

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT APO – ABUJA**

**THIS THURSDAY, THE 13<sup>TH</sup> DAY OF JANUARY, 2025.**

**BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE**

**SUIT NO: FCT/HC/PET/297/2016**

**BETWEEN:**

**CHIKE JUDE OBELE.....PETITIONER**

**AND**

**NWAMAKA OKECHINYERE ENWERE .....RESPONDENT**

**JUDGMENT**

By an Amended Notice of Petition dated the 16<sup>th</sup> day November, 2021, and filed on the 17<sup>th</sup> day of November, 2021 the Petitioner claims the following Relief against the Respondent as follows:

- 1. A Decree of Dissolution of the marriage between the Petitioner and the Respondent on the grounds that the marriage has broken down irretrievably.**
- 2. An Order that the Respondent shall have the custody of the children while the Petitioner shall have access to them at all reasonable time of the day.**
- 3. An Order that the Petitioner and the Respondent shall both be responsible for the care and maintenance of the children.**
- 4. An Order for the re-imbusement of the Petitioner’s medical expenditure in the sum of N23,000.00.**
- 5. The cost of this petition.**

From the records of the Court, the originating process of this petition was duly served on the Respondent personally on the 7<sup>th</sup> day of January, 2022. On the day 31<sup>st</sup> day of January, 2022, the Respondent entered appearance through his counsel, the matter was thereafter adjourned for hearing.

On the 28<sup>th</sup> day of September, 2023 when the matter came up for hearing, the Petitioner and her counsel was in court and the Respondent's Counsel was also in court. The Petitioner adopted her witness Statement on Oath, verifying affidavit and testified that:

#### THE CASE OF THE PETITIONER

The Petitioner stated that on the 9<sup>th</sup> day of January 2010, he and the Respondent were lawfully married under the Act, at the Marriage Registry Apapa, Lagos wherein certificate of marriage was issued to them before proceeding to Sacred Heart Catholic Church, 43 Creek Road Apapa Lagos. That the Certificate of the marriage is attached to the petition. That immediately after their marriage the Petitioner and Respondent began to live peacefully and cherished each other. That while they lived in the bliss union, the Respondent suddenly began to behave in an unusual manner by insulting, threatening, assaulting and batter the Petitioner, which almost made the Petitioner develop high blood pressure. That when he tried to care and wanted to know why the Respondent sudden change of attitude, the Respondent will rebuff him. That in spite of the constant and daily assault, intimidation and battery by the Respondent on him, he insisted that the marriage must work but the Respondent refused to allow the union work. That he is still very young with a promising and prosperous future have decided that the marriage be dissolved so that everyone can go on with his or her own way. That since the marriage the Respondent has behaved in such a way that he the Petitioner cannot reasonably be expected to trust or live with her. That both parties to the marriage have lived apart for over five years and four months. That due to the threatening

and continuous insult, the he the Petitioner have decided to put the marriage to an end on the 16<sup>th</sup> day of February, 2012, were upon to safe his life from danger of the Respondent, abandoned his matrimonial home and have never returned back.

## COURT'S ANALYSIS

The Respondent, who was dully served with the petition, chose not to defend the petition. After the adoption and testimony of the Petitioner who was the PW1, tendered the Marriage Certificate between him and the Respondent celebrated on the 9<sup>th</sup> day of January, 2010 which was admitted in evidence and marked Exhibit PW1A. The matter was then adjourned to the 13<sup>th</sup> day of November, 2023 for cross examination.

on the said 13<sup>th</sup> day of November, 2023, there was no appearances from both parties the Court adjourned the case to the 22<sup>nd</sup> day of April, 2023 for cross examination. On that day the Petitioner and his Counsel was present in court. The Respondent's counsel was in court but the Respondent chose not to cross examine the Petitioner. There was no Cross Examination of the PW1 by the Respondent Counsel that day, rather they filed terms of settlement to resolve their ancillary reliefs to this petition.

Having carefully considered the petition, the unchallenged evidence led on oath, the narrow issue is whether the Petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of this petition. It is on the basics of this issue that I would now proceed to consider the evidence led in this case.

## ISSUE FOR DETERMINATION

**Whether the Petitioner has on a preponderance of evidence established/satisfied the legal requirements for the grant of the petition.**

I had at the beginning of this judgment stated the claims of the Petitioner. Similarly I had also stated that the Respondent despite being represented by a counsel in court did not either cross examine the Petitioner or put up any defence to the petition. In law, it is an acceptable principle of general application that in such circumstances, the Respondent is assumed to have accepted the evidence adduced by the Petitioner and the trial court is entitled or is at liberty to act on the Petitioner's unchallenged evidence. I take my guide from **TANAREWA (NIG) LTD V. ARZAI (2005) 5 NWLR (pt.919) 593 at 636 C-F**; see also **OMOREGBE V. LAWANI (1980) 3-7 SC 108**; also see **AGAGU V. DAWODU (1990) NWLR (pt. 160) 169 at 170**.

