

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON THURSDAY THE 1<sup>ST</sup> DAY OF APRIL, 2021.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI**  
**SUIT NO: FCT /HC/PET/187/2020**

**MR. SUNDAY MATTHEW BOBAI -----PETITIONER**

**AND**

**MRS. JANET SUNDAY BOBAI -----RESPONDENT**

**JUDGMENT**

This is Judgment in petition for a decree of dissolution of marriage filed by the Petitioner against the Respondent on 17th February, 2020 wherein he seeks for the following Orders: -

- a. A decree of dissolution of the marriage between the Petitioner and the Respondent conducted at AMAC Marriage Registry FCT Abuja on 4<sup>th</sup> October, 2013 in accordance with the provisions of 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. And for such order or further orders as this Honourable court may deem fit to make in the circumstance of this case.

The ground upon which the Petitioner seeks the dissolution of the marriage is premised on the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with Respondent.

The Petition was served on the Respondent on 02/3/2020 and on receipt of the process served on her; Respondent caused an Answer to Petition and

Cross- Petition for dissolution of marriage to be filed by her counsel. The said processes of the Respondent were filed on 14/5/20. In the said Cross-Petition, the Respondent/Cross-Petitioner also seeks the dissolution of the marriage against the Petitioner on the ground that since the marriage the Cross Respondent has committed adultery and the Cross Petitioner finds it intolerable to live with the Cross Respondent and prays for the following reliefs;

- a. A decree of dissolution of marriage between the Cross-Petitioner on the ground that the marriage has broken down irretrievably in that since the commencement of the marriage the Cross- Respondent has physically abused the Cross-Petitioner and has committed adultery, wherefore the Cross-Petitioner finds it intolerable to live with the Cross-Respondent.
- b. And for such other orders that the Honourable Court may deem fit to make in the circumstances.

Upon receipt of the Respondent/Cross-Petitioner's processes, Petitioner/Cross-Respondent filed his reply and Answer to the Cross Petition on 5/6/20.

After exchange of pleadings the case went into full blown trial. In proof of their respective cases, both the Petitioner and the Respondent/Cross-Petitioner testified and called no witness.

Petitioner testified and adopted his witness statement on oath as his evidence in this case. In his witness statement on oath Petitioner averred that the Respondent have found submission in the marriage impossible which have made the marriage unbearable to the point that the Petitioner cannot reasonably be expected to live with the Respondent. That the

Petitioner can no longer exercise control as the Head of his home any longer. That the Respondent's movements in and out of the matrimonial home without consent and permission of the Petitioner has become unbearable to the Petitioner which has become a major concern to the Petitioner. That the behaviour of the Respondent is causing health issues and unrest for the Petitioner. That as a result of the Respondents non submission in the marriage, the Petitioner feels rejected unloved and disregarded by the Respondent. That both parties have found it difficult to live in peace with each other. That consummation ceased between the parties in marriage since 2019. Petitioner gave the Respondent notice to produce the original Marriage Certificate. Petitioner/Cross-Respondent in his reply and Answer to the Cross Petition denies paragraphs in the answer to Petition and the Cross-Petition and puts the Respondent/Cross-Petitioner to the strictest proof. Under cross examination, Petitioner reiterated that Respondent has been going back and forth her matrimonial home. That Respondent would move out of the home with her property and after sometime move in again. That Respondent had finally moved out.

Respondent opened her defence and adopted her witness statement on oath. Respondent tendered the original Certificate of marriage celebrated on 4/10/2013 between the Petitioner and the Respondent at the Abuja Municipal Area Council Registry with No. 4150 and a letter dated 9/6/17. Both were admitted in evidence and marked thus; a. Original Certificate of Marriage No. 4150 dated 4<sup>th</sup> October, 2013 between parties as Exhibit "A" and letter from the firm of Emma Okunola & Associates dated 9/06/2017 addressed to the Commissioner of Police Adamawa state

command as Exhibit "B". Respondent averred that she has been very submissive to the Petitioner as his wife throughout the marriage. That she gave the Petitioner his due respect as the head of house. That she never left the matrimonial home without the knowledge and permission of the Petitioner. That she never caused the Petitioner any unrest nor health issues but rather it was the Petitioner that caused her severe unrest as a result of his physical and verbal abuse towards her shortly after their marriage. That the Petitioner frustrated all efforts to reconcile them by family members. And on the Cross-Petition, the Cross-Petitioner averred that the Cross-Respondent warned her never to call his cell phone but rather to send text messages whenever she needed to communicate with him. That he has been very uncaring and physically abusive towards her. That of his own volition he stopped sleeping in the same bedroom with her, that all appeal to return him to their matrimonial bedroom failed. That the Cross-Respondent often beats her up, calls her a barren woman at the slightest misunderstanding. That she has been informed that the Cross-Respondent is having affairs with other women but she treated it as a mere rumor. That sometime in August 2019 when the Cross-Respondent traveled to Kaduna while doing house chores, she stumbled on a copy of a police witness statement dated 20<sup>th</sup> June 2017 made by the Cross-Respondent and a letter written by the law firm of Okunola and Associates on behalf of the Cross-Respondent dated 9<sup>th</sup> June 2017. The letter was addressed to the Nigerian Police Force at the Adamawa state command, wherein Petitioner lodged a complaint against a lady by name Mariam Usman Wazinda and her foster father who lives at Hospital Road, Opposite Remand Home Jimeta Yola, Adamawa state. The

