennesse Andrea

OkpakoOkwoche 13 years, Christopher Rock OgaOkwoche 11 years and Regina Emma OriakoOkwoche7 years.
In evidence the Petitioner tendered two (2) document which was admitted in evidence and marked as follows;

i. Marriage certificate dated 22/1/2009. **Exhibit A1**
ii. Certified True Copy of Marriage certificate **Exhibit A2.**

As earlier stated, the Respondent was served with originating processes and hearing notices. She did not file any answer or process challenging the petition neither was she represented by counsel. At the end of the Petitioner's case, the case was then adjourned for adoption of final written addresses. The Petitioner's counsel adopted his final written address filed8/5/2024 wherein he raised the following issues for determination to wit;

1. Whether from the evidence adduced by the Petitioner, the marriage between the parties could be held to have broken down irretrievably?
2. Whether the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent?
3. Whether the Respondent has been so intolerable that the Petitioner cannot reasonably be expected to live with the Respondent?
4. Whether the Petitioner has met the required standard of proof in proving his petition and entitled to the prayers sought?

Summarily on issues 1 & 2, Learned counsel submitted that the marriage between the Petitioner and the Respondent has broken down irretrievably.That the section particularly applicable to this suit is Section 15(2)(c) which required the petitioner to show "that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent". Counsel submitted that this ground is a wide and omnibus one, which is not confined to particular facts or circumstances. That it takes care of all matters not specifically set out in the Matrimonial Causes Act and which in the opinion of the court is sufficient to warrant the dissolution of a marriage. That the test of the reasonableness or otherwise of the conduct of the respondent is an objective one to be carried out by the court. Counsel then submitted that it is clear from the evidence of the Petitioner that the Respondent indeed behaved in a manner that is intolerable, unreasonable and such that the petitioner cannot reasonably be expected to condone same and continue to live with the Respondent which facts were not controverted, contradicted or challenged by Respondent.
On issues 3 & 4 counsel submitted that what constitutes intolerable behaviour as a ground for dissolution of marriage is that the behaviour must be negative, and such that a reasonable man cannot endure. That it must be grave and weighty as to make cohabitation virtually

impossible. Counsel submitted therefore that in a case such as this where the evidence of the Petitioner is not contested,It is trite law that evidence of a party which is unchallenged and uncontroverted by the adverse party is good evidence on which the Court should act to make appropriate findings. Finally, the Petitioner has placed before this Honourable court plausible evidence to convince the court to be satisfied reasonably that indeed, the marriage between the Petitioner and the Respondent has broken down irretrievably and as such merits a decree of dissolution of the marriage. Counsel urged the court to hold that the Petitioner has proved to the reasonable satisfaction of the court that the marriage between him and the Respondent has broken down irretrievably and therefore merits a decree of dissolution of the marriage.Counsel relied on the following authorities **Section 15 (1) (2) of the Matrimonial Causes Act; EkerebeV.Ekerebe (1993) 3 NWLR (Pt. 596) 514 CA; Essays on civil proceedings volume2 by Honourable Justice Ohi Okoye at page 122 Paragraph 72; O'Neil v. O'Neil (1975) 1 WLR 1118; Ash v. Ash (1977) 2 WLR 347; Chabasaya v. Anwasi (2010) 25 WRN 30.; Nana v. Nana(2006) 3 NWLR (pt.966) 1; UBN V Fajebe Foods Ltd (1998) 6 NWLER (Pt. 554) 380; MorahAchoru (1990) 6 NWLER (Pt.156)254; Bibilari v. Bibilari (2011) LPELR-4443 (CA); Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383; Damulak v. Damulak (2004) 8 NWLR (Pt. 874) 151; ZAKARIYA MOHAMMED (2022) LPELR-57505(CA); SAIPEM SPA V. INDIA TEFA (200-0 FWLR (PT. 74) 377 @ P. 394; IGBINOVIA V. AGBOIFO (2002) FWLR (P . 103) 505 @ P. 514; PLANTAIN SELLERS MULTIPURPOSE CO-OPERATIVE SOCIETY LTD & ANOR v. YAU & ORS (2022) LPELR-58302(CA); Minton v. Minton (1979) AC 593 Livesey (1985) 1 AC 424 @ 430 and Mahoney Mahoney (1995/96) GR 77 @79.**

Having carefully considered the petition, the unchallenged evidence led and the address of counsel, the narrow issue is;

> *"Whether the petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of this petition".*

I had at the beginning of this judgment stated that the Respondent did not file any answer or process in challenging the petition. Hence the Respondent did not challenge the evidence adduced by the Petitioner. In the circumstances, it was only the Petitioner that led evidence situating that the marriage between the parties had broken down irretrievably as the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. In law, it is now an accepted principle of general application that in such circumstances, the Respondent is assumed to have accepted the evidence adduced by Petitioner and the trial court is entitled or is at liberty to act on the Petitioner's unchallenged evidence. The

Supreme Court in **GOV. ZAMFARA STATE & 3ORS V. GYALANGE & 12 ORS (2012) 4 S.C. 1 AT 12** held:

> *"The settled law is that evidence that is neither attacked nor successfully challenged is deemed to have been admitted and the court can safely rely on the evidence in the just determination of a case".*

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the Petitioner to the relief(s) she seeks. 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 the point appears sufficiently made that the burden of proof lies on the Petitioner as in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the unchallenged evidence.

