

**IN THE HIGH COURT OF JUSTICE**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIERO,**  
**ON THURSDAY THE**  
**13<sup>TH</sup> DAY OF FEBRUARY, 2025**

**BETWEEN:** **SUIT NO. B/767<sup>D</sup>/2023**  
**HOPE EVBAGUEHIKHA AJAYI -----PETITIONER**  
**AND**  
**GLORIA ONYEKA AJAYI -----RESPONDENT**

**JUDGMENT**

This Judgment is in respect of a Petition for the dissolution of marriage filed on the 29<sup>th</sup> of August 2023 by the Petitioner on the grounds *inter alia* that the marriage has broken down irretrievably because the parties 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. Furthermore, that the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of the 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 she refused to appear before this Court to defend the petition. The matter was eventually fixed for hearing and the Petitioner opened his case and testified in proof of his Petition.

In his evidence, the Petitioner stated that he married the Respondent at the Oredo Local Government Area Marriage Registry on the 30<sup>th</sup> of October, 2010. He tendered their marriage certificate which was admitted in evidence as Exhibit 'A'.

He alleged that immediately after the marriage the Respondent and he cohabited at the following places: No 9 Egbon Street, Benin City; No. 2 Aigbogun Street, off Sapele Road, Benin City and at No. 6 2<sup>nd</sup> Nekpenekpen Lane, Benin City.

He said that since the marriage there has been no previous proceedings between them and that he did not connive or collude with the Respondent to file this petition.

He alleged that the problem in the marriage started immediately after their wedding ceremony on the 30<sup>th</sup> of October, 2010. According to him, as soon as they stepped out of the wedding hall, they discovered that the Respondent's wedding ring was missing. He said that they searched frantically for it but they could not find it.

According to him, four months later, the Respondent became sick and it was discovered that she had fibroid. However, when they performed an operation on her, the doctors did not see anything.

He said that the Respondent was sick for about six years and the doctors could not diagnose her ailment. He said that the Respondent's family were aware of their predicament but they did nothing, so his family instructed him to send the Respondent back to her family for them to take care of her and on the 4<sup>th</sup> of November, 2018 the Respondent went back to her father's house and never came back.

He alleged that on the 10<sup>th</sup> of July, 2023, the Respondent's family members came to his family and returned the bride price.

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, *D.I. Egbewuare Esq.* formulated a sole issue for determination as follows:

***“Whether from the evidence of the petitioner before court the marriage between the Petitioner and Respondent has broken down irretrievably.”***

Opening his arguments, the learned counsel referred the Court to ***Section.15 (1)and (2) of the Matrimonial Causes Act CAP M7*** and the cases of of ***Anioke v Anioke (2013) ALL FWLR PT 658 pg 975 at 986 Para G.*** and ***Ibrahim v. Ibrahim (2007) 1 NWLR (PT. 1050).***

He submitted that in proof of a petition, the Petitioner is not expected to prove all the grounds as provided under ***Section 15. (2) (a)-(h) of the Matrimonial Causes Act***, but that proof of just one ground is sufficient for the court to dissolve the marriage.

He referred the Court to the provisions of ***Section 15. 2 (e) and (f) of the Matrimonial Causes Act*** which provides thus:

***(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 three years immediately preceding the presentation of the petition***

He said that the Petitioner in proof of his case testified that the Respondent left their matrimonial home on the 4<sup>th</sup> of November 2018 for her father's house and they have been living apart ever since without any communication between them.

He submitted that by the evidence of the Petitioner, they have established the grounds for divorce under ***Sections S. 15 (1) and 15 (2) (e) and (f) of MCA*** and he urged the Court to so hold and he relied on the cases of ***Okoro v Okoro (2015) ALL FWLR PT 572 PG 1749 at 1773 par GH.*** And ***page 1787 par E-F*** and ***Olaniyi v. Olaniyi (2024) LPELR 62816 (CA).***

He therefore urged the Court to uphold this Petition and dissolve the marriage.

He submitted further that the evidence of the Petitioner was neither challenged nor contradicted, so the proof required of the Petitioner is minimal and he relied on the case of ***SPDC Nig Ltd vs. Edemakue (2009) ALL FWLR (PG 489) 407 R. 8 at 413.***

He submitted that where a party to a suit was given the opportunity to be heard and refused, such a party should not be seen complaining of denial of fair hearing or opportunity to be heard. He said that since the Respondent failed to challenge or contradict the evidence of the Petitioner, the Court should rely on the evidence of the Petitioner and he cited the case of *Chami Vs United Bank For Africa (2010) ALL FWLR (PT 520) 1287 R. 2 AT 1289*.

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 grounds inter alia that the marriage has broken down irretrievably upon the fact that the parties 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. Furthermore, that the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of the 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 Petitioner and the Respondent have been living apart since the year 2018. Thus they have been living apart for a continuous period of at least two years immediately preceding the presentation of this petition and the Respondent does not object to a decree being granted.

Furthermore, the parties have also lived apart for a continuous period of more than three years immediately preceding the presentation of this Petition.

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

In essence, the Petitioner has established two 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 30<sup>th</sup> of October, 2010.*

*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**  
**13/02/2025**

**COUNSEL:**

- 1. Efe Abulele Esq.-----Petitioner**
- 2. Unrepresented-----Respondent**