

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

BEFORE

**HIS LORDSHIP, HON. JUSTICE N.A. IMOUKHUEDE,
ON WEDNESDAY THE 11TH DAY OF DECEMBER, 2013**

B E T W E E N:	SUIT NO.: B/267D/2013
IFUEKO OSARU UWAGBOE	PETITIONER
A N D	
SUNNY OSAYUKI UWAGBOE	RESPONDENT

J U D G M E N T

This is a Petition for a Decree of dissolution of Marriage brought pursuant to section 15(1) (2) of paragraph B and f of the Matrimonial Causes Acts 2004 and Order 3 Rule 1 of the Matrimonial Causes Rule praying for a Decree of dissolution of marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably. The Petition was served on the Respondent on the 24th of June 2013 and the Respondent did not respond to the Petition. On the 27th of November 2013 the Petitioner gave evidence in support of her Petition.

Petitioner testified that she was married to the Respondent on the 21st of February, 2004 at St. James Anglican Church, Akpakpava, Benin City and tendered the marriage certificate which was admitted as Exhibit A. Petitioner testified that there are no children of the marriage and that they both lived at Egbomide Street, Off 2nd East Circular Road, Benin City, from 2004 – 2010.

Petitioner testified that since 2004 when they got married, they waited for one year and no child, so she went for medical checkup. Petitioner further testified that the Respondent refused to go with her. Petitioner testified that three years later she found out that he had a child from another woman and stated that she did not know that he was already married to another woman and the child is now an adult.

Petitioner testified that all the time while she was making efforts to look for a child, he did not assist, so she left the marriage. Petitioner testified that since she left in 2010, the Respondent never looked for her or went to her family house. Petitioner then urged the court to dissolve the marriage between her and her husband.

D.O. Inegbeboh Esq, Counsel to the Petitioner addressed Court and submitted that the Petitioner in her evidence has shown that the Respondent concealed the existence of the son he had before he married her. Counsel urged this court to believe her evidence in its entirety that the marriage is in an irreparable state and has broken down irretrievably. Counsel to the Petitioner urges this court to so hold and grant the prayers sought.

The Respondent was served with the Petition by the Court Bailiff on the 24th day of June 2013 and he did not respond to the Petition. The Court is then left with the uncontradicted evidence of the Petitioner. I observed the Petitioner from the witness box and I find her to be a witness of truth.

In Suit No: CA/C/157/2010 ENO BASSEY EKANEM V. ENGR. EKANEM BASSEY EKANEM & ANOR the Court of Appeal per NDUKWE-ANYANWU, J.C.A. held that:

‘The dissolution of marriage under the Act is guided by the Matrimonial Causes Act, Cap 220 LFN 1990 Ibrahim V. Ibrahim (2007) 1 NWLR pt. 1015 page 383. Either party to a marriage may present a petition that their marriage has broken down irretrievably under S. 15(1) of the Matrimonial Causes Act 1990.

By virtue of section 15(2) of the Matrimonial Causes Act 1990, the court upon hearing a petition for dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfies the court of one or more of the following facts namely: (a) that the Respondent has willfully and persistently refused to consummate the marriage:

(b) that since the marriage the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent;

(c) that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;

(d) that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition;

(e) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent does not object to a decree being granted; (f) that the parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the Petition; (g) that the other party to the marriage has, for period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under the law; and (h) that the other party to the marriage has been absent from the Petitioner for such a time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead. In effect, there are eight grounds for divorce and proof of one of these grounds or facts are, in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage.

In Nigeria a court cannot dissolve a marriage or, declare a marriage to have broken down though it appears the marriage has broken down irretrievably unless one of the facts listed in S. 15(2) of the Matrimonial Causes Act is established by the Petitioner. Ibrahim V. Ibrahim (supra), Damulak V. Damulak (2004 8 NWLR Pt. 874 page 151.’

I find as a fact that the Petitioner has proved that the marriage between her and the Respondent has

broken down irretrievably under facts listed in S. 15(2) of the Matrimonial Causes Act 2004 and I so hold.

I therefore grant a Decree Nisi in the first instance for the dissolution of the marriage of IFUEKO OSARU UWAGBOE, Petitioner and SUNNY OSAYUKI UWAGBOE Respondent, in compliance with the Matrimonial Causes Act 2004.

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HON. JUSTICE N. A. IMOUKHUEDE,
J U D G E.
11/12/2013

D. O. Inegbeboh Esq,
Counsel to the Petitioner