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 upon 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**. In the case of **IBRAHIM V. IBRAHIM (2006) LPELR-7670(CA) Per ARIWOOLA, J.C.A in Pp. 16-17, paras. E-F held**

> "*The law also provides for the facts, one or more of which a petitioner must establish before a Court shall hold that a marriage has broken down irretrievably. It reads thus - Section 15(2) - "The Court hearing a petition for a decree of dissolution of a 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 in **Section 15(2) (a-h) of the Matrimonial Causes Act**, 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).**The burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings.This is so because in civil cases, the only criterion to arrive at a final decision at all times is by determining on which side of the scale the weight of evidence tilts. Indeed **Section 82 (1) and (2) of the Matrimonial Causes Act** provide thus:

1. *For the purposes of this Act, a matter of fact shall be taken to be proved, if it is established to the reasonable satisfaction of the court.*
2. *Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.*

Now in the extant case, the Petitioner from his petition seeks for the dissolution of the marriage with Respondent on the ground that the marriage has broken down irretrievably and essentially predicated the ground for the petition on the fact that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. That they had constant conflicts since the beginning of their marriage, making it unbearable and harmful to their well-being. That despite repeated efforts to resolve these issues, the marriage remains strained, leading to health problems, including hypertension and the risk of stroke. That persistent disagreements and religious differences have exacerbated tensions, often escalating into fights. These facts are not contradicted nor challenged by the Respondent. 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".*

Thus, by virtue of **Sections 15(1) and 15 (2) (c) of the Matrimonial Causes Act**, the Court shall hold that a marriage has broken down irretrievably if there is evidence showing that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

In the circumstances, I therefore hold that the marriage has broken down irretrievably Petitioner having proved **Sections 15(1) and 15 (2) (c) of the Matrimonial Causes Act** the marriage ought to be dissolved and **IT IS ACCORDINGLY DISSOLVED.**

In relief b, the Petitioner is seeking for custody of thechildren of the marriage. By **Section 71(1) of the Matrimonial Causes Act**, the court must prioritize the best interest of the child of the marriage. The court has the authority to make appropriate orders regarding custody, guardianship, welfare, advancement, or education of the child. Determining the best interest of the child is not easily defined and extends beyond material possessions. It includes factors that support the child's psychological, physical, and moral development, as well as their happiness and security as held in**ODOGWU V ODOGWU (1992) LPELR – 2229 (SC) and ODUSOTE V ODUSOTE (2011) LPELR – 9056 (CA).** In this instant case, the Respondent in this instant case is not opposed to the grant of custody of the children to the Petitionerand the Petitioner is not against right of visit being granted to the Respondent any time she wants to visit her children. There is no evidence that Petitioner is not capable of caring for the children neither is there evidence that the children has been treated unfairly by Petitioner.Consequently, custody of the childrenof the marriage (Jennesse Andrea OkpakoOkwoche 13 years, Christopher Rock OgaOkwoche 11 years and Regina Emma OriakoOkwoche7 years)are hereby granted to the Petitioner until they attain the age of 18years. It is important to state that the children need their mother for wholesome and balanced development, consequently, Respondent shall be granted access to visit the children one weekend (between Friday afternoon to Sunday afternoon) every month.Consequently, I hereby order as follows;

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **HON. AUSTIN OCHI**

OKWOCHE and the Respondent, **MRS. JANADA AUSTIN OKWOCHE**at AMAC Marriage Registry, Abuja on the 22ndofJanuary, 2009.

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.
3. That Petitioner shall have custody of the children of the marriage (Jennesse Andrea OkpakoOkwoche 13 years, Christopher Rock OgaOkwoche 11 years and Regina Emma OriakoOkwoche7 years)until they attain the age of 18years. Respondent shall be granted access to visit the childrenone weekend every month; Respondent is hereby given free access to the children on phone anytime she wants to call her children.

Parties: Absent
Appearances: G. B. Ajibulu appearing for the Petitioner. Respondent is not represented.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
13TH NOVEMBER, 2024