

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA- ABUJA**

**DATED THIS THURSDAY 28<sup>TH</sup> DAY OF MARCH, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFIA**

**SUIT NO: FCT/HC/PET/306/23**

**BETWEEN:**

**MRS ANGELA STEPHEN .....PETITIONER**

**AND**

**MR. STEPHEN EZE.....RESPONDENT**

**JUDGMENT**

This judgment is on a petition dated the 24<sup>th</sup> March, 2023 and filed on the same date.

The reliefs sought by the petitioner against the Respondent before this Honourable court are as follows:

**A declaration of this honourable court dissolving the marriage between the petitioner and the Respondent which, was solemnised on the 19<sup>th</sup> July, 2014 at the saintMaryCatholic Church, Suleja Niger State.**

The Petitioner filed alongside with a verifying affidavit in support of petition of 5 paragraphs deposed to by Mrs Angela Stephen a business woman of Kabusa Village Abuja, the petitioner's Affidavit evidence of Mrs Angela Stephen of 11 paragraph, certificate relating to reconciliation deposed to by one SalisuOguncheUsman.Esq of R. R. Adejo Andrew & Co.

The Respondent on receipt of the Petitioner's Notice of petition filed an answer and cross-petition of 11 paragraphs where he seeks the following orders

**An order dismissing the petition**

**A decree of dissolution against the petitioner on the ground that the marriage has broken-down irretrievably, the parties having lived apart for a continuous period of more than three years.**

Alongside with a verifying affidavit deposed to by Stephen Eze of No 2 Sawhy Close Off Nouakachott street Wuse Zone 1 FCT Abuja of 6 paragraphs dated the 30<sup>th</sup> May, 2023, Certificate Relating to reconciliation deposed to by one Hillary Chinedu Ezeude Esq dated the 26<sup>th</sup> May, 2023 and the Respondent's witness Statement on oath of 14 paragraphs dated the 30<sup>th</sup> day of May 2023.

This matter was mentioned on the 5<sup>th</sup> day of July, 2023 wherein: One O. U. Salifu for the petitioner and one H. C. Ezeude with H. Bukar appeared for the Respondent.

The petitioner's counsel on this date informed this court to deem the matter mentioned as the Respondent has filed in it's crosspetition and is in court. The matter was then deemed mentioned and adjourned to 24-10-2023 for hearing.

On the 30<sup>th</sup> day of November 2023 one O. U. Salifu appeared for the petitioner while one S, E, Aturi appeared for the Respondent. On this date PW1 gave evidence. This court summarises the evidence of PW1 thus:

PW1 having affirmed stated in his evidence, that she is a Christian by name Stephen Angela, a class teacher at Doveland International School at Kubwa-Karbana-Abuja lives at Otorve Closs Kabana Estate, Abuja.

That she made a statement on oath before this court that said statement which she identified through her passport photograph name and signature the said statement was adopted as her oral statement before this court.

That in paragraph 3 of her statement she made mention of marriage certificate, the marriage certificate contains her name and her husband's and it is signed by the priest.

The marriage certificate between Stephen Eze and Angela Stephen conducted at St. Mary's Catholic Church Suleja Dated 19-07-2014 was tendered and admitted in

evidence as exhibit A. He prayed the court to annul the marriage between her and the Respondent.

Under cross-examination

Q. you and the respondent were married from 2014-2019

A yes

Q the marriage did not produce any child?

A yes

Q in July, 2019 you parked out of the house

A I did not pack out, he sent me out, it was like the 4<sup>th</sup> time he was doing that in the same year and that before then he usually speaks to seek for help from the church priest. That on the last time her mummy tried to reconcile them but nothing was done. After several attempts to settle to no avail. My parents then told me to pack to give him some space.

Q did you remember the Respondent buying you a phone in the year 2019?

A No he has never bought me any gift throughout the five years spent with him and i have never used an iPhone.

Q there was a time you had a misunderstanding and you took a knife to stab the Respondent?

