

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

**IN THE ABUJA JUDICIAL DIVISION.  
ON TUESDAY DAY THE 7TH DAY OF  
DECEMBER,2021.**

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

**SUIT NO. FCT/HC/PET/053/2021**

**BETWEEN:**

**IKANONEERHIJAKPORESEOGHENE JUDITH-PETITIONER**

**AND**

**IKANONEIGHODARO -----RESPONDENT**

**[JUDGMENT.]**

The petitioner, wife of the marriage conducted at the UvwieLocal Government Registry, Effurun in

Delta State, on the 5/8/2014, in her petition for dissolution of marriage dated and filed on 05/02/2021 prays this honourable court for the following reliefs:

1. A decree of dissolution of the marriage celebrated between the Petitioner and the Respondent, on the 5<sup>th</sup> day of August 2014, on the ground that the marriage has broken down irretrievably as the Respondent has deserted the home for a period more than Seven (7) years.

2. An ORDER granting sole custody of the only child of the marriage IkanoneIgbunu David to the Petitioner.

3. An ORDER directing the Respondent to pay the sum of ₦3,000,000.00 (Three Million Naira) to the petitioner per annum, to be paid quarterly for the maintenance of the child of the marriage IkanoneIgbunuDavid until he becomes 18 years of age.

The facts relied on by the Petitioner as constituting the grounds for the Divorce are as stated in paragraphs 9 to 18 of the Petition.

The summation of the case of the Petitioner as contained in her petition is that the petitioner got married to the Respondent on the 5<sup>th</sup> day of August, 2014 at Uvwie Local Government Marriage Registry, Effurun, Delta State, and that they were issued with a marriage certificate. That parties after their wedding cohabited at No.60 Water Board Street along Agbarho/Ughelli Road, Delta State, where the Respondent began to constantly abuse the petitioner emotionally and physically by acts ranging from assault, battery et al.

It is the Petitioner's evidence that in the last quarter of 2014, the Respondent had threatened to flee with the son of the marriage to United Kingdom thereby prompting the petitioner to make an oral complaint to the office of the Nigerian Immigration.

That the Respondent did leave and eventually returned to Nigeria to his family House at No. 35C, Edo Street, Byazhin Across, Kubwa, Abuja FCT. The Petitioner had in the interim, relocated to her father's house. In all the years of his sojourn, the Respondent failed to ask about the welfare of his son neither did he cater for him.

On being aware of his return to Nigeria, she reached out to him at his family house but was turned back by his mother who told her that the Respondent was not interested in her anymore.

That on another occasion, the Petitioner repeated the visit, this time with her parents and some family members, but they were all chased away by the Respondent and his mother, stating that they were no longer interested in the marriage.

That as a result of the Respondent's absence for a period more than seven years, the Petitioner has been in sole custody of the only son of the marriage.

The petitioner also filed a witness deposition wherein she replicated the facts as contained in 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 petitioner was therefore ordered to prove her petition.

On the date fixed for hearing that is on the 22/4/2021 the petitioner testified in proof of her petition; her testimony was in exact term with her case in the petition which I have summarised above.

On the 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 foreclosed from defence on the 29/9/2021 accordingly Learned Counsel for the Petitioner was ordered to file her written address which was filed on the 14/09/2021 and adopted 20/10/2021

Learned Counsel for Petitioner raised a lone issue for determination to wit:

“Whether the petitioner has been able to prove that her marriage to the Respondent has broken down irretrievably as to be entitled to a decree of

dissolution of the marriage and other ancillary reliefs sought’.

Learned Counsel argued on behalf of the Petitioner that Section 15(2) (f) of the Matrimonial Causes Act substantiates the position that the marriage between the Petitioner and the Respondent has broken down irretrievably.

She went further that Section 82(1) of the Matrimonial Causes Act provides that the level of proof required under the section is to the reasonable satisfaction of the court which has been defined as preponderance of probability that the marriage has broken down irretrievably.

Arguing further, she stated that order V Rule 27 of the Matrimonial Causes Rules provides that the existence of a valid marriage may be proved by either the production of the original Marriage Certificate or the Certified True Copy thereof. She then stated that in the instant case, the Petitioner tendered the original Marriage certificate.

She continued that the Petitioner had led evidence as to when the Respondent deserted the home which is over a period of seven years preceding this petition, thereby proving one of

the grounds for the dissolution of marriage. That this piece evidence given by the petitioner remains unchallenged and uncontroverted.

