

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

**IN THE ABUJA JUDICIAL DIVISION.
ON MONDAY THE 6TH DAY OF DECEMBER,2021.**

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

SUIT NO. FCT/HC/PET/066/2021

BETWEEN:

CHIKA IKWUOMA AGHA ----- PETITIONER

AND

MIKE AHUAMA AGHA-----RESPONDENT

[JUDGMENT.]

The Petitioner, Chika Ikwuoma Agha wife of the
marriage conducted at the Abuja

Metropolitan Area Council (AMAC) F.C.T. Marriage Registry on the 29/12/2011, in her Petition filed on the 11th day of February 2021, prays this Honorable Court for a Decree of dissolution of marriage between her and the Respondent, Mike Ahuama Agha, on the ground that the marriage has broken down irretrievably. The Petitioner in paragraph 12 of her Petition seeks for:

“A decree of dissolution of the marriage on the ground that the petitioner and Respondent have lived apart for a continuous period of at least 3 (three) years immediately preceding the presentation of the petition”.

With leave of court the originating processes in this petition were served on the petitioner by substituted means, despite being served, the Respondent did not file an answer to the petition.

This petition was then fixed for hearing accordingly hearing notice was issued and served on the Respondent.

On all the adjourned days the Respondent elected not to appear in court despite being served with

hearing notices. The record of this Honorable Court shows the originating processes in this petition were duly served on the Respondent on the 18/03/2021.

The facts relied on by the Petitioner as constituting the grounds for the dissolution of the marriage are as disclosed in paragraph 12(a)-(b) of the Petition. In the said paragraph, the Petitioner averred that she and the Respondent have lived apart for a continuous period of three years immediately preceding the presentation of this petition and that the marriage has broken down irretrievably.

In proof of her petition, the Petitioner testified in person, she called no witness.

At the trial, the Petitioner's testimony was in exact terms with her case in the petition. The petitioner tendered the Marriage Certificate evidencing the celebration of the marriage as Exhibit 1.

It is the petitioner's testimony that the Respondent is her husband, that she got married to the Respondent at the Abuja Metropolitan Area Council (AMAC) Marriage Registry F.C.T. on the 29/12/2011 and that they were issued with a marriage certificate (exhibit 1).

It is the evidence of the petitioner that she lived with the petitioner at number 5 Anthony Ochefu close,zone D Apo quarters, F.C.T. Abuja and at flat 12, Graveny Court, River Side Close,RamfordEsson RM.11E2, in the United Kingdom. That owing to irreconcilable differences which arose from their differences about religious denomination and their belief as Jehovah witnesses and more, the marriage broke down.

That the petitioner and the Respondent have lived apart since 2017,that due to the irreconcilable differences they were unable to even conceive.It is her further evidence that attempts by family and church members at reconciling them failed.

It is the petitioner's evidence that the Respondent knows her place of abode but has not cared for her or about her since 2017, thus, at this point the petitioner is not willing to remain married to the Respondent.

She testified that she was not conniving with the Respondent.

On application of Counsel for the petitioner, the respondent was foreclosed from cross-examination on the 22/7/2021 and was accordingly discharged from the witness box.The Respondent was further foreclosed from defence on the 29/9/2021, accordingly Learned Counsel

for the Petitioner was ordered to file her written address which was adopted on 11/11/2021.

Arguing the lone issue distilled in the written address filed on behalf of the petitioner, Learned Counsel for the petitioner canvassed the following points for the Petitioner and submitted 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, both parties have lived apart for a continuous period of at least three years immediately preceding the presentation of this petition, that the Petitioner has fulfilled the requirement for the grant of the decree of dissolution of marriage sought as provided in section 15(2)(a)-(f). Learned Counsel relied on the case of **BIBILARI V. BIBILARI (2011) LPELR-4443(CA)**, and submitted that despite serving the court processes in this petition on the Respondent, the Respondent did not file an answer to the petition which implies that the Respondent is not opposed to this Petition. Learned Counsel contends that the evidence of the petitioner is unchallenged and therefore urged this honorable court to believe the

case of the petitioner. **Learned cited the case of MONKOM V ODILI (2010) 2 NWLR (PT 1179) 419 at 442 paras d-f** among others.

A dedicated reading of the petition clearly reveals that the grounds for seeking the dissolution of the marriage herein is that the parties to this petition have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.

I have carefully considered the Petition before this Honourable Court. I have also considered the oral evidence of the Petitioner as well as the written address filed by Learned Counsel for the Petitioner.

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 is 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 12 of the Petition:

The sole issue for resolution 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 that the Petitioner was lawfully married to the Respondent as evidenced by exhibit 1.

It was the evidence of the petitioner that the marriage between the Respondent and herself has broken down irretrievably premised on irreconcilable differences leading to the parties leaving apart since 2007. Furthermore, the petitioner gave evidence that the Respondent did not only refuse to practice their faith after the marriage but was compelling her to abandon the faith she has practiced since birth despite prior understanding to continue practicing the faith after marriage.

I watched the demeanor of the petitioner in court and the Petitioner came across to me as witness of truth.

The petitioner and the Respondent clearly are not enjoying marital bliss from the evidence of the petitioner.

In determining whether the Petitioner is entitled to the relief of dissolution of marriage.

The Matrimonial Causes Act (Cap. M7, Laws of the Federation) 2004 appears to facilitate the dissolution of a marriage that exists only in name, that is 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, in section 15 (1) of the MCA (SUPRA) 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) (f) MCA, which is 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,

This provision of the MCA has been described as a departure from the old law. It is a non-fault provision; it 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 satisfactorily 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 gave evidence to the effect that she and the Respondent have lived apart since 2017.

This piece of evidence and indeed the evidence of the petitioner is unchallenged and not contradicted. Now, relying on the principle stated in the case of **IJEBU ODE LG V. ADEDEJI (1991) LPELR SC 22/1989 AT PAGE 38, PARAS A-D**, which is to the effect that where there is evidence to support a claim, which remains unchallenged or uncontroverted by the other party, the Court is bound to accept the evidence in support of the claim, this Honorable Court cannot but find in the circumstance that the marriage between the Petitioner and the Respondent has indeed broken down irretrievably.

This Court being satisfied hereby hold that the Petitioner has proved that the marriage between her and the Respondent has broken down irretrievably and hold further that this Petition succeeds.

Accordingly, I hereby pronounce a Decree Nisi dissolving the marriage between CHIKAIKWUOMA AGHA and the Respondent; MIKE AHUAMA AGHA celebrated at the Abuja

Metropolitan Area Council (AMAC) F.C.T.
Marriage Registry on the 29/12/2011.

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

I make no order with regards to Cost.

JUSTICE F.E. MESSIRI.

[JUDGE.]

Appearances.

Eunice O. Achoba for Petitioner.