A there was never a time i did so

Q it was through one Kenneth you knew the Respondent

A it was not true but he knew me when we were neighbors that was the reason, even why he got married to me.

Q After the Respondent reported the incident that you took a knife that you wanted to stab the Respondent you took your bag and packed out that night?

A I did not move out of the house, because I wanted to move earlier on. Even though the marriage has gone almost to a point of No repair as it was then

but could to avoid the neighbor's interference but when he insisted, there was a lot of threat.

This to the Sunday evening when he returned back from the church on issue about N10,000.00she sent to her younger brother came up and had a little back and forth in the car before they got home.

Had a lunch, he was trying to bring back the issue but I tried not to engage him, after that I went to bed, and he came later. That before God and Man she had developed at that point a hatred for herself and for him for life and had no desire for sexual pleasure. But when he demanded it, it was her will to oblige him even when she didn't derive any pleasure in it. he came in as usual, without any form of play or connection, but was inside of me from the back and she endured him until he was done and when he was done he felt asleep and she felt okay, he will be fine when he wakes up.

And a hour later he wakes up again with an insult as she was not happy when he was making love. The person who said she should pack and leave then called her mummy.

Q one Mr Francis Ozoagwuan evangelist called both of you to reconcile but you told him that you are no longer interested in the marriage?

A it was one of the incidents before she went out of the house. That he called to reconcile but she didn't say no. but followed him to his house.

Q in 2017 you smashed the windscreen of the car?

A No I didn't, that happened when he had a fight with the neighbour.

Q when you were leaving the house you packed some items that you bought with your money?

A I didn't, but left with my little bag and my laptop bag.

Q You are a graduate with B.sc in Economic?

A yes

Q the Respondent stopped at secondary school?

A yes

Q since 2019 you left the marriage, is 4 years and you have lived apart without marriage affairs

A Yes

Q when you were in marriage you were keeping extra-marital affairs sending nude pictures to your male partners and he seized your phone?

A that the respondent is her first ever relationship and she has never had any other. That it is true she had nude pictures for herself but never insane to send such pictures to social media.

Q that part of the reason why you don't have to stay in the marriage is because he stopped at secondary school and you are an undergraduate and you are not proud of having an undergraduate as a husband?

A the academic status has never and absolutely nothing to do with our relationship.

No-re-examination.

The petitioner then closed it's case.

DW1, one Stephen Eze, an artisan of Aluminums Fabrication lives at Kabusa Village of FCT, Abuja knows the petitioner who is his wife.

That on the 30-05-2023 he swore to a witness statement on oath and can recognize same through his passport photograph and his signature. That he wants the court to use the said witness statement on oath as his oral testimony in this case, and wants this court to grant his petition and answer to cross-petition filed in this case.

Under cross-examination by the petitioner's counsel.

Q tell the court which year you married the petitioner?

A we did our traditional marriage in December, 28<sup>th</sup> 2013 and the church wedding in 2014, July 19<sup>th</sup>,

Q how many years did you people live together.

A years

Q when did she leave your house?

A she left in June, 19<sup>th</sup> 2019.

Q that you people have lived separately for about 4 years.

A yes

Q you want your wife back no

No re-examination

Now to the oral address by the Respondent's counsel

That by a petition for dissolution of marriage brought by the petitioner of marriage brought by the petitioner, in this instant suit dated the 24<sup>th</sup> March, 2023, the Petitioner is seeking for the dissolution of marriage entered between her and the Respondent Mr Stephen Eze. And the grounds upon which the petitioner's action is predicated are as follows:

Both the petitioner and the Respondent have during the pendency of the marriage lived in a manner that it can be conclusively said that the marriage has broken down irretrievably.

That the parties have lived apart for a period of 3 years and exceeding before the institution of this action.

In response to the said petition, brought by the petitioner, the Respondent filed an answer to the petition, as well as to the cross-petition and is also seeking for the dissolution of the said marriage.

