

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

SUIT NO: FCT/HC/PET/186/2023

DELIVERED: ON THE 19/03/2024

BETWEEN:

KYAUTA BAWA.....PETITIONER

AND

MR. ISHAYA SAMAILA.....RESPONDENT

JUDGMENT

This petition for a Decree of Judicial dissolution of marriage was filed by Kyauta Bawa praying for the following reliefs as set out in the petition thus:

- a) A Decree of dissolution of the marriage between the Petitioner and the Respondent Contracted at the Magajin Garin Registry in Kaduna State on the 27th day of December 2020, on the ground that the marriage has broken down irretrievably.
- b) An Order of Court granting to the petitioner absolute custody of the child of the Marriage.

The ground upon which the petitioner seeks for the decree of dissolution of marriage are:

- a. That the parties to the marriage have lived apart a continuous period of at least two years immediately preceding the presentation of this petition.
- b. That the Respondent has caused the petitioner to live in desertion for a continuous period of at least two years immediately preceding this petition.
- c. That since the marriage, the Respondent has been keeping several extramarital relations without discretion.
- d. That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- e. That the petitioner now finds it intolerable to live with and continue in marriage with Respondent.
- f. The Respondent is extremely violent, has persistently threatened violence on the petitioner, caused public nuisance and disturbance to neighbours, and embarrassment to the petitioner, and the marriage.
- g. The Respondent is disrespectful to the petitioner's families that have tried to call him to order, as all effort to achieved results have proved abortive.

- h. The Respondent is adulterous, and with his current lifestyle of engaging in numerous extra marital relations, cannot properly look after the Child of the marriage.
- i. The Respondent is not willing to undertake the moral and financial Responsibility of catering for the child. The child is solely dependent on the Petitioner since birth.
- j. The Petitioner shall also rely on the facts constituting the ground for the divorce as grounds for seeking custody.

The petition along with other processes were served on the Respondent by substituted means i.e. pasting on the wall at No: 50, Haile Selessie Street Asokoro, Abuja been the last known address of the Respondent on the order of Court granted on the 16th May, 2023. The Respondent did not file any answer to the petition and was absent and not represented by a Counsel throughout the trial despite repeated service of Hearing Notice's and other processes of Court. The petition the proceeded as an uncontested action.

The petitioner was the sole witness who testified as Pw1. She adopted her deposition as in the witness statement on Oath dated 31st January, 2023 and one Exhibit was tendered in her evidence in chief. She testified that the parties got married on

27th December, 2020 and a certificate of marriage was issued it was admitted and marked as “P1”

That they had cohabited immediately after the marriage was contracted until 21st December, 2021 when cohabitation ceased.

The petitioner averred thus:

That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition.

That Respondent has cause the petitioner to live in constructive desertion for a continuous period of at least two years immediately preceding this petition. The Respondent has continuously caused the petitioner to suffer, threatened the life of the petitioner and abandoned the petitioner several times after inflicting pain and injury on the petition in the course of his violent acts.

That since the marriage, the Respondent has been keeping several extramarital relations without discretion.

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 the petitioner now finds it intolerable to live with and continue in marriage with the Respondent.

That the Respondent has clearly shown that he is not interested in the marriage anymore; even after their parents, siblings, community and religious head have tried to call the Respondent to order, the Respondent has since paid deaf ears and has continued to torment the petitioner, and has caused the petitioner to live in pain and depression.

The Respondent has also been summoned by family on several occasions to no avail, thereby making all efforts of the petitioner in ensuring that this marriage works an effort in futility.

The petitioner has not condoned or connived at any the ground specified above and is not guilty of collusion in presenting this petition.

On the date adjourned for cross examination 31/10/2023 by the Respondent, the Respondent was absent in Court and not represented by counsel. The petitioner applied that the Respondent be foreclosed and was granted and matter was adjourned for defence on the adjourned date, which was 21/11/2023 the Respondent was still absent and not represented

and had filed nothing before the Court having been served Hearing Notices.

On the next adjourned date, petitioner Counsel adopted their final written address dated 18/01/2024 as their oral argument in support of the petition and Judgment was fixed for today.

In the final written address, petitioner's Counsel formulated two issues for determination to wit:

- a. From the evidence presented before this Honourable court, whether the petitioner has shown that the marriage between herself and the Respondent has indeed broken down irretrievably.
- b. Whether the petitioner is entitled to the reliefs sought in this petition.