allegation that could be deduced from the letter and the Police statement are;

- a. “The said Mariam Usman Wazinda was in an amorous relationship with the Cross-Respondent and became pregnant for him.
- b. The Cross-Respondent commenced customary marriage rites over the said Mariam Usman Wazinda. However, upon the claims that the pregnancy resulted in a still-birth and the inability of the said Mariam Usman Wazinda to show where the fetus was buried and the hospital wherein it occurred led to the breakdown of that relationship, with the Cross-Petitioner requesting for the return of the Honda Accord 1998 model car he had earlier given to the said lady”.

That the above content confirmed that the Cross-Respondent committed adultery in the marriage, a fact which she finds intolerable to live with. That when confronted with the letter and Police statement it led to a heated argument which occasioned her leaving the house to a friend’s house to avoid been assaulted by the Cross-Respondent. That on her return the next day the Cross-Respondent refused her entry into the house, whereupon she called her brother to intervene but the Cross-Respondent refused to be pacified and threaten them. That it forced her to lodge a report at the Police Station and by the intervention of the Police was able to gain access to some of her personal effects which she took out of the house to use for work while effort was being put to resolve the main issues. That she finds it intolerable to remain married to the Cross-Respondent who has committed adultery and has shown intense disdain towards her for most part of their marriage. That she seeks the order of this Honourable Court for a Decree of Dissolution of marriage to the Cross

Respondent in the best interest of her physical, mental and emotional health. Under cross examination Respondent maintained her stance that Petitioner had never been caring since they got married and that contrary to Petitioner's claim she had actually gotten his permission to travel to Kaduna.

At the close of parties' case the court adjourned the case for filing and adoption of final written addresses which was adopted on the 28th day of January 2021.

The Respondent/Cross Petitioner's final written address is dated the 7<sup>th</sup> day of December, 2020 and filed on the 8<sup>th</sup> day of December, 2020. Counsel formulated a sole issue for the Honourable Court's determination to wit "whether from the totality of oral and documentary evidence adduced in this suit, the marriage has broken down irretrievably". Summarily, learned counsel submitted that the Respondent has adduced sufficient evidence to be entitled to the relief sought as some of the aforementioned grounds have found expression in the facts and evidence led before the court. Counsel further submitted that the totality of the actions of the Petitioner towards the Respondent amounts to cruelty which is capable of putting any reasonable mind under unwholesome pressure and fear of hurt. Counsel also submitted it is trite law that facts not expressly denied are deemed admitted. That there was nowhere, whether by pleading, oral or documentary evidence whereby the Petitioner challenged the evidence of the Respondent touching on acts of adultery. In conclusion counsel submitted that the Respondent/Cross Petitioner has proved her case and urged the court to hold that the

marriage between the Petitioner and Respondent has broken down irretrievably. Counsel relied on the following authorities;

- a. **Sections 15 & 16 of the Matrimonial Causes Act**
- b. **BIBILARI V. BIBILARI (2011) 13 NWLR (PT. 1264)**
- c. **DAMULAK V. DAMULAK (2004) 8 NWLR (PT. 874) 151**
- d. **ALABI V. ALABI (2007) 9 NWLR (PT. 1039) 297**
- e. **OKIKE V.L.P.D.C (2005) 15 NWLR (PT. 949) 7 @ 471**

The Petitioner upon receipt of said Respondent/Cross Petitioner's final written address filed his own address dated 14<sup>th</sup> day of December 2020 and filed on the same date. The address was duly adopted as his oral argument in this suit. Learned counsel formulated four issues for determination to wit;

- i. Whether from the evidence adduced by the Petitioner, the marriage between the parties could be held to have broken down irretrievably?
- ii. Whether the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent?
- iii. Whether the Respondent has been so intolerable that the Petitioner cannot reasonably be expected to live with the Respondent?
- iv. Whether the Petitioner has met the required standard of proof in proving his petition?