The petitioner answered and a cross-petition was filed on the 20-5-2023 raised issues such as grounds of seeking for dissolution of marriage.

That the marriage has broken down irretrievably.

That parties have lived apart since 2019 till petition.

On this it is his submission that by paragraph 8.0 (e)(f) it is the facts stated therein that the parties have lived apart for about 3 years and that the marriage has broken down irretrievably as a result of the separation of the parties.

That there is also a concurrent of facts as stated in the petition. Facts stated in paragraph 7 of the Respondent answer/cross petition to wit:

The Respondent petitioned the court for decree of dissolution against the petitioner on the grounds that parties to the marriage have lived apart for a continuous period of at least three years and that the marriage has broken down irretrievably.

It is their submission that he stated two accounts of the petitioner and the Respondent made out in their processes filed before this court which shows their concurrence in admitting that the marriage has broken down irretrievably. The Facts stated by them qualifies as an admission. Hereferred the court to section 22 of the evidence Act 2011 and urged this court to hold that both the petitioner and the Respondent have admitted that the marriage has broken down irretrievably.

Furthermore, that it is a ground for the dissolution of marriage under the M. C. Act section 15 (1).

Submits that irretrievable breakdown of marriage is an established ground for dissolution of marriage.

Reference also to section 15(2)(f).that reading the provision in context means that the circumstances in this petition is one in which the court will deem that the marriage has broken down irretrievably in which this court will order the dissolution of marriage.

And therefore urge this court to grant the prayers of the Respondent's cross/petition in this matter and order the dissolution of marriage.

On the side of the petitioner counsel address adopted the submission of the counsel to the Respondent/Cross petitioner in urging the court to dissolve the marriage between the parties.

Furthermore,he urged the court to take judicial notice of both the petition and cross petition before the court andalso the evidence of PW1 and DW1 which all points to one factand that is the marriage has broken down irretrievably. Also the court should be guided by the provisions of section 15(1),(2) & (8) of the M.C. Act which both supports the fact that the part played by the parties are sufficient enough to persuade the court that the marriage has broken down.

In conclusion of the concurrence of both parties urged the court to hold that the marriage has broken down irretrievably and accordingly should be dissolved.

I have carefully gone through the (petition) motion of petition and the petition for decree of dissolution of marriage; the factual grounds record upon by the petitioner as constituting the grounds of irretrievable breakdown of the marriage especially grounds E and F, stated below:

E- That the parties have been separated for over three years and have lived apart without any form of matrimonial relationship.

F- that the marriage has broken down irretrievably as a result of the separation of the parties and other grounds,

The reliefs sought by the petitioner against the Respondent before this court: i.e.

A decree of this Honourable court dissolving the marriage between the petitioner and the Respondent which are solemnized on the 19<sup>th</sup> July, 2014 at the Saint Mary Catholic Church, Suleja Niger State.

The verifying affidavit in support of petition of 5 paragraphs deposed to by Mrs Stephen Angela a business woman of Kabusa Village Abuja the petitioner affidavit evidence of Mrs Angela Stephen of 11 paragraph where in the affidavit evidence especially paragraph 3, 4, 5, 6, 7, 8, & 9 reproduce below:

#### Paragraph 3

That I as a spinster was lawfully married to the Respondent then a Bachelor at the Registry of the Saint Mary Catholic Church on the 19<sup>th</sup> July, 2014 and a certificate of marriage evidence the said marriage as form E was issued to the parties. The original copy of the said certificate is with the Respondent who is hereby placed on notice to prove same.

A copy of the marriage certificate issued by the church is hereby attached

#### Paragraph 4

That immediately after the celebration of cohabitation myself and the Respondent started having misunderstanding based on insecurity of the Respondent and intolerance of himself and relations as the Respondent made all efforts to separate

me from families and friends and this caused serious strain on our relationship leading to breakdown of communication.

