

- “1. A decree of dissolution of marriage on the ground that the marriage has broken down irretrievably.*
- 2. An order granting custody of the children in the marriage by name Chizaram Egbenu Jasmine Ocholi and Munachimso Kendra Ugosinba Ocholi to the Petitioner for being under age.*
- 3. An order directing the Respondent to pay the school fees of the said Chizaram Egbenu Jasmine Ocholi and Munachimso Kendra Ugosimba Ocholi.*
- 4. An order for the payment of maintenance allowance for the Petitioner and the children of the marriage, which include feeding, clothing and health.*
- 5. An order awarding substantial cost of this action in favour of the Petitioner.”*

The Petitioner testified on the 7/6/2023. She adopted her witness statement on oath of 31/3/2022 and tendered the following documents:

- Certificate of marriage dated 14/10/2011 marked as Exhibit A
- Marriage certificate from The Shepherd's House Assembly Int'l dated 26/11/2011 marked as Exhibit A1.
- Bundle of receipts admitted collectively as Exhibit A2.

The Petitioner got married to the Respondent on the 14/11/2011 at the Abuja Municipal Area Council (AMAC) Marriage Registry. Thereafter, parties cohabited at No. 177, Cadastral Zone 5, Behind Kado Fish Market, Life Camp FCT. The marriage is blessed with two female children Chizaram Egbenu Jasmine Ocholi, 9 years and Munachimso Kendra Ugosimba Ocholi, 4 years.

She testified that the Respondent is in the habit of assaulting her even while pregnant thereby causing her complications and putting her life and that of the baby at risk. At 3 months pregnant, the Respondent abandoned her. Even when in labour, he did not pay the delivery fees

nor attended the naming ceremony. The Petitioner has been solely responsible for the upkeep of the children.

The Petitioner was cross examined on the 15/6/2023. The case was then adjourned to 24/10/2023 for defence. On that date, the Respondent was absent and not represented and no explanation was sent to the Court regarding their absence. Learned counsel to the Petitioner urged the Court to foreclose the Respondent from defence and waived his right to address the Court. The case was thereafter adjourned to 25/1/2024 for adoption of final written address of the Respondent, if any.

On the 21/3/2024 when the case came up, **Esther Chidera Agbom Esq** appeared for the Respondent and informed the Court that the Respondent has waived his right to address the Court and was not contesting the Petition. Learned counsel to the Petitioner **J.O. Yakubu Esq** urged the Court to proceed to enter judgment for the Petitioner.

The law requires that every petition for dissolution of marriage contain specific ground or grounds that will fall within the set out facts under Section 15(2) of the Matrimonial Causes Act. See **Harriman vs. Harriman (1989) 5 NWLR (part 119) 6, Ibrahim vs. Ibrahim (2007) 1 NWLR (Part 1015) 383**. It is important to note that the onus of proof with regards to the facts set out in Section 15(2)(a - h) of the Act lies on the Petitioner. Success or otherwise of the petition depends largely on how diligently and adequately this burden is discharged. Failure in this regard will entail a dismissal of the petition. Thus, by virtue of the provision of the law, a Petitioner at the hearing in a matrimonial causes proceeding, must satisfy the Court of the fact or facts alleged or relied upon.

Again by Section 82(1) and (2) of the Matrimonial Causes Act, such matter or fact shall be established to the reasonable satisfaction of the Court. Put differently, the matter or fact as alleged shall be sufficiently proved once

the Court is reasonably satisfied of the existence of the ground, fact or matter as alleged. It is further noteworthy that the phrase reasonable satisfaction, has not been defined in the Act, nevertheless, it connotes adducing all available relevant and adequate evidence in support of the averments before the trial Court and reasonably and satisfactorily too. See **Omotunde vs. Omotunde (2001) 9 NWLR (part 718) 525**

“Unreasonable behavior” as a ground for dissolution of marriage is provided under Section 15(2)(c) of the Act. It is the term used to describe the fact that a person has behaved in such a way that their Partner/Spouse cannot reasonably be expected to live with them. It is important to understand that there is no definitive list of unreasonable behaviors used in divorce petitions. However, unreasonable behavior in divorce proceedings used to cover a multitude of conducts. It referred to behavior that one party found

unacceptable, and the Courts deemed serious enough to grant a divorce.