On issues 1 and 2 learned counsel submitted that the celebration and dissolution of statutory marriage such as the instant marriage in Nigeria is governed solely by the Matrimonial Causes Act LFN 1990. Counsel submitted that that it is clear from the evidence of the Petitioner that the Respondent indeed behaved in a manner that is intolerable and such that the Petitioner cannot reasonably be expected to bear same and continue to live with the Respondent. Counsel also submitted that evidence

unchallenged or uncontradicted whether contained in an affidavit or as oral testimony on oath affords the court credible material to rely on. On the 3<sup>rd</sup> and 4<sup>th</sup> issues, counsel answered in the affirmative and submitted that the evidence of the Petitioner before the court had shown that the Respondent is not only not submissive to the Petitioner but goes out of their matrimonial home at will without prior consent from the Petitioner. Counsel further submitted that it is pertinent to note that the Respondent is not contesting the dissolution of the marriage as the Respondent is a cross petitioner who is also seeking the dissolution of the same marriage. Counsel also submitted that in a case such as this where the parties both desire divorce, the court is bound to grant it. He urged the court to give effect to the wishes of the parties more so that the Petitioner has sufficiently proved that the conduct of the Respondent is such that the Petitioner cannot reasonably be expected to live with. Counsel also urged the court to discountenance the arguments of the Respondent as it's misconceived. Counsel relied on the following;

- a. Section 15 (1) & (2) of the Matrimonial Causes Act
- b. **EKEREBE V. EKEREBE (1993) 3 NWLR (PT. 596) 514 CA**
- c. **O'NEIL V. O'NEIL (1975) 1 WLR 1118**
- d. **ASH V. ASH (1972) 2 WLR 347**
- e. **CHABASAYA V. ANWASI (2010) 25 WRN 30**
- f. **NANA V. NANA (2006) 3 NWLR (PT. 966) 1**
- g. **BIBILARI V. BIBILARI (2011) LPELR-4443 (CA)**
- h. **IBRAHIM V. IBRAHIM (2007) 1 NWLR (PT. 1015) 383**
- i. **OMOTUNDE V. OMOTUNDE (2001) NWLR (PT 718) 252**

Both written address of counsel are to the effect that parties have found it intolerable to live with each other.

I have carefully gone through the processes filed by the Petitioner and Respondent/Cross Petitioner so also their respective counsel final written addresses filed in this case. From the evidence before me, the issue for determination is:

“Whether parties are entitled to a decree of dissolution of their Marriage”.

Petitioner in his written statement on oath and the Respondent in her statement on oath both alleged to the fact that they both find it intolerable to live with one another.

With respect to the relief of dissolution of marriage the law is fairly settled that no marriage will be dissolved merely because the parties have agreed that it be dissolved as marriage is a very important institution and it is the foundation of a stable society. The policy of law therefore is to preserve the institution of marriage. That is why marriages will not be dissolved on agreement of the parties to it. A Decree for the dissolution of marriage would therefore only be granted if the Petitioner has proved that the marriage had broken down irretrievably and that the Petitioner finds it intolerable to live with the Respondent. It is provided in **Section 15 (1) of the Matrimonial Causes Act, that a court hearing a petition for the dissolution of a marriage shall grant the relief if the marriage has broken down irretrievably.** **Sub-section (2) of Section 15** sets out facts upon which the court could hold that a marriage has broken down irretrievably. It states: "The court hearing a petition for a decree of dissolution of 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 Act provides that 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 adduced evidence on the ground that the marriage between the Petitioner and the Respondent has broken down irretrievably. While the Respondent/Cross-Petitioner adduced evidence in support of the Cross-Petition that since the marriage the Cross-Respondent has committed adultery and the Cross-Petitioner finds it intolerable to live with the Cross-Respondent. However, it is trite that the sole ground for instituting an action for dissolution of marriage in Nigeria is that the marriage has broken down irretrievably. This is one and only ground to dissolve a marriage in Nigeria. **Section 15 (2) (a-h) and Section 16 of the Matrimonial Causes Act** states the particulars or facts that the Petitioner must prove in order to sustain the sole ground of the marriage breaking down irretrievably. Hence the Petitioner must successfully satisfy the Court of any one or more of the facts stated in **Section 15 (2) (a-h) of the Matrimonial Causes Act**. Once any of these facts is successfully proved by the Petitioner then the Court can grant a decree nisi.

Although the Cross-Petitioner failed to file for dissolution of Marriage on the sole ground as stipulated in Section 15 (2) of the Act as reproduced above, however, while the courts have a duty to follow its rules, this cannot or should not be the case where grave injustice will be done to parties. The rules are designed to assist the parties in putting forward their case before the court. They are not intended to deny parties of the opportunity of presenting their case, thereby resulting in injustice. See

**SAVANNAH BANK OF NIG PLC V. JATAU KYENTU (1998) 2 NWLR (Pt. 536) @ 59 para B-C Per Edozie JCA (as he then was).** In essence, irregularity concerning procedure will not vitiate the suit unless miscarriage of justice will be occasioned hence it ought not vitiate the proceedings as procedure is to guide orderly and systematic presentation of a cause.