#### Paragraph 5

That after unsuccessful attempts to isolate me the Respondent started distrusting my fidelity, accusing me of extra marital affairs and subjecting me to emotional verbal and physical torture and blackmail.

#### Paragraph 6

That myself and family members made frantic efforts to have the couple reconciled but that the Respondent became more hardened by the day, subjecting me to greater hardship, Hatred, disdain and neglect by refusing to provide the basic and necessities of life for me thereby exposing me to shame lacked opprobrium.

#### Paragraph 7

That I was forced to leave the matrimonial home at times in 2019 without any form of provision or maintenance and have lived separate from the Respondent between 2019 and the date of the presentation of the petition.

#### Paragraph 8

That myself and the Respondent have been separated for over three years and have lived apart without any form of matrimonial relationship.

#### Paragraph 9

That the marriage between me and the Respondent has broken down irretrievable as a result of our separation and other grounds stated above,

And the certificate relating to reconciliation dated the 24/3/2023.

So also the answer and cross petition of the Respondent admit paragraph 2, 3, 5, 6, 7, of the petitioner's pleadings and denied paragraph 8.0 (A-D) and admits paragraph 8.0 (E-F) of the petitioner's pleadings and therefore asked the court to dismiss the petition of the petitioner, the verifying affidavit of one Stephen Eze dated the 26-May, 2023 of 6 paragraphs, certificate relating to reconciliation, the

Respondent's witness statement on oath especially paragraph 4, 5, 6, 7, 8, 9, 10, & 11 reproduce below:

Paragraph 4

That the petitioner deserted the matrimonial home for a continuous period of more than 3 years since 2019 and since then, we have been living apart

Paragraph 5

That the petitioner has denied me my conjugal marital rights as couple since we were married

Paragraph 6

That since the marriage I have suffered emotional, verbal, physical torture, abuse and black mail from the petitioner.

That it was the petitioner that voluntarily left the matrimonial home since 2019.

That the petitioner has refused to respect me in the marriage and has even threatened to kill me on various occasions.

Paragraph 9 that all efforts made to solve the issues we were having during the time we were living together proved abortive. That I called our priest and family members to broker peace between the petitioner and I, yet the petitioner said that she is not interested in the marriage anymore.

Paragraph 10 that I have not condoned or convinced at any of the grounds specified in this answer/cross petitioner and that I am not guilty of collusion in presenting this answer.

Paragraph 11 that the facts contained in paragraph 4-7 of the petitioner's pleadings are facts.

I have carefully gone through the notice of petition for the Decree of dissolution of marriage the reliefs sought therein by the petitioner which said relief centered on a decree of this Honourable court dissolving the marriage between the petitioner and the Respondent which was solemnized on the 19<sup>th</sup> Day of July, 2014 at the saint Mary Catholic Church Suleja, Niger State.

The verifying affidavit in support of the petition and the petitioner's affidavit, evidence of Mrs Angela Stephen, the certificate relating to reconciliation dated the 24<sup>th</sup> Day of March, 2023 and the annexure attached thereto being the certificate of marriage.

Also gone through the Respondent Answer and Cross-Petition and order sought thereto which includes.

An order dismissing the petition

A decree of dissolution against the petitioner on the ground that the marriage has broken-down irretrievably, the parties having lived apart for a continuous period of more than three years.

The verifying affidavit of Stephen Eze dated the 30<sup>th</sup> May, 2023 the certificate relating to Reconciliation dated the 26<sup>th</sup> May, 2023 and the Respondent's witness statement on oath and the petitioner and the cross-petitioner counsel respectively.

A careful perusal of the reliefs sought reveals that reliefs one of the petitioner's reliefs and the reliefs 2 of the cross-petitioner Respondent all seeks for the dissolution of marriage as such the reliefs will be taken as one while the second relief of the cross-petitioner Respondent seeks for an order dismissing the petition.