In proving this ground of unreasonable behavior, the law makes it incumbent on the petitioner to show.

- a. The sickening and detestable behavior of the Respondent ; and
- b. That the Petitioner finds it intolerable to live with the Respondent. See **Uzokwe vs. Uzokwe (2016) LPELR – 40945 (CA); Nanna vs. Nanna (2006)3 NWLR (Part 966) 1 at 30; Damaluk vs. Damaluk (2004)8 NWLR (Part 874) 151 at 165.**

As earlier stated, the Respondent filed an Answer to the Petition, but abandoned same before the Court. In law, it is now an accepted principle of general application that in such circumstances, the defendant is assumed to have accepted the evidence adduced by plaintiff and the trial Court is entitled or is at liberty to act on the petitioner's

evidence. See *Agagu vs. Dawodu* (1990) NWLR (part 160) 169 at 170, *Omoregbe vs. Lawani* (1980) 3 – 7 SC 108.

In *Bakare vs. Bakare* (2016) LPELR – 41344 (CA), the Court held:

“While in civil cases generally, failure to deny allegation in the Statement of Claim is taken to be an admission of that claim, the same rule does not apply to matrimonial causes.

This is so because divorce proceedings are not governed by the High Court Rules but by the Matrimonial Causes Rules and the Matrimonial Causes Act.

See Section 82(1)&(2) of the Matrimonial Causes Act and *Ibeawuchi vs. Ibeawuchi* (1973) E.C.S.L.R. Vol. 3 (Part 1) 56.”

The Petitioner is required to strictly prove his averment in the petition irrespective of any admission by the

Respondent to the petition. See **Ezeagbabulem vs. Ezeagbabulem (2019) LPELR – 47558 (CA)**.

Therefore, eventhough the evidence is unchallenged, the Petitioner must satisfy the Court of the facts alleged or relied upon. The conduct of the Respondent which the Petitioner finds intolerable have been highlighted above. Section 16(1)(a – g) Matrimonial Causes Act does not vest the Court with discretion as to what conduct would amount to intolerable behavior under Section 15(2)(c). The evidence of the Petitioner must fall within the conditions listed in Section 16(1).

The unchallenged evidence of the Petitioner is that she was left without any means of support for her and the children. This is one of the conditions listed in Section 16(1)(c)(ii) of the Matrimonial Causes Act, a valid ground for filing the petition and sufficient to grant a dissolution of same.

The law has always been that where evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity of doing so, it is always open to the Court seized of the proceedings to act on the unchallenged evidence before it. Consequently, where a Respondent chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the Petitioner. See **A.B.U. vs. Molokwu (2003) 9 NWLR (part 825) 265.**

By a confluence of the facts/evidence, it is clear that this marriage exists only in name. The established fact under Section 15(2)(c) clearly show that this marriage has broken down irretrievably and parties have no desire to continue with the relationship. The unchallenged petition in the circumstance has considerable merit.

The Petitioner has prayed for custody of the children of the marriage. In deciding to whom to award the custody of a child of a broken marriage the Court shall regard the best

interest of the children as paramount. See **Williams vs. Williams (1966) 1 All NLR, 36 Odogwu vs. Odogwu (1992) 2 SCNJ page 357.**

The Respondent is not challenging custody of the two female children who are minors and still in their formative age. In **Williams vs. Williams (supra)** the Court made the point that if the parents are separated and the child is of tender age, it is presumed that he/she will be happier with the mother and no order will be made against this presumption unless it is clearly established to the contrary, for example instance of immorality of the mother, the mother having infectious disease, insanity and cruelty by the mother to the child. See also **Otti vs. Otti (1992) 7 NWLR (part 252) page 87.**

In this case, there is no evidence of insanity or the Petitioner being affected with infectious disease placed before the Court. There is no evidence that the Petitioner has been cruel to the children either. The Court reckons

with the fact that the children have been living with the Petitioner and are equally schooling. It will not serve their interest if they are removed from her custody having bonded together for long. By reason of the foregoing, the Court is minded in the best interest of the children to grant custody of the children to the Petitioner.

