

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 28GUDU - ABUJA
DELIVERED ON THURSDAY THE 1ST DAY OF APRIL 2021
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE.R. OSHO-ADEBIYI
SUIT NO.FCT/HC/PET/362/2020

BETWEEN:

SUNDAY UCHEENA-----PETITIONER

AND

AMARACHI SANDRA UCHEENA-----RESPONDENT

JUDGMENT

By a notice of Petition filed on the 22nd day of July 2020, the Petitioner filed this suit against the Respondent seeking the following reliefs;

1. A Decree of Dissolution of the Marriage between the Petitioner and the Respondent.
2. And for such further order or orders as the Honourable Court. May deem fit to make in the circumstances.

The grounds upon which the Petitioner is seeking for the dissolution of the marriage is that the marriage between parties has broken down irretrievably in that the Respondent has lived apart from the Petitioner for a continuous period of three (3) years preceding the presentation of this Petition; that the Respondent has deserted the Petitioner for a continuous period of three years preceding the presentation of this Petition and that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

The Petitioner filed his accompanying documents and his written statement on oath, which Petitioner adopted as his evidence in proof of his case. From the evidence of the Petitioner, it is the case of the Petitioner that Petitioner and the Respondent got married on the 29th of November 2013 and that the Petitioner has consistently been taking care of the Respondent and was convinced by the Respondent to send her to the United Kingdom for her masters in 2015. That the Petitioner visited the Respondent on two different occasions in the United Kingdom in course of her studies and the Respondent visited the Petitioner in Nigeria in 2017 for the last time and thereafter cut off all channels of communication upon return to the UK, a month after her visit to Nigeria. That all efforts made by the Petitioner to convince the Respondent to come back to Nigeria after her studies failed as the Respondent has shown zero interest in returning to Nigeria. That the Respondent deserted the Petitioner since May 2017 and parties have lived apart since 2017 till date. Petitioner tendered the marriage certificate dated 29/11/2013 which the Court admitted into evidence as Exhibit A1.

At the close of the Petitioner's case, the Respondent was called upon to cross-examine the Petitioner. The Respondent who was represented by her counsel informed the Court that the Respondent does not intend to contest the Petition and the Court adjourned the case for final Court address.

The Petitioner's Counsel filed his final written address and raised two issues for determination as follows;

- a. Whether the Petitioner successfully proved his case to show that their marriage has irretrievably broken down hence entitling the dissolution of the marriage between the Petitioner and the Respondent?
- b. Whether the Petitioner has made out a case entitling him to the reliefs sought?

Summarizing Counsel's address, the Petitioner's Counsel arguing both issues simultaneously, submitted that the Petitioner has by unchallenged and uncontroverted evidence, shown that the marriage between the parties has broken down irretrievably, the Respondent having deserted the Petitioner; parties having lived apart for a continuous period of three years and that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. Counsel urged the Court to grant the reliefs sought as the Petitioner has by uncontradicted evidence, discharged the burden of proof to be entitled to be relief sought.

Although Respondent was legally represented, however, Respondent chose not to file a written address nor defend this case.

I have examined the processes filed by the Petitioner together with the evidence adduced and the written address filed by Petitioner's Counsel. The issue to be resolved is "**whether the Petitioner has proved his case to be entitled to the relief sought**".

In this case, the Respondent was served with the Petition along with other processes in this suit. The Respondent who was represented by Counsel failed to file a response to the Petition. Instead, Counsel to the Respondent informed the Court of the Respondent's intention not to

contest the Petition. The principle of law is that, where a party served with the Court processes, refuses to file a response or come to Court to defend the suit, such a party cannot be heard to complain that he was deprived the right of fair hearing. In this case, the petitioner's depositions are without reply from the Respondent. The evidence of the Petitioner is therefore not challenged or contradicted by the Respondent. The effect is that the evidence of the Petitioner will be taken as accepted or established. See the case of OLOFU v. ITODO(2010) LPELR-2585(SC)

The Petitioner in this case is seeking for an order dissolving the marriage celebrated between the Petitioner and the Respondent and the law is fairly settled that no marriage will be dissolved merely because the parties have agreed that it be dissolved. The policy of law therefore is to preserve the institution of marriage hence 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 has broken down irretrievably. See Section 15 of the Matrimonial Causes Act and the case of DAMULAK VS. DAMULAK (2008) 8 NWLR (PT. 874) P. 651 and OLABIWONU VS. OLABIWONU (2014) LPELR – 24065. Therefore, by the provisions of Section 15 (2) of the Matrimonial Causes Act, the Petitioner at the hearing must satisfy the Court by evidence of one or more facts stated therein for the Court to dissolve the marriage celebrated by parties.

In this instant case, there is unchallenged evidence before me that the Respondent deserted the Petitioner since May 2017 when she returned to the United Kingdom and cut all forms of communication with the Petitioner and that parties have lived apart for a period of three years preceding the presentation of this petition. The act of the Respondent

returning to the United Kingdom culminates into physical separation; and all efforts made by the Petitioner to the Respondent to return to the matrimonial home or make the marriage work did not succeed as the Respondent cut all forms of communication with the Petitioner. This also interprets that the Respondent has shown a manifest intention to remain separated.

In my considered view, by virtue of the provisions of Section 15(2) (d),(e),(f) of the Matrimonial Causes Act 2004, which provides as follows; *(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;* the Petitioner has firmly established that Respondent deserted the Petitioner, that parties have lived apart for a continuous period of more than three years immediately preceding the presentation of the petition and the Respondent does not object to the decree being granted.

I therefore hold that the marriage in the entire circumstances of this case has broken down irretrievably and the marriage ought to be dissolved and it is accordingly dissolved.

Consequently, it is hereby ordered as follows;

1. I hereby pronounce a *decree nisi* dissolving the marriage celebrated between the Petitioner, **SUNDAY UCHENNA** and

the Respondent, **AMARACHI SANDRA UCHENNA**,
contracted on the 29th day of November 2013 with Marriage
Certificate number; 167293 at the Federal Marriage
Registry, Abuja.

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.

Parties: Parties absent.

Appearances: Peter Ugwuoke, Esq., holding brief of OnyekaOsigwo,
Esq., for the Petitioner, Mrs.
IfeyinwaakuecheUdemetu, holding brief of R.
Udemezue, Esq., for the Respondent.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

01/04/2021