I will first and foremost take the first relief that seeks an order dismissing the petition. On this relief that seeks an order dismissing the petition. On this I wish to state that, the main reason that a court of law will dismiss a petition for dissolving a marriage will be that the court lacks jurisdiction, failure to serve proper notice or procedural errors. The above reasons which are not the case in the instant suit. Hence the order sought to dismiss this petition is not availing.

On the second relief being a decree of dissolution of marriage on the ground that the marriage has broken down irretrievable, the parties having lived apart for a continuous period of more than three years in this three both the petitioner and the Respondent in there respective affidavit have agreed that the marriage has indeed been broken down irretrievable.

In divorce proceedings, the petitioner must prove one of the facts contained in section 15 (2)(a)-(h) of the matrimonial causes Act before he can succeed and where the petitioner fails to prove that the petition for the dissolution of the

marriage will be dismissed notwithstanding the fact that the divorce is desired by both parties. See AkinbuwaAkinbuwa (1998) NWLR (Pt. 559) 661. in the instant case, petitioner who is alleging that the Respondent has behaved in such a way that he cannot reasonably be expected to live with the Respondent unless, the petitioner satisfied this court on both of these matters this court will refuse to hold that the marriage has broken down irretrievably. Here two sets of facts call for proof under section 15 (2)(c) of the Act. They are

1. The sickening and detestable behavior of the Respondent
2. That the Petitioner finds it intolerable to live with the Respondent.

These two facts which are deduced from section 15(2) (c) of the Act are bearable and independent. The petitioner must prove the detestable act or such condemnable Act or conduct that the Respondent finds intolerable and then proceed to prove that he itintolerable to live with the Respondent see Damulak V Damulak (2004) 8 NWLR (PT.874) 151.

ON THIS PARAGRAPH 8.0 (D) provision this,

“that the petitioner was forced to leave the, matrimonial home sometimes in 2019 without any form of provisions or maintenance and has so lived between 2019 and the date of the presentation of the petition.

Reasons given are stated as follows:

That immediately based on insecurity of the Respondent and intolerance of visitors and relation of the Respondent made the efforts to separate the petitioner from families and friends and this caused a serious strain on their relationship leading to a breakdown of communication. That after unsuccessful attempts to isolate the petitioner, the Respondent started discussing her fidelity, accusing her of extra-marital affairs and subjecting to emotional verbal and physical torture and blackmail that the petitioner and family members made frantic efforts to have the couple reconcile but that the Respondent became more hardened by the day, subjecting the petitioner to grave hardship hatred, disdain, neglect by refusing to provide the basic and necessities of life for her thereby exposing her to shame,

lack and opprobrium. By this the petitioner was forced to leave the matrimonial home sometimes in 2019 without any form of provision or maintenance.

From the above, the petitioner leaving the matrimonial home under such circumstance can only be best described as constructive desertion. It is constructive discretion in the sense that it was the conduct of the Respondent that compelled the petitioner to abandon the matrimonial home. Section 18 of the MCA defines constructive desertion as

A married person whose conduct constitutes just cause or excuse for the other party to the marriage to live separately or apart, and occasions that other party to the marriage to live separately apart, shall be claimed to have willfully deserted that other party without just cause or excuse, notwithstanding that, that person may not in fact have intended to conduct to occasion that other party to live separately, or apart. A proper construction of the provision with the evidence abound from the record of this court, clearly established that it was the petitioner that was in desertion.

From the above, parties have agreed that the marriage be dissolved meaning that the marriage has broken down irretrievably.

In view of the foregoing, I shall grant the reliefs sought by the parties, to say that the marriage has broken down irretrievably, hence dissolved. The reliefs sought therein is hereby granted as prayed with an order of this court dissolving the marriage between the petitioner and the Respondent celebrated at the Registry, of saint Mary Catholic Church Suleja, Niger State on the 19<sup>th</sup> July, 2014.

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**Hon. Justice A. Y. Shafa**

**Appearance:**

1. O.O. Salifu for the Respondent

2. H. C. EzeudeEsq with I. C. EzeodeEsq for the Petitioner.