Taking the Cross-Petition first, the Cross-Petitioner has relied on the facts that since the marriage the Respondent has committed adultery and the petitioner finds it intolerable to live with the Respondent. The Cross Petitioner in adducing evidence in support of the allegation of adultery on the Cross-Respondent tendered Exhibit B which is a letter from the firm of Emma Okunola & Associates dated 9/06/2017 signed by Emma Okunola Esq. and addressed to the Commissioner of Police Adamawa state command titled;

“COMPLAINT OF CRIMINAL CONSPIRACY, CRIMINAL BREACH OF TRUST, CHEATING AND CONCEALMENT OF BIRTH AGAINST MARYAM USMAN WAZINDA AND HER FOSTER FATHER.

REQUEST FOR ITS TRANSFER FROM KAREWA POLICE DIVISION, JIMETA YOLA TO STATE CID YOLA FOR PROPER INVESTIGATION”.

It is trite law that adultery as a matrimonial wrong must be specifically pleaded and clearly proved. In **Alabi V. Alabi (2007) LPELR-8203 (CA)** it was held that apart from direct evidence which is very rare, adultery is usually proved by circumstantial evidence. Petitioner in this case did not controvert nor challenge Respondent’s accusation of adultery on his part as the fact that Petitioner committed adultery was not debunked under

cross examination. The law in such a situation enjoins the court to hold that Petitioner by not challenging the issue of adultery has admitted same. It is trite that facts admitted needs no further proof as held in **BARAU & ORS V. CONSOLIDATED TIN MINES LTD & ORS (2019) LPELR-46806 (CA)** and provided for in **Section 123 of the Evidence Act 2011**. It is against this backdrop of the above that I hold that Respondent has successfully proved her grounds that Petitioner committed adultery in the course of their marriage. Also the fact that Petitioner was physically abusive towards Respondent all through their marriage was unchallenged by Petitioner.

An overview of the Petition shows that the Petitioner seeks for a decree of dissolution of the marriage he contracted with the Respondent on the ground that the marriage between the Petitioner and the Respondent has broken down irretrievably. Relying on the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with and in his witness statement on oath averred that the Respondent has found submission in the marriage impossible, moves in and out of the matrimonial home without consent and permission of the Petitioner, that the Petitioner feels rejected unloved and disregarded by the Respondent and that both parties have found it difficult to live in peace with each other and consummation in their marriage had ceased since 2019. The Respondent in answer to the Petition denies the Petitioner's averments but however prays the Court for a decree of dissolution of her marriage with the Petitioner as she finds it intolerable to live with the Petitioner. They both complained of each other's character which has affected them both physically, mentally and emotionally in a

negative way. Respondent particularly proved that the Petitioner has not only committed adultery but has been physically abusive all through their marriage.

The Petitioner has averred that the Respondent has behaved in such a way that Petitioner cannot reasonably be expected to live with. And the Respondent averred that she finds it intolerable to live with the Respondent. Hence parties are in agreement that they cannot continue in the marriage thereby praying the Court for the dissolution of their marriage. In this Petition, there is the unchallenged and uncontroverted evidence of the Petitioner in paragraph 14 of his witness statement on oath that consummation of their marriage ceased since 2019, fact which the Respondent did not deny. The Respondent in paragraph 6 and 7 of the Respondent's witness statement on oath "particulars of grounds" averred that the Cross Respondent of his own volition stopped sleeping in the same bedroom with her and started sleeping in the living room and also moved her belongings to the guest room and forbids her from going into their matrimonial bedroom. It is the law that refusal to consummate a marriage and adultery are cogent grounds to prove that marriage has broken down irretrievably. From the totality of the evidence before this Hon. Court, it is evident that parties can no longer tolerate living with each other and it would not be in the interest of the parties for them to remain married.

On the whole it is my considered view, that in so far as none of the parties to this petition is contesting the grant of the order of dissolution of their marriage, this Honourable Court has no more to do than to grant the relief as sought by the parties. Consequently, I therefore hold that the marriage between the Petitioner and Respondent has broken down

irretrievably. I hereby dissolve the marriage and make the following orders:-

i I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, MR. SUNDAY MATTHEW BOBAI, and the Respondent, MRS. JANET SUNDAY BOBAI at the Marriage Registry, Abuja Municipal Area Council (AMAC) on the 4<sup>th</sup> of October, 2013.

ii. 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.

**Parties:** Absent

**Appearances:** Onome Ikweme appearing for the Respondent. Petitioner not represented in Court.

**HON. JUSTICE M. OSHO-ADEBIYI**  
**JUDGE**  
**1<sup>ST</sup> APRIL, 2021**