

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

**HOLDEN AT MAITAMA ABUJA**

DATE: 1<sup>ST</sup> DAY OF DECEMBER, 2021  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 5  
SUIT NO: PET/225/2018

**BETWEEN:**

MRS. PATRICIA OYE-KUTA ----- PETITIONER

**AND**

MR. GABRIEL OYE-KUTA ----- RESPONDENT

**JUDGMENT**

The Petitioner Mrs. Patricia Oye - Kuta filed this petition seeking for the dissolution of her marriage with the Respondent Mr. Gabriel Oye-Kuta celebrated at the Marriage Registry, Ikeja, Lagos State on the 12<sup>th</sup> July, 2007. From the Notice of Petition, the Petitioner relied on the sole ground that since the marriage, the Respondent's behavior is one which the Petitioner cannot reasonably be expected to live with.

The Respondent was duly served with the Notice of Petition together with hearing notice but he did not file any Answer in response to the Petition. However, the Respondent appeared in person and informed the Court that he does not wish to engage the services of any legal Practitioner and he is not contesting the petition.

In proof of the petition, the Petitioner as sole Witness testified on the 27<sup>th</sup> October, 2021 as PW1. PW1 adopted her sworn testimony made on the 9<sup>th</sup> July, 2020. Her evidence in support of the petition is that immediately after the marriage parties cohabited at No.10, Adekpetu Ajayi Close, Alakuko Lagos State between July, 2007 and November, 2010, and later at Christ Foundation Orphanage, AA2 Kuje from November, 2011 till date. PW1 stated that before her marriage with the Respondent, she registered and operated an Orphanage known as Registered Trustees of Christ Foundation Orphanage which is still situate at AA2 Kuje, before Azman Filling Station, Kuje.

That during the pendency of the marriage parties lived together as a couple on the same premises as the Orphanage.

The Witness testified that sometime in 2017, she discovered that the Respondent indulged in the unholy act of sexually assaulting and defiling the little female orphans in the Orphanage. She stated that in order to save the marriage and the good name of the Orphanage, the Petitioner had to send away 2 of the orphans. That the Respondent persistently sneaked out of the couple's room into the female section of the Orphanage to caress the breast of the sleeping innocent kid orphans. PW1 further stated that despite her expression of shock and disappointment with the Respondent's ill behavior, the Respondent still persisted in his immoral attitude. That the Respondent in his conceived lust and knack to have sexual intercourse with the orphans, continued to woo the little

girls by offering them extra pocket money to school and promising to give them good things of life.

PW1 stated that prior to the filing of the instant petition, the Respondent persistently molested and assaulted one of the orphans by name Godiya who is just 12 years and reside in the orphanage. That conjugal relationship has ceased between the parties.

The certificate of marriage was received in evidence and marked as exhibit A. As stated earlier, the Respondent herein duly informed the Court that he is not contesting the Petition, therefore the right of the Respondent to cross-examine and defend the petition was therefore fore-closed. The Petitioner's Counsel also waived his right to address the Court and the petition was adjourned for judgment.

From the Notice of Petition, the factual ground relied upon by the Petitioner is that the Respondent's behavior is one which the Petitioner cannot reasonably be expected to

live with. This ground is provided for under Section 15(2)(C) of the Matrimonial Causes Act.

It is trite that irretrievable break down is the sole ground of divorce in Nigeria. However, the Court cannot make a finding of irretrievable break down of marriage in the absence of proof of any of the facts specified under Section 15(2)(a) – (h) and 16(1) of the Matrimonial Causes Act. It follows therefore that in the absence of proof of any of the facts listed, the Court cannot suo motu grant a decree on the ground that the marriage has broken down irretrievably. See: Harriman vs. Harriman (1989)5 NWLR (Part 119)6.

Now, “*unreasonable behavior*” is the term used to describe the fact that their Partner/Spouse cannot reasonably be expected to live with the other. It should be noted that there is no definitive list of unreasonable behaviors under the Act. However, the behavior has to be negative. It must be such that a reasonable man cannot

endure it. The conduct must be grave and weighty in nature as to make further cohabitation virtually impossible. See: Damulak vs. Damulak (2004)8 NWLR (Part 874)151, Oguntoyinbo vs. Oguntoyinbo (2017) LPELR – 42174 (CA).

The duty of the Court is to consider whether the alleged behavior is one which a right thinking person would come to a conclusion that the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with him taking into consideration the totality of matrimonial history of the parties. See: Ibrahim vs. Ibrahim (2007)1 NWLR (Part 1015) page 383.

If I may repeat the evidence; the Petitioner testified that the Respondent habitually indulged in the unholy act of sexually assaulting and defiling the little female orphans under the care and responsibility of the Petitioner.

He sneaks into the female section of the Orphanage to caress the breast of the sleeping innocent orphans. The

witness said she reported the Respondent to the Police when he threatened to kill her, himself and anybody who serves him with any divorce papers. It is noted however that no Police Report was tendered in evidence.

The Respondent did not have any answer, to these weighty and grave allegations levelled against him despite the opportunity given to him. He stated emphatically that he was not contesting the Petition and did not require the services of any lawyer.

The Petitioner's evidence was neither challenged nor controverted under cross-examination. It is settled law that evidence of a party which is not contradicted or disputed is deemed to have been admitted by the other party. Also settled is that where there is unchallenged and uncontroverted evidence, a Court has a duty to act on it where credible. See: Magaji vs. Nigeria Army (2008)8 NWLR (Part 1089) page 338, Kopek Construction Ltd. vs. Ekiola (2010) LPELR - 1703 (SC).

It is pertinent to state at this juncture that the test of whether the behavior complained of, is intolerable to expect the Petitioner to continue to live with the Respondent is objective. Thus there is the possibility that what the Petitioner terms 'intolerable' may not pass this objective test. However, the standard of proof required is no more than that of preponderance of evidence. What a Petitioner is expected to prove are two conditions viz:

1. The sickening and detestable or condemnable conduct of the Respondent, and
2. The fact that the Petitioner finds it intolerable to continue to live with the Respondent. See: **Damulak vs. Damulak (Supra)**.

I have, watched and heard the Petitioner. I believe her evidence as credible, and capable of belief. The conduct of the Respondent is sickening, detestable and condemnable and no reasonable person is expected to endure, the Petitioner not being an exception. I wonder why the

Petitioner has not reported any of the incidents to the law enforcement agencies.

I hold that the marriage has broken down irretrievably and having said this, I now order a decree nisi dissolving the marriage between the Petitioner and the Respondent contracted at the Marriage Registry, Ikeja, Lagos State on the 12<sup>th</sup> July, 2007 pursuant to Section 15(2)(c) of the Matrimonial Causes Act. The decree nisi shall become absolute upon the expiration of three months from today.

Signed  
Honourable Judge

**Appearances:**

E.O. Nwafor Esq – for the Petitioner

Respondent absent and not represented