

On the 1st day of February, 2016, the Petitioner opened his case and testified for himself that he got married to the Respondent at the Flowing Grace Mission Church on the 17th day of June, 1995; that the marriage was under the Marriage Act. The Certificate of Marriage was admitted as Exhibit A.

The Petitioner further testified that he and the Respondent lived together and had three children in the marriage who are Cynthia Okpere (20 years old), Osato Diana Okpere (18 years old) and Etinosa Clinton Okpere (12 years old). He also testified that he and the Respondent lived happily together until she later discovered that he had a child outside the matrimonial home; that they have lived apart for three years. He prayed this Court to grant a decree of dissolution of the marriage.

On the directive of this Court, the learned counsel to the Petitioner filed a Final Written Address which he adopted on Monday, the 15th day of February, 2016. In the Written Address, the learned counsel to the Petitioner, C.O. Igiebor, Esq. submitted that the Petitioner's evidence remained unchallenged and uncontradicted; that the Petitioner had satisfied section 15 (2) (d) & (e) of the Matrimonial Causes Act. He argued further that where the Respondent did not call evidence, the onus of proof on the Petitioner is discharged on a minimal proof. He relied on *AJIDAHUN v. AJIDAHUN* Reported in Selected Matrimonial Cases by Funmi Quadri Vol. 1 Page 27 RT 8. On the effect of unchallenged evidence, learned counsel referred to *AJIDAHUN'S* Case (supra), per Suleiman Galadima, JCA at page 37. Learned counsel then urged this Court to dissolve the marriage between the Petitioner and the Respondent.

COURT:

I have considered the petition of the Petitioner and the prayer sought therein. I have equally considered the only unchallenged evidence adduced by the Petitioner and the written address of his learned counsel, including the authorities cited therein. I am of the considered view that the only issue worthy of determination in this case is as follows:

öWhether the Petitioner has proved his petition on the evidence led.ö

The FACTS relied on to support the claim of the Petitioner for the Oder of dissolution sought were stated at paragraph 8 (a) ó (e) (i) & (ii) which are reproduced as follows:

ö8. FACTS

The facts relied on by the Petitioner as consulting (sic) the ground specified above are as follows:

- (a) That the Respondent since the marriage never care for the Emotional needs of the Petitioner.
- (b) That both Petitioner and Respondent have lived apart since 2013 to date.
- (d)(sic) The parties to the marriage have lived apart for more than a year immediately preceding the presentation of this petition (i.e since 2013 till date) as a result of the attitude of the Respondent who is constantly abusing him psychologically and refusing to contribute to the family.

(e) Since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. The Petitioner will rely on the following fact inter alia:

(i) The Respondent never paid any attention to the emotional needs of the Petitioner.

(ii) The Respondent accused the Petitioner of having extra marital affairs a thing she knew is not correct and complained bitterly of the child Petitioner had for another woman an incidence the Petitioner earlier told the Respondent.

The learned counsel to the Petitioner, in his Final Written Address, submitted that the unchallenged evidence of the Petitioner satisfied the provisions of Section 15 (2) (d) & (e) of the Matrimonial Causes Act. These provisions are reproduced as follows:

õ15 (2) The Court hearing a petition for decree of dissolution of a 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 ó

(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.ö

The trite position of the law is that evidence that is unchallenged or uncontroverted should be believed and acted upon by the Court if such evidence is credible. See MARTCHEM INDUSTRIES NIG. LTD. v. M.F. KENT WEST LTD. (2005) NSCQR VOL. 22 PAGE 1037 where G.A. Oguntade held at page 1049 thus:

öIt is now trite law that when evidence is unchallenged and uncontroverted, the same may be accepted by the trial Court for the purpose the evidence is offered provided the evidence is in its nature credible.ö

The evidence on record which touches on the issue of dissolution of marriage is as follows:

öWe have lived apart for three years now.ö

Does the above meet the requirement of Section 15 (2) (d) of the Matrimonial Causes Act of the Respondent deserting the Petitioner for at least one year immediately preceding the presentation of the petition? I believe that the evidence of the Petitioner has met the requirement of the law because this

Petition was filed in 2014 and they have lived apart for three year which means they lived apart for one year before the Petitioner was brought to Court.

I hold that the Petitioner has successfully proved his Petition. Therefore, I hold that the marriage contracted by the parties at Flowing Grace Mission Church, Benin City on the 17th day of June, 1995 in accordance with the Marriage Act 1990 has broken down irretrievably.

Consequently I grant a decree of dissolution of the marriage between the Petitioner and the Respondent. I hereby Order a Decree Nisi which will be made a Decree Absolute after three months unless there is a cogent reason to vary same.

HON. JUSTICE V. O. EBOREIME
JUDGE
2nd March, 2016.

COUNSEL:

C.O. Igiebor, Esq., Counsel for the Petitioner.