The Petitioner also prayed the Court for an order directing the Respondent to pay the school fees of the children and provide for their maintenance. Sections 13,14, and 15 of the Child's Right Act, 2003 provide for the right of the child to health and health services, parental care, protection and maintenance; and right to education, respectively. Apart from Sections 70 and 71 of the Matrimonial Causes Act, those Sections of the Child's Right Act place upon parents the duty and responsibility of providing for their children as of right. In particular, Section 14(2) is categorical when it provided as follows:

“(2) Every child has the right to maintenance by his parents or guardians in accordance with the extent of their means, and the child has the right, in appropriate circumstances, to enforce this right in the family Court.”

The right to maintenance is not contractual in nature and it is the right of the children to demand that they be so maintained. In **Adejumo vs. Adejumo (2010) LPELR – 3602 (CA)** the Court held:

“A man who discharges this duty efficiently acquires for himself the title or appellation of Bread Winner.”

In this instance, evidence revealed that the Respondent works with Microfinance Bank even as his exact earning is not stated. The Court however will not leave the children without any maintenance. In the exercise of the discretion given to the Court, Section 69(1)(3) of the Child’s Right Act, 2003 which provides:

“Where the Court makes an order under subsection 1 of this section giving custody of a child to the mother, the Court may further order that the father shall pay to the mother towards the maintenance of the child such weekly or other periodical sum as the Court may, having regard to the means of the father think reasonable.”

The Respondent being the undenied father of the children is under a duty to maintain and provide for them. In the light of this the Court is minded to direct the Respondent to pay maintenance for the children.

In the final analysis, having found the petition meritorious, it is declared that the marriage between the Petitioner and Respondent contracted at Abuja Municipal Area Council (AMAC) Marriage Registry on the 14/11/2011 is hereby dissolved. A decree nisi is granted in its dissolution. The decree nisi shall become absolute upon the expiration of three months from today.

2. Custody of the children *Chizaram Egbenu Jasmine Ocholi and Munachimso Kendra Ugosimba Ocholi* shall remain with the Petitioner. By way of consequential order, the Respondent shall be granted reasonable access to the children in a bid to foster their psychological and emotional wellbeing.
3. The Respondent shall be responsible for the school fees of the children. He shall also pay medical bills as the need arises.
4. The Respondent is directed to provide the sum of N50,000.00 (Fifty Thousand Naira) monthly to the Petitioner for the maintenance of the children.
5. I make no order as to costs.

Signed
Honourable Judge

Appearances:

J.O. Yakubu Esq – for the Petitioner

Esther Chidera Agbom Esq – for the Respondent

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT ABUJA, NIGERIA.
MATRIMONIAL CAUSES (DIVORCE)

SUIT NO:

FCT/HC/PET/181/2018

BETWEEN:

NELLY NNENNA OCHOLI

←→ PETITIONER

AND

OCHOLI SAMUEL OCHOLI

←→ RESPONDENT

FORM 41

CERTIFICATE OF DECREE NISI

HAVING BECOME ABSOLUTE

1. DATE OF DECREE NISI: - - - - -

17TH OF APRIL, 2024

2. DATE OF ORDER UNDER SECTION 57: - - - - -

- - - - - NIL

3. DATE OF DETERMINATION OR DISCONTINUANCE OF APPEAL: - - -

NIL

4. DATE OF ORDER UNDER SUB – SECTION (2) OF SECTION 58: - - - - -

- NIL

5. DATE OF WHICH INTERVENTION DETERMINED: - - - - -

- - - NIL

I CERTIFY THAT THE DECREE NISI FOR DISSOLUTION OF THE MARRIAGE BETWEEN THE PETITIONER AND THE RESPONDENT SOLEMNIZED AT THE ABUJA MUNICIPAL AREA COUNCIL (AMAC) MARRIAGE REGISTRY BECAME ABSOLUTE ON THE 17TH OF JULY, 2024.

DATED THIS 17TH DAY OF JULY, 2024

SIGNED

REGISTRAR

