

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON THURSDAY THE
20TH DAY OF FEBRUARY, 2025

BETWEEN: **SUIT NO. B/429^D/2023**
BOSE IJOSE IGUNMA ----- PETITIONER
AND
AUSTIN OSARETIN IGUNMA-----RESPONDENT

JUDGMENT

This Judgment is in respect of a Petition for the dissolution of marriage filed on the 19th of May 2023 by the Petitioner on the ground that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of this Petition.

In this Petition, the Petitioner is seeking an order of decree of dissolution of the marriage between the Petitioner and the Respondent.

The Petition was served on the Respondent but he refused to appear before this Court to defend the petition. The matter was eventually fixed for hearing and the Petitioner opened her case and testified in proof of her Petition.

In her evidence, the Petitioner stated that she got married to the Respondent on the 21st of August, 2018 at the Oredo Marriage Registry, Benin City, Edo State. At the hearing, she tendered the marriage certificate which was admitted as Exhibit “A”.

She alleged that they lived together as husband and wife for some time after they got married until they began to have some irreconcilable differences which both families tried to resolve but to no avail as all efforts proved abortive.

She said that the Respondent deserted their matrimonial home since the 30th of January 2022 and never came back.

She said that she has no knowledge of where the Respondent is presently because he has severed all ties of relationship and communication between them and they have not been living together as husband and wife since the desertion.

She informed the Court that there is no child from the marriage.

She pleaded with the Court to dissolve the marriage since it has broken down irretrievably.

Upon the conclusion of the Petitioner’s evidence, the matter was adjourned for final address.

In his Final Written Address, the learned counsel for the Petitioner, *O.I. Asenoguan Esq.* formulated a sole issue for determination as follows:

“Whether in the circumstances of this case, the Petitioner is entitled to the orders sought.”

Arguing the sole issue for determination, the learned counsel submitted that the sole ground for the dissolution of marriage as stipulated in *section 15(1) of the Matrimonial Causes Act 2004* that the marriage has broken down irretrievably.

He said that by virtue of the provisions under *S.15 (2) of the Matrimonial Causes Act* the Court upon hearing a petition for dissolution will hold that the marriage has broken down irretrievably if the Petitioner satisfies the Court of one or more of the facts set out under *sub paragraphs, (a) – (h) of Section 15 (2) of the Act* and he cited the case of *BIBILARI V BIBILARI (2011) LPELR 4443 (CA)*.

Counsel submitted that by *Section 15(2) (d) of the Act*, the Petitioner's marriage has broken down irretrievably since the Respondent has deserted the Petitioner for a continuous period of at least one year preceding the presentation of this Petition.

He maintained that desertion is a ground for the dissolution of marriage under *Section 15(2) (d) of the Matrimonial Causes Act*. He defined desertion as the withdrawal of support and cessation from co-habitation without the consent of the other spouse and with the intention of abandoning allegiance, fidelity or responsibility and to remain separated forever. In support, he cited the cases of *NWANKWO VS. NWANKWO (2014) LPELR 24396 (CA)*; and *ANIOKE VS. ANIOKE (2011) LPELR - 3774 (CA)*.

He posited that in the instant case, the Petitioner gave evidence of how the Respondent fled from their matrimonial home without her knowledge and severed all ties with the Petitioner.

He said that the Petitioner has established the elements of desertion by: (a) physical separation of the Respondent;(b) his intention to remain separated having not challenged this petition despite the service of several hearing notices and court processes on him; (c) his lack of just cause for withdrawal from cohabitation; and (d) the absence of consent of the Petitioner to desert the marriage.

Counsel submitted that it is trite law that where averments or depositions in an affidavit are unchallenged by the other party, they are deemed to be admitted. He cited the case of *AJAKUTA STEEL CO LTD V ROLE (2011) LPELR PT 563 193 CA* and urged the Court to so hold since this Petition was not challenged by the Respondent.

He submitted that where it is proved that the marriage has broken down irretrievably, a decree of the dissolution of marriage is inevitable and he cited the case of *AROWOSELU V AROWOSELU (1980) FWLR 172*.

Furthermore, he referred to the case of *BASSEY V BASSEY (1978) H.C.L.R, 242*, where the court stated that *"if the bond of marriage of the couple no longer exists, the court can conveniently hold that the marriage has irretrievably broken down."*

Finally, he urged the Court to hold that the marriage between the Petitioner and the Respondent has broken down irretrievably and to grant the relief sought.

I have carefully gone through the evidence adduced at the trial together with the address of the learned counsel for the Petitioner. From the records contained in the Court's file in this petition, all through the case, the Respondent virtually abandoned the trial and never responded to all the Hearing Notices served on her.

Thus, the evidence of the Petitioner remains unchallenged. The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See: *Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663.*

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendant, the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See: *Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24.*

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See: *Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341.* Even where the evidence is unchallenged, the trial court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: *Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650.*

Applying the foregoing principles, I will evaluate the evidence adduced by the Petitioner to ascertain whether they are credible and sufficient to sustain the Petition.

I am of the view that the sole issue for determination in this Petition is ***whether the Petitioner has proved that the marriage has broken down irretrievably?***

In every civil action, including a matrimonial petition, the burden of proof is on the Claimant or Petitioner, as he who asserts must prove. Furthermore, the standard of

proof required is on the preponderance of evidence or the balance of probabilities. See: *AGAGU V MIMIKO (2009) 7 NWLR (PT. 1140) 223.*

In the instant case, the Petitioner is seeking a Decree of Dissolution of Marriage on the ground that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of this Petition.

By virtue of *Section 15(2) of the Matrimonial Causes Act*, the Court upon hearing a petition for dissolution of a marriage shall hold that the marriage has 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 a 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 is in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage. See *Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383*.

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 listed facts is established by the petitioner. The law requires that the petitioner should state clearly the specific ground or grounds for divorce as listed in *Section 15(2)* above. See *Ibrahim v. Ibrahim (supra) and Damulak v. Damulak (2004) 8 NWLR (Pt. 874) 151*.

The law provides that in matrimonial causes, a matter or fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court. Thus in divorce suits, a decree shall be pronounced if the Court is satisfied on the evidence that a case for the petition has been proved.

In the instant case the evidence adduced at the trial is to the effect that the Respondent deserted their matrimonial home since the 30th of January 2022 and never came back.

The Petitioner led evidence to show that the Respondent has severed all ties with her since he deserted her.

By virtue of the provisions of *section 15(2) (d) of the Matrimonial Causes Act*, the evidence adduced is sufficient proof that the marriage has broken down irretrievably.

In essence, the Petitioner has established one of the grounds to prove the irretrievable breakdown of the marriage. As earlier stated, proof of one of these grounds or facts is in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage. See *Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383*.

I therefore resolve the sole issue for determination in favour of the Petitioner.

Having resolved the sole issue for determination in favour of the Petitioner, ***I hold that this Petition succeeds and I hereby make an order of decree of dissolution of***

the marriage between the Petitioner and the Respondent conducted on the 21st of August, 2018.

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. I make no order as to costs.

***P.A.AKHIHIERO
JUDGE
20/02/2025***

COUNSEL:

- 1. O.I. Asenoguan Esq.-----Petitioner***
- 2. Unrepresented-----Respondent***