

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
HOLDEN AT APO.**

**IN THE ABUJA JUDICIAL DIVISION.
ON WEDNESDAY THE 14TH DAY OF JULY ,2021.**

**BEFORE HIS LORDSHIP
HON. JUSTICE FRANCES ERHUVWU MESSIRI.
(JUDGE)**

SUIT NO. FCT/HC/PET/542/2020

BETWEEN

ABIGAIL OLAYINKA ARUMUN } PETITIONER

AND

JEREMIALTORHILEARUMUN } RESPONDENT

JUDGMENT.

The Petitioner, wife of the marriage conducted in living faith Church, Durumi on the 19/04/2014 in her Petition dated 10th day of November 2020 prays this Honorable Court for a Decree of dissolution of marriage between her and the Respondent on the ground that the marriage has broken down irretrievably and the petitioner cannot reasonably be expected to live with the Respondent.

The Petitioner in paragraph 11(a) of her Petition seeks

A decree of dissolution of the marriage on the ground that the marriage has broken down irretrievably between the petitioner and Respondent.

The facts relied on by the Petitioner as constituting the grounds for the Divorce are as stated in paragraph 8 (a)-(x) of the Petition.

The summation of the case of the Petitioner as contained in her pleading is that they have lived apart since then, till date.

In proof of her petition, the Petitioner testified in person and called no witness. In defence of the petition the Respondent testified in person and called no witness.

At the trial, the Petitioner's testimony was in exact terms with her case on the pleadings. The petitioner tendered the Marriage Certificate as Exhibit A, while photographs evidencing the marriage ceremony were tendered as exhibit B, B1, B2 and B3 respectively.

It is the petitioner's testimony that the Respondent is her husband, that she got married to the Respondent, that they were issued with a marriage certificate, that the marriage was celebrated at Living Faith Church Durumi, a registered place of worship on the 19/04/2014.

The Petitioner further gave evidence on oath that she lived with the Respondent till 2018 when they stopped living together and that there is no child in the marriage.

Again, it was her evidence that the Respondent incessantly kept late nights or did not come home at all, that she found out that the Respondent had an alternative accommodation. It was

her further testimony that the Respondent does not provide financial upkeep for her, and that he pressured her for anal sex which she resisted and further that he moved out from their matrimonial home thus cohabitation ceased between her and the Respondent since 2018.

She testified that she was not conniving with the Respondent in the filing of the Petition before the Court. She stated that due to the Respondent being inaccessible to her amidst irreconcilable differences, she seeks a decree for dissolution of the marriage. She finally urged the Court to grant the dissolution of the marriage.

On his part, the Respondent denied pressuring the Petitioner in any way for anal sex. It was his testimony that he married the petitioner as a student and was responsible for her upkeep and tuition.

It was the Respondent's testimony that he moved out of his matrimonial home in September 2018. He further testified that he reached out to the petitioner for reconciliation who said to him that she wished he was dead. That this made him drop the idea of reconciliation as he had to preserve his life.

At the close of the case of the Respondent, Petitioner's Counsel filed a written address dated 21st of June, 2021 while the Respondent's Counsel filed a written address dated 25th day of March 2021 which the Learned Counsel adopted on the 29th day of June 2021.

In the said addresses, Petitioner's counsel formulated a lone issue for determination while Respondent Counsel also formulated a lone issue for determination, both issues are same in substance and can thus be taken to be ;

Whether the Petitioner has proved that the marriage between her and the Respondent has broken down irretrievably to warrant an order of dissolution of their marriage.

Arguing the lone issue, it was the submission of Counsel for the Petitioner that the Petitioner has made out a case entitling her to the dissolution of the marriage between herself and the Respondent on the ground that the said marriage has broken down irretrievably. Counsel submitted that from the evidence of the Petitioner and the Respondent conceding to the fact that both parties have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition, the Petitioner has fulfilled a requirement for the grant of the decree of dissolution of marriage sought. He submits that this petition was filed on the 10th day of November 2020 which was not contradicted by the Respondent. The Respondent moved out of the Matrimonial home in September, 2018 a period exceeding two years.

A dedicated reading of the petition clearly reveals that the grounds for seeking the dissolution of the marriage is that the Respondent failed or refused to perform his conjugal duties and responsibilities since 2018 and that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.

