

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP HONOURABLE JUSTICE C. O. IDAHOSA ó
CHIEF JUDGE

ON FRIDAY THE 8TH DAY OF JULY, 2016

BETWEEN: SUIT NO. B/169D/2015
MR. OLUWAFEMI DAVIS ... **PETITIONER**
AND
MRS. MARY IYOBOSA DAVIS ... **RESPONDENT**

J U D G M E N T

This is a petition for divorce, filed on 22/9/15 in which the petitioner prays the court as follows:-

- (a) A Decree of Dissolution of marriage on the grounds that the marriage has broken down irrevocably as the Respondent has contracted another marriage.
- (b) Full access to the children of the marriage, Faith Davis and Mary Claire Davis.

The Respondent was fully served by substituted service on 19/2/16 pursuant to an order of court made on 28/1/16.

The Petitioner testified on oath in support of his petition. He tendered a notarised copy of the certificate of marriage dated 28/6/03 and it was admitted and marked as Exhibit A. He told the court that the marriage produced two children, both females. He said they cohabited at 23, Eweka Street, Off Upper Lawani Street, Benin City, before moving to the United Kingdom.

Petitioner said that on 31/23/12, Respondent became quite agitated and asked him to pack his personal effects and move out of the house and he did. Shortly after he moved out of the house, the Respondent got engaged, and married one Mr. David Isafuekhoerhe Airuehiomo at the Oredo Marriage Registry, Benin City. He tendered a Certified True Copy of the marriage certificate and it is Exhibit B. He was not cross examined as Respondent was not in court and she was not represented.

Learned Counsel for Petitioner relied on his case and asked for judgment.

I have considered the petition and the testimony of the Petitioner. The Respondent did not file an Answer nor did she appear. The testimony of the Petitioner was neither challenged by cross examination nor controverted by contrary evidence.

It is now trite that evidence that is unchallenged by cross examination nor controverted by contrary evidence has to be accepted and relied upon by the court.

It is also trite that in such a situation minimal proof is all that is required to satisfy the onus of proof.

See Generally

LARIME V. DATA PROCESSING MAINTENANCE AND SERVICES
LTD 2006 ALL FWLR (296) 1.

After due consideration of the petition and the testimony of the Petitioner, especially the Certified True Copy of the marriage certificate, which proved that the Respondent, got married to another man while her marriage to the Petitioner had not been lawfully dissolved, I am satisfied that the Petitioner has successfully proved his case.

It is necessary to point out that the Petitioner is entitled to visitation right to his children. To keep the children away from him is a cruel and unkind act.

On the whole judgment is entered in the following terms.

- (a) A Decree Nisi is hereby ordered dissolving the marriage between the parties.
- (b) The Decree Nisi shall be made absolute in 90 days in the absence of any objection.
- (c) The Respondent shall continue to have custody of the two children of the marriage, Faith and Mary Claire until they are 18 years of age, when they can decide where they can live.

(d) The Petitioner shall have access to the children, Faith and Mary Claire, without any hindrance from the Respondent, her agents or privies including the new husband of the Respondent.

(e) Each party shall bear his/her costs.

C. O. IDAHOSA
CHIEF JUDGE
8/7/2016

COUNSEL:

P. A. EROMOSELE ESQ. for the Petitioner