

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT GUDU - ABUJA
ON WEDNESDAY THE 13TH DAY OF NOVEMBER, 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. FCT/HC/PET/306/2024

BETWEEN:

MR. OLAOLUWA ELIJAH -----PETITIONER

AND

MRS. SARAH OLUWABUNMI ELIJAH----- RESPONDENT

JUDGMENT

By a Notice of Petition dated and filed 20th March, 2024, the Petitioner claims the following Reliefs against the Respondent:

- a. A decree of dissolution of the marriage between the Petitioner and the Respondent conducted at Bishop John Falope Memorial Anglican Church, Omi Asoro, Ilesha, Osun State on the 19th December, 2015 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 shared Custody of the only child of the Marriage to the Petitioner to wit that the child always spends her holidays with the Petitioner while the Respondent takes custody on all other days.
- 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.

Upon being served with the originating court processes, the Respondent through her Learned counsel Olushola Oguntimehin, Esq. filed an answer dated 29/05/2024, wherein the Respondent is seeking for the following:

- i. A DECREE for the dissolution of this marriage on the ground that the marriage has broken down irretrievably and the Respondent cannot be expected to continuously and reasonably live with the Petitioner.
- ii. A DECREE for the dissolution of this marriage on the premise that the Petitioner deserted the Respondent for a continuous period of over one year immediately preceding the presentation of the petition.
- iii. AN ORDER granting Respondent and Petitioner joint legal custody of their only child Olamiposi Elijah in order to enable both parties partake in all decisions pertaining to her development and general well-being and both parties have agreed that the only child of the marriage always spends her holidays with the Petitioner while the Respondent takes custody on all other days.

First and foremost, it is important to state that parties filed terms of settlement, however, marriage under the Act can only be dissolved by proof that the marriage has broken down irretrievably by facts stated under **Section 15 (2) (a-h) of the Matrimonial Causes Act** and not by agreement of parties. Hence oral evidence must be adduced in a case for dissolution of marriage. The matter then proceeded to hearing solely for the dissolution of the marriage between the parties.

The Petitioner adopted his witness statement on oath wherein summarily he averred that the Petitioner and Respondent were married on December 19th, 2015, in line with the Marriage Act, and have lived together at various addresses in Abuja since 2008. That they have one child, named Olamiposi Elijah. That parties have irreconcilable issues and constant quarrels which have led to health complications, including hypertension. That despite efforts to resolve these conflicts, the Petitioner claims that the situation has worsened, resulting in a loss of affection. That both parties agree that separating is in the best interest of their mental health and the wellbeing of their child. The Respondent also adopted her witness statement on oath and averred in summary that the Respondent and the Petitioner got married on December 19th, 2015, in Ilesha, Osun State. That they have a daughter, Olamiposi Elijah, born on January 29, 2019. The Respondent disputes the

Petitioner's claims of factors responsible for the breakdown of their marriage, stating that the Petitioner has been quarrelsome, uninterested in resolving issues, and has shown no affection towards her throughout the marriage. The Respondent admits to some facts in the Petition which is that parties have agreed to go their separate ways for the sake of their mental sanity but averred that she has unsuccessfully tried to involve their families to mediate. The Respondent alleges that the Petitioner's actions have caused her distress, affected her mental and physical health, and caused her to reach a breaking point. That the child currently resides with the Respondent in a well-furnished apartment in Lagos, where the child is comfortable. The she will continue to provide for the upkeep and wellbeing of their daughter provided the Petitioner also pays part of their child's school fees and continues to send funds for the child's upkeep. The Respondent in proof of her case tendered three (3) documents in evidence which were admitted and marked as follows:

- i. Certificate of marriage No. IELG2918E dated 19/12/2015 **Exhibit A.**
- ii. Copy of appointment letter of the Respondent to Federal Fire Services dated 11/11/2013 **Exhibit B.**
- iii. Terms of settlement between parties filed 9/7/2024 **Exhibit C.**

There was no cross examination or re-examination, parties closed their case and waived their rights of filing final written address.

Having carefully considered the petition, the answer to the petition and evidence led by parties, both parties therein inter alia, urged the Court to hold that the marriage has broken down irretrievably and dissolve same. Therefore, the narrow issue is;

“Whether Parties have established the legal requirements for the grant of this petition”.

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)**.

In this case, the Petitioner seeks for a decree of dissolution of the marriage he entered into with the Respondent on the ground that it has broken down irretrievably for the reasons inter alia that the Respondent has behaved in such a way that the Petitioner cannot

reasonably be expected to live with the Respondent. An assertion which the Respondent relied on and urged the court to also dissolve the marriage between her and the Petitioner. It is trite law as provided in **Section 123 of the Evidence Act 2011** that facts admitted needs no further proof. It is held in **OWENA MASS TRANSPORTATION CO. LTD v. OKONOGBO (2018) LPELR-45221(CA)** per Ndukwe-Anyanwu JCA that: -

“...It is well settled that a fact admitted by a Defendant in his pleadings should be regarded as established and should constitute one of the agreed facts of the case such that they need not be proved for there is no issue joined”.

From the totality of the evidence adduced in this case, both parties are fed up with the marriage, and find it intolerable to live with each other. The Respondent having stated that she is not in any way contesting the dissolution of the marriage in my view is also fed up with the marriage. Both parties averred that the issues in their marriage has caused them high blood pressure and mental distress. It would not be in the interest of the parties for them to remain married. In my considered view, the evidence adduced in this case has satisfied the requirement of **the Matrimonial Causes Act, 2004, in Section 15 (1) and (2) (c)** which is as follows;

2(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;

And for that, the marriage celebrated between the parties ought to be dissolved and **IT IS ACCORDINGLY DISSOLVED.**

Parties having agreed on the welfare of the only child of the marriage in their terms of settlement and agreed that the said terms shall be incorporated by this Honourable Court into its judgment, Consequently, I hereby order as follows;

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **MR. OLAOLUWA ELIJAH** and the Respondent, **MRS. SARAH OLUWABUNMI ELIJAH** at Bishop John Falope Memorial Anglican Church, Omi Asoro, Ilesha, Osun State on the 19th of December, 2015.

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 both parties have agreed to share Custody of the only child of the Marriage to wit: that the child remains with the Respondent but shall always spend her holidays with the Petitioner.
4. That the Petitioner will be paying the sum Thirty Thousand Naira (N30,000.00) monthly for the feeding of the child while the Respondent will augment whenever the need arises.
5. That the Petitioner would occasionally buy cloths and other items for the child as the occasion demands.
6. That the petitioner shall be paying the sum of Seventy Thousand (N70,000.00) Naira for school fees of the child of the marriage per term;
7. That both parties have no claim(s) whatsoever against each other than the dissolution of the marriage between them.
8. That both parties bear their cost of litigation.
9. That both parties shall not make any further claims against each other in connection with this suit, save for the enforcement of the terms herein agreed by both parties.

Parties: Absent

Appearances: G. B. Ajibulu appearing for the Petitioner.
OlusholaOguntimehin appearing for the Respondent.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE**

13TH NOVEMBER, 2024