Citing the case of IJEBU ODE L.G V. ADEDEJI (1991) LPELR SC 22/1989 AT PAGE 38, PARAS A-D, Learned Counsel argued 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. She referred court to the case of INCAR NIG. LTD V. ADEGBOYE (1995)2 NWLR (PT8) 453 AT 460. Learned Counsel therefore submitted that in the circumstance of this case, this court is bound to accept the petitioner's evidence of the Respondent's deserting the home for a period of over 7 years and that since then, she(the petitioner) has been taking care of the only child of the marriage.

Learned Counsel submitted further that this court has discharged its duty by providing the needed atmosphere for the Respondent to ventilate his own side of the story, but that the Respondent failed to utilize same. Learned Counsel cited the case of New Watch Communication Ltd v. Atta (2006) 12 NWLR (Pt 993) 144 at 171C, 179 13-D.

In her analysis, Learned Counsel stated that the Respondent in this case was served with the processes of this court by substituted means. The court also granted several adjournments but the Respondent stayed away from court.

Placing reliance on the case of **OGUNADE V. OSHUNKEYE (2007) 12 MJSC 157(a) 160**, Learned Counsel submits that the petitioner had led unchallenged evidence to the effect that the Respondent has deserted the home for a period more than 5 years before proceeding with this petition for dissolution of marriage which is ground for dissolution of marriage as provided for under Section 15 of the Matrimonial Causes Act. Learned Counsel submits therefore that the court should dissolve the marriage as the Petitioner has satisfied all necessary requirements for the order to be made, and that the court should grant sole custody of the only child of the marriage IkhanoneIgbunu David to the Petitioner, and also grant the order of cost of maintenance for the son of the marriage, her evidence being unchallenged.

A dedicated reading of the petition clearly reveals that the grounds for seeking the dissolution of the

marriage is that the parties have lived apart for a continuous period of seven years immediately preceding the presentation of the petition.

I have carefully considered the Petition before this honourable Court along with the oral evidence of the Petitioner as well as the written addresses filed by Learned Counsel for the Petitioner 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.**

It was the evidence of the Petitioner that the marriage between the Respondent and herself has broken down irretrievably. I watched her demeanor in court and the Petitioner came across as a witness of truth. The petitioner and the Respondent clearly are not enjoying marital bliss.

The Matrimonial Causes Act 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.**

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 the most radical 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 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 show that she and the Respondent have lived apart from each other for seven years and that the marriage produced one offspring who has been in her custody since the Respondent deserted the home. This piece of evidence is not contradicted, furthermore the petitioner in paragraph 15 of her petition disclosed that the Respondent and his mother informed her and her family that they are no longer interested in the marriage.

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 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. Furthermore,

there is proof that the Respondent was served with the processes in this suit.

This honourable court cannot but find in the circumstance that the marriage between the Petitioner and the Respondent has indeed broken down irretrievably.

This honourable court is satisfied and accordingly hold that the Petitioner has proved that the marriage has broken down irretrievably. The Petition accordingly succeeds.

This honourable court thereby pronounces A decree Nisi for the dissolution of the marriage celebrated between the Petitioner, Ikonone Erhikakpor Eseoghene Judith and the Respondent, Ikanone Ighodaro on the 5<sup>th</sup> day of August 2014 at the Uvwie Local Government, Marriage Registry Effurun, Delta State.

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.

With regards to relief 2, this Honourable Court takes note of the age of the only child of the marriage and the fact that he has been in custody

of the petitioner for the last seven years as disclosed in paragraph 9 of the petition. Accordingly, custody of the only child of the marriage IkanoneIgbunu David is granted to the petitioner.

On relief 3, this honourable Court notes that there is nothing placed before this honourable court challenging the sum, especially as there is proof of service of the petition on the Respondent yet the Respondent did not challenge same.

This Honourable Court therefore grants relief 3, the Respondent shall pay the sum of ₦3,000,000 (Three Million) Naira only to the petitioner per annum. The sum shall be paid quarterly for the maintenance of the child of the marriage IkanoneIgbunu David until he becomes 18 years of age.

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***JUSTICE F. E. MESSIRI.***  
***[JUDGE.]***

Appearances.  
Dim C. Izunobiesq

