

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

BEFORE HIS LORDSHIP, HONOURABLE JUSTICE O. S. UWUIGBE, JUDGE  
ON THURSDAY, THE 30<sup>TH</sup> DAY OF JUNE, 2016

BETWEEN SUIT NO. B/232<sup>D</sup>/16

MRS. JULIET OMOHONRIA í í PETITIONER

AND

MR. GODWIN OMOHONRIA í í RESPONDENT

**JUDGMENT**

This is a petition for the dissolution of marriage filed on the 7<sup>th</sup> of April, 2016. The orders sought by the Petitioner in the petition is as follows:

(1) õORDER SOUGHT

The Petitioner seeks the following Order:

- (a) A DECREE of dissolution of the marriage í í í í í ..

The Respondent who was duly served with the petition and hearing notices filed no answer to the petition. He was present in Court, but he was not legally represented.

The Petitioner's case is that she got married to the Respondent at the Oredo Marriage Registry, Benin on 4/2/2009. She identified the Certified True Copy of the marriage certificate which was tendered and admitted in evidence as Exhibit A. She stated that after the

marriage, the Respondent took her to stay with him in the Respondent's father's house in the village at Iduguokha, Ewohimi in Esan South East Local Government Area. As she got to the village, the Respondent did not care for her neither did he give her money for food. He did not also cloth her. She said the Respondent started drinking and smoking and that anytime he smoked, he will beat her up. She stated that the Respondent refused to take her advice to stop drinking and smoking. She said her mother (Petitioner's mother) gave the Respondent the sum of ₦150,000.00 (One hundred and fifty thousand Naira) to rent a house, but that the Respondent took the money but failed to use the money for the purpose it was meant for.

The petitioner further stated that on 20/12/2009, the Respondent used cutlass to chase her out of the house and told her not to enter his house again. She stated that on getting to the Respondent's mother's place, she told her to comply as the Respondent had told her to go. The Petitioner said, she thereafter went back to her parents. She stated that her family and herself met the head of the family of the Respondent and complained of the crisis, but she never heard from them. She said since the Respondent left her till when she filed this

petition, he has not put a call across to her. The Petitioner urged the Court to dissolve the marriage.

Upon calling on the Respondent to cross-examine the Petitioner, he stated that he had no question to ask the Petitioner and that all he wanted was for the Petitioner to go away.

In his address, Learned Counsel for the Petitioner, A.O. Asenoguan, Esq submitted that the ground for the divorce as enumerated in the petition is straight forward and that it can be deduced that the marriage has broken down irretrievably. He urged the Court to grant the petition.

I have carefully considered the petition before the Court, the evidence led and the submission of Learned Counsel to the Petitioner. The ground on which the Petitioner seeks the dissolution of the marriage to the Respondent in this petition is as set out in Section 15(2) (f) of the Matrimonial Causes Act CAP M7 Laws of the Federation 2004 which provides as follows:

õ15(2) The Court hearing a petition for a decree of dissolution of the marriage shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfied the Court of one or more of the following facts:-

- (f) 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

In this case the evidence led by the Petitioner is that the Respondent made life unbearable for her and refused to cloth or feed her. The Respondent beat her up whenever he smoked.

In a case of this nature where the Respondent did not call evidence at the trial, the onus of proof on the Petitioner is discharged on a minimal proof. See the case of AJIDAHUN V. AJIDAHUN Vol. 1(2002) SELECTED MATRIMONIAL CASES p.24 at p.38.

However, the Petitioner led unchallenged evidence that they have lived apart since 20/12/2009 when the Respondent pursued her out of the house with a cutlass. It is a matter of record which I am entitled to take notice of that this petition was presented on the 7<sup>th</sup> day of April, 2016, making a period of 7 years since the parties started living apart.

The Respondent who was present in Court did not file any reply to the petition and stated emphatically that all he wanted was for the Petitioner to go her own way. The unchallenged evidence of the Petitioner amounts to satisfactory evidence before the Court. It constitutes proof of her allegations and this Court has a duty to act on it. See the following cases.

- (1) AJIDAHUN V. AJIDAHUN (SUPRA) PAGE 24 at PAGE 37.
- (2) NWABUOKU V. OTTIH (1961) ALL NLR p.457.

On the requirement of Section 15(2)(F), see the case of OMOTUNDE V. OMOTUNDE Vol.1 (2002) MATRIMONIAL CASES PAGE 255 at PAGE 291 where the Court of Appeal held that the law behind this section ðas far as living apart is concerned is not interested in right or wrong or guilt or innocence of the parties. Once the parties have lived apart the Court is bound to grant a Decreeö.

It is crystal clear from the positive and uncontroverted evidence before me that the parties have lived apart for a period of 7 years before the petition was filed.

Thus I hereby hold that the Petitioner has proved that the marriage celebrated between her and the Respondent has broken down irretrievably under Section 15(2) (f) of the Matrimonial Causes Act Cap M7 Laws of the Federation 2004.

In conclusion, in an uncontroverted case, as in this instant case where the evidence in support of the claim is unchallenged and is not itself incredible, the Court ought to accept and act on it.

Finally in sum and in view of this unchallenged evidence on record which I accept, the judgment of this Court is as follows:

1. The marriage celebrated between Mrs. Juliet Omohoria and Mr. Godwin Omohoria on 4/2/09 at the Oredo Marriage Registry in Benin is hereby dissolved.
2. Accordingly, I hereby pronounce an Order of Decree Nisi, the Decree Nisi shall be made absolute at the expiration of 3 months from the date hereon unless sufficient cause is shown on the contrary.
3. There shall be no order as to cost.

Hon. Justice O. S. Uwuigbe (Mrs.)  
Judge  
30<sup>th</sup> June, 2016

APPEARANCES

A. O. Asenoguan, Esq  
for the Petitioner