

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

**IN THE ABUJA JUDICIAL DIVISION.
ON THURSDAY THE 16TH DAY OF DECEMBER,2021.**

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

SUIT NO. FCT/HC/PET/118/2021

BETWEEN:

MRS. BOMA BROMILLOW JACK OJEONU----PETITIONER

AND

MR. CYRIL OJEONU ----- RESPONDENT

[JUDGMENT.]

The Petitioner, wife of the marriage conducted at the AMAC Marriage Registry, Area 10 Abuja, FCTin on the 18/4/2002, in her Amended petition for dissolution of marriage dated and filed on 29/6/2021 prays this HonourableCourt for the following reliefs:

1. A decree for dissolution of the Marriage between the Petitioner and the Respondent, on the ground that the marriage has broken down irretrievably in that the parties

have lived apart for a continuous period of 16 years preceding the presentation of this petition .

The facts relied on by the Petitioner as constituting the grounds for the Divorce are as stated in the grounds for the petition.

The summation of the case of the Petitioner as contained in her Amended Petition is that the Petitioner got married to the Respondent on the 18/4/2002 at AMAC Marriage Registry Area 10 Abuja ,FCT. that they were issued with a marriage Certificate. That parties after their wedding cohabited at No.6Premabre Street ,D/line port Harcourt ,Rivers State

It is the Petitioner's evidence that they separated in 2004 and have lived apart continuously for a period of more than 16 years due to irreconcilable differences.It is the Petitioner's evidence that there is no longer mutual feeling between the Petitioner and the Respondent, as the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

With leave of this Honourable Court the originating processes in this Amended Petition were served on the Respondent by substituted means, despite being served, the Respondent did not file an answer to the Amended Petition.

This Amended 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 Amended petition.

On the date fixed for hearing, that is on the 10/11/2021 the Petitioner testified in proof of her petition, her testimony was in exact term with her Amended petition which I have summarised above.

On the application of Counsel for the Petitioner, the Respondent was foreclosed from cross-examination on the 3/12/2021 and was accordingly discharged from the witness box.

The Respondent was foreclosed from defence on the 10/12/2021 accordingly Learned Counsel for the Petitioner was ordered to file her written address which was filed on the 13/12/2021 and adopted 14/12/2021.

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.

He submits that, the main ingredient for grant of divorce is that the parties must have lived apart. In this instance, the parties have lived apart for more than 16 years (Sixteen years) preceding the institution of this divorce proceedings, which makes this a valid ground upon which the court can dissolve the marriage between parties. What more, the Respondent, though served with the Petition, as well as subsequent hearing notices in the matter, chose not to file an answer or participate in the proceeding.

Still submitting, Learned Counsel cited the case of **OMOTUNDE V. OMOTUNDE (2001) 9 NWLR(Pt.718)525 per ADEKEYE, J.C.A. (Pp. 62-63, paras. D-E), it was held as follows;**

By section 15(2)(f) of the Act: a court hearing a petition for the dissolution of a marriage shall hold the marriage to have broken down irretrievably if the parties to the marriage have lived apart for a continuous period of three years immediately preceding the presentation of the petition. The law is that the provision is mandatory and the Court has no discretion to exercise.

Counsel contends that it is the law, that the effect of deliberate non participation of the Respondent at the trial is that the evidence of the Respondent remains unchallenged, uncontroverted and unimpeached, and is therefore deemed admitted. He submits further that the evidence of the Petitioner ought to be taken as proved on the minimal standard of the preponderance of evidence.

Counsel cites the case of **CONSOLIDATED RESOURCES LTD. V ABAFOR VENTURES (NIG) LTD. (2007) 6 NWLR (PT. 1186) 177; OSHAFUNMI& ANOR. V. ADEPOJU (2014) LPELR-23073 (CA).**

I have carefully considered the Amended 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.

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 16 years and that the marriage did not produce any offspring .

This piece of evidence is 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 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 hereby pronounces A decree Nisi for the dissolution of the marriage between the Petitioner, MRS BOMA BROMILLOW JACK OJEONU and MR CYRIL OJEONU conducted on the 18th day of April 2002 at the AMAC Marriage Registry, Area 10 , Abuja FCT.

The Decree Nisi shall become absolute at the expiration of three months from this day 16/12/2021 of this Judgment unless sufficient cause is shown to the Court why the decree shall not become absolute.

JUSTICE F. E. MESSIRI.
[JUDGE.]

Appearances.