I have carefully considered the Petition before this Court. I have also considered the oral evidence of the Petitioner and the Respondent as well as the written addresses filed by both Learned Counsel for the Petitioner and Learned Counsel for Respondent in this suit.

It is trite law that under the Matrimonial Causes Act 2004, there is only one ground for the dissolution of marriage which

is that “*the marriage has broken down irretrievably*” as provided for under Section 15(1) of the Matrimonial Causes Act 2004. See also the case of: **Harriman Vs. Harriman (1989) 5 NWLR (Pt. 119) @ 6**

For purpose of clarity, Section 15(1) of the Matrimonial Causes Act 2004 provides: -

15(1) *A Petition under this Act by a party to a marriage for a Decree of dissolution of marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably.*

In the present case, the Petitioner prays the Court for the dissolution of the marriage on the ground that the marriage has broken down irretrievably and relies on the facts as stated in paragraph 8 of the Petition:

The issue before the Court is:

1. “*Whether the marriage between the Petitioner and the Respondent has broken down irretrievably*”?

Section 15(2) of the Matrimonial Causes Act 2004 provides as follows:

The Court hearing a Petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if he satisfied the court of one or more of the following facts as stated in Section 15(2) a-h of the same Act.

I find from the evidence of the Petitioner which is corroborated by the evidence of the Respondent that the Petitioner was lawfully married to the Respondent at the Living Faith Church as evidenced by exhibit A.

It was the evidence of the petitioner that the Respondent made no financial contribution for her upkeep and failed or refused to perform his conjugal duties and responsibilities since 2018. The Respondent denied the allegation of the petitioner in his answer to the petition but headmitted that the marriage between the petitioner and himself has broken down irretrievably. I watched their demeanor in court and the Petitioner and Respondent came across as witnesses of truth. The petitioner and the respondent clearly are not enjoying a marital bliss.

The sole Issue for determination deals with whether the Petitioner is entitled to the relief of dissolution of marriage. The Matrimonial Causes Act (Cap. M7, Laws of the Federation) 2004 is to facilitate the dissolution of a marriage that exists only in name: a marriage that has become a mere shell, and an empty shell at that, **See OKAFOR v OKAFOR (1966 -1979) Vol. 5 Oputa Law Reports 102 at 105.** As earlier stated in this judgment section 15 (1) of the MCA, the sole ground for either party to a marriage to seek dissolution of their marriage is that the marriage has broken down irretrievably thus the court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, and only if, the petitioner satisfies the court of one or more of the eight factual situations listed in paragraphs a - h of section 15 (2) MCA.

The factual situation relied upon in the present Petition is the one provided in s. 15 (2) (e) MCA, which is 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 of dissolution being granted.

This provision of the MCA has been described as the most radical departure from the old law. It is a non-fault provision which does not concern itself with whether either party to the marriage is at fault or not. The provision is mandatory and confers no discretion on the Court to exercise once it is shown that the parties to a marriage have lived apart for the statutory period. See ADEREMI A. AJIDAHUN v DAPHINE O. AJIDAHUN [2000] 4 NWLR (PT. 654) 605 at 612 and DR JOSHUA OMOTUNDE v MRS YETUNDE OMOTUNDE [2001] 9 NWLR (PT. 718) 252 at 284, the Petitioner adduced evidence to show that she and the Respondent have lived apart from each other since 2018.

This fact of living apart is eloquently admitted by the Respondent in his answer to the petition dated 10/3/2021 wherein he conceded to the dissolution of marriage on the same ground even though he used the word that the parties be separated therein, the Respondent does not object to the dissolution of the marriage with the petitioner.

I cannot but find and hold that the marriage between the Petitioner and the Respondent has broken down irretrievably. I am satisfied therefore that the Petitioner has proved that the marriage has broken down irretrievably. I hold that this Petition succeeds.

I hereby pronounce a Decree Nisi dissolving the marriage between the Petitioner, ABIGAIL OLAYINKA ARUMUN and the Respondent; JEREMIAH TORHILEARUMUN celebrated at living faith Church, Durumi a registered place of worship on the 19/04/2014.

The Decree Nisi shall become absolute at the expiration of three months from the date of this order unless sufficient cause is shown to the Court why the decree should not become absolute.

Parties are to bear their cost.

JUSTICE F.E. MESSIRI.

[JUDGE.]

Appearances.