Having carefully, considered the unchallenged evidence of PW 1, the submission of the Counsel and Judicial authorities cited, the court finds that only on (1) issue calls for determination that is:

“Whether the petitioner has successfully made out a case to warrant the grant of the reliefs Sought”

The law is trite that a person who has a duty to defend an action, but refused to do so can be concluded to have admitted the positions of the adverse party and a fact admitted need no further proof. The implication of this is that the court will deem the unchallenged and uncontroverted evidence of the petitioner as true, correct and act on it. See the Case of ***CBN VS IGWILO (2007) 14 NWLR (Pt. 1054) 393 (a) 406.***

The Matrimonial Causes Act has in ***Section 15 of the Matrimonial Causes Act CAP M7 Laws of the Federation of Nigeria 2010(Revised edition)*** made provisions guiding dissolution of marriage on the general ground that the marriage has broken down irretrievably. Section 15(2) provides that a Court hearing such a petition shall hold that the marriage has broken down irretrievably if the Petitioner is able to by evidence adduced to prove the existence of one of the grounds/facts set out in Section 15 (2) (a) to (h). The ground provided for in Section 15(2) (d) is that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition. Section 15(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 being granted.

The implication of these provisions is that proof vide evidence of any of the grounds/facts listed out under Section 15(2) (a) to (h) of the Matrimonial Causes Act may suffice for the Court to hold that the marriage has broken down irretrievably and pursuant thereto grant a decree in dissolution of the marriage. See *KALEJAIYE V. KALEJAIYE (1986) vol.11 QLRN 162 AND OMOTUNDE V. OMOTUNDE (2001) NWLR (PT 718) 255 THUS:*

‘The law behind section 15(2f) as far as living apart is concerned, is not interested in right or wrong or guilt or innocence of the parties. Once the parties have lived apart, the court is bound to grant a decree. The pleadings pointed at the living apart of the parties’.

A married person whose conduct constitute just cause or excuse for the other party to the marriage to live separately or apart, and occasions that other party to live separately or apart, shall be deemed to have willfully deserted that other party without just cause or excuse, notwithstanding that that person

may not in fact have intended the conduct to occasion that other party to live separately or apart.

See: TABANSI V. TABANSI (2018) 18 NWLR (pt. 1651) 279.

From all of these, I must hold that, the Petitioner has proved her case to the satisfaction of the Court. Accordingly, I find that the marriage has broken down irretrievably. And judgment is hereby entered in favour of the Petitioner.

In the light of my findings and in respect thereof, I will and do hereby record a Decree Nisi for the dissolution of the marriage contracted on the 27th December, 2020 between the Petitioner and the Respondent. The Decree Nisi shall become absolute by operation of law upon the expiration of three months from today.

I shall now consider the issue of custody of the only child of the marriage having dissolved the marriage between the parties. Custody of a child in a matrimonial cause connotes not only the control of the child but carries with it the concomitant implication of the preservation and adequate care of the personality and physical, mental, and moral development of the child. *ALABI VS ALABI All FWLR (pt 418) 248 at 257 (CA).*

Often, it is the welfare of the children that is of paramount importance as a parameter to be used in the determination of the issue of custody.

It is the contention of the Petitioner that the only child of the marriage namely Mansour Allen Samaila who is an infant should be granted custody to her with right of access to the Respondent.

Indeed, judicial discretion of a judge is what is often called upon when issue of custody of children is before the court.

The age of the children, welfare generally, upbringing and the arrangement for their accommodation, the conduct of the parties to the marriage are the factors always borne in mind by the judge in the determination of who should have custody of the children. ***ODUCHE VS ODUCE (2005) LPELR 8976 (CA)***.

Guided by wisdom and reason, however considering the fact that the only child is an infant, the petitioner shall have the custody of the child.

The Respondent shall pay in full the child's school fees per term basis as assessed by the child's educational institution.

The Respondent shall provide monthly up-keep of the sum of **₦59000** monthly for the child.

The Respondent shall have unfettered access to his child during day time provided he gives petitioner prior notices either via text messaging or phone call.

Above is my judgment.

SIGNED:
HON. JUDGE
19/03/2024.

APPEARANCE:

Khoni Bobai, Esq, for the Petitioner.