Notwithstanding the above general principle, the court is however under a duty to examine the established facts of the case and then see whether it entitles the Petitioner to the relief she seeks. I find support in the case of **NNAMDI AZIKIWE UNIVERSITY V. NWAFOR (1999) 1 NWLR (pt.585) 116 at 140-141** where the Court of Appeal per Salami J.C.A expounded the point thus:

**The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence ...the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant...**

A logical corollary that follows the above instructive dictum is the attitude of the court to the issue of burden of prove where it is not satisfactorily discharged by the

party upon which the burden lies. The Supreme Court in **DURU V. NWOSU (1989) 4 NWLR (pt.113) 24** stated thus:

**...a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence or if the evidence on the material issues he needs to prove. If he has not so led evidence or the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the judge does not have to consider the case of the defendant.**

From the above, the point appears sufficiently made that the burden of prove lies on the plaintiff or petitioner in this case to establish his claim irrespective of the presence and /or absence of the defendant or respondent defence. I derive support from **AGU V. NNADI (1999) 2 NWLR (pt. 589) 133 at 142**

This burden or standard of proof required in Matrimonial Causes Act provides thus:

- 1. For the purpose of this Act, a matter of fact shall be taken to be proved, if it is established to the reasonable satisfaction of the court;**
- 2. Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.**

Now in the instant case, the Petitioner from his petition seeks for the dissolution of the marriage with the Respondent on the ground that his marriage with the Respondent has broken down irretrievably, and essentially predicated on the ground for the petition on the fact that:

- a. Since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to trust or live with the Respondent.
- b. The Petitioner has lived apart since 16<sup>th</sup> day of February, 2012 preceding the date of filling this petition.

It is doubtless therefore, that the petition was brought within the purview of **Section 15 (1) (c), (e) and (f) of the Matrimonial Causes Act 1970**. It is correct that **Section 15 (1) of the above Act** provides for the irretrievable breakdown of a marriage as a ground upon which a party may apply for a dissolution of a marriage. The fact that may lead to this breakdown are clearly categorized under **Section 15 (2) a to h of the above Act**. In law any one of these facts if proved by credible evidence is sufficient to ground or found a petition for divorce.

Now from the uncontroverted evidence of the Petitioner before the court, I find that the essential facts required by law have been established in this petition. I so hold.

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the Respondent who was given all the opportunity in the world. 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 to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it. I call in aid **ODUNSI V. BAMGBALA (1985) 1 NWLR (pt. 374) 641 at 664 D-E; see also INSURANCE BROKKERS OF NIG. V.A.TM CO. LTD (1996) 8NWLR (pt.466) 316 at 327 G-H**

This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts.

Consequently, where a defendant or respondent chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the plaintiff or petitioner. I rely on the case of **A.G OYO STATE V. FAIR LAKES HOTELS LTD. (1989) 5 NWLR (pt.121) 255**; see also **A.B.U V. MOLOKWU (2003) 9 NWLR (pt. 825) 265**.

Indeed the failure of the Respondent to defend the petition, when she had the apple opportunity, confirms in all material times that the marriage has broken down irretrievably and that they have lived apart for more than three years preceding the date of filling this petition.

By a confluence of these facts, it is clear that this marriage exist only in name. As stated earlier, any of the facts under **Section 15 (2) a-h of the Matrimonial Causes Act**, if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of lack of interest, love and affection as well as living apart show clearly that this marriage has broken down irretrievable and parties have no desire to continue with the relationship; this fact alone without more can ground a decree of dissolution of marriage. If parties to a consensual marriage relationship cannot live any longer in peace and with mutual respect for each other, then it is better they part in peace. The unchallenged petition in the circumstances has considerable merit.

#### COURT'S DECISION

In the final analysis and in summation, having carefully evaluated the petition, the unchallenged evidence of the parties, I accordingly make the following order:

- (a) A Decree Nisi for the Dissolution of the marriage between the Petitioner and the Respondent celebrated on the 9<sup>th</sup> day of January 2010, at the Marriage Registry Apapa, Lagos, on**

**grounds that, the marriage has broken down irretrievably, in that since the marriage, the Respondent behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent.**

- (b) Custody of the three (3) children of the marriage namely:**
- i. Chimdalu Tiffany Obele, female, born on the 11<sup>th</sup> day of August, 2010;**
  - ii. Chukwuka David Obele, male born on the 13<sup>th</sup> day of May, 2012 and;**
  - iii. Chukwudike Daniel Obele, male, born on the 13<sup>th</sup> day of May, 2012 shall be with the Respondent wherein the Petitioner shall have unrestrained access to the Children at all reasonable time whether in the United States of America, or United Kingdom or in Nigeria or anywhere.**
- (c) The Petitioner shall pay the sum of N100,000 (One Hundred Thousand Naira) per month for the welfare and upkeep of the children.**
- (d) No award as to cost, parties bear their respective cost.**
- (e) It is hereby also ordered that the Terms of Settlement adopted on the 23<sup>rd</sup> day of October, 2024 be adopted as the final settlement and judgment of this court in respect of other ancillary reliefs as agreed by parties to this suit.**

This is the judgment of the Court.

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Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. Kenneth Osemeha ESQ for the Petitioner
2. Chuks Udo Kalu ESQ for the Respondent