

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P. A. AKHIHIERO,
ON FRIDAY THE
13TH DAY OF FEBRUARY, 2026

BETWEEN: **SUIT NO. B/526^D/2023**
MRS. LOVETH UGIAGBE-----PETITIONER
AND
MR. EFE UGIAGBE-----RESPONDENT

JUDGMENT

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner on the 22nd of April 2024. In her Petition, the Petitioner is seeking the following reliefs:

- a) That the marriage be dissolved on the ground that the marriage between the Petitioner and the Respondent herein has broken down irretrievably.*
- b) An Order against the Respondent to return the personal properties of the Petitioner listed above.*
- c) And for any ORDER or Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.*

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 27th day of March, 2021 at the Apostolic Church in Benin City, and they were issued with a Marriage Certificate. At the hearing, she tendered a photocopy of the marriage certificate which was admitted as Exhibit “A”.

The Petitioner alleged that after their wedding ceremony, she lived with the Respondent at their matrimonial home. She said that two weeks after the Wedding, she discovered that the Respondent had a medical issue, so she requested him to do a medical test. The Petitioner alleged that the Respondent refused to go for the medical checkup, and started to abuse her verbally and physically.

The Petitioner stated that after some months the Respondent agreed to go for the medical checkup and she found out that the Respondent had a low sperm count. The Petitioner said that on the 10th of December, 2021 the Respondent sent her out of their matrimonial home. She said that their parents tried to settle the two of them but they could not.

The Petitioner testified that the Respondent is still harassing her at her place of business. She said that the Respondent comes with his friends to scatter the goods she is selling.

She testified that she wants the court to dissolve the marriage between the Respondent and herself, and that her properties in the Respondent’s house are as follows:

1. Set of chairs;
2. Washing machine;
3. Three curtains; and
4. Gas cooker and the gas cylinder.

She wants the court to make an order for her to collect her above property. She further testified that the Respondent paid dowry on her in the sum of ₦5,000 and some other items that she has now forgotten.

Upon the conclusion of the Petitioner’s evidence, the matter was adjourned for cross examination. Fresh hearing notice was issued and served on the Respondent, but he

failed to appear in court to cross examine the Petitioner. The Respondent was later foreclosed and the matter was adjourned for defence or final address.

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

“Whether or not this petition can succeed in view of the evidence adduced by the Petitioner, together with the documents submitted as exhibits.”

Arguing the sole issue for determination, the learned counsel submitted that going by the unchallenged and uncontroverted evidence of the petitioner, together with the documents relied upon as exhibits before the court, this Petition ought to be granted by this Court.

Learned counsel posited that the Respondent failed, refused and voluntarily neglected to file any answer to all the issues raised against him in the petition and did not attend court to challenge same, notwithstanding that he was duly and consistently served with Hearing Notices by the Bailiff on the orders of this Court.

He urged the Court to hold that where a party deliberately fails and refuses to challenge the evidence adduced against him by the other party, the Court or Tribunal is bound to give judgement on the strength of the evidence before it.

Learned counsel submitted that the Respondent who was sufficiently served with notices of the pendency of the case against him (at all time material) but failed to appear before the court to challenge the case or to defend himself can no longer enjoy any favour or sympathy from the same court, and the only option open to the court is to rely on the evidence given and to act on it. In support of this, learned counsel cited the following cases: ***HASSAN V. ATANO (2002) 8 NWLR (Pt. 4) 770 AT PAGE 581; EZEANAH V. ATTA (2004) 7 NWLR (Pt. 4) 873 AT PAGE 468; MATANMI V. DADA (2013) and FBN Plc V. A.G Federation (2013) 30 WRN at Pages 110-111 lines 4-5.***

He therefore urged the Court to grant this Petition.

Counsel submitted that the ground and prayers for the dissolution of the marriage is based on the fact that the marriage has broken down irretrievably in accordance with the provisions of ***Section 15 of the Matrimonial Causes Act***. He also cited the

following cases: *Harriman V. Harriman (1989) NWLR (Part) 119 at Page 26 at 18*; *Nanna V. Nanna (2006) 3. NWLR (Pt) 966 at Page 1*; and *Ibrahim v. Ibrahim (2004) 1 NWLR (Pt) 1015 at 383*.

Learned counsel stated that to satisfy the court that her marriage to the Respondent has broken down irretrievably, the Petitioner pleaded and gave evidence that since the marriage, the Respondent has behaved in such a way that she cannot reasonably be expected to live with him as Husband and Wife. He maintained that the Petitioner adduced vivid evidence of incessant beatings without just cause, both at home and in public places.

Learned counsel also argued that it was also stated that the Respondent all along did not provide means of feeding for the Petitioner who would at times remain without food for days unless and until she got provision from her parents. He said that consummation between the parties was poor and medical reports indicated that consummation was unproductive and most times absent.

Learned further submitted that from the evidence adduced, both parties have lived apart for a period of more than two years preceding the date of the institution of this Petition. Thus, the Petition has met the requirement of *section 15(2)(e) of the Matrimonial Causes Act* to enable the Court to dissolve the marriage.

He submitted that there was no collusion and or connivance between the parties before filing this Petition.

He informed the Court that there is no child in the marriage so there is no prayer for costs or damages save that the Court should order the return of the Petitioner's personal properties itemized in the Petition.

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 him.

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 the case of: *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.***

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*.

In the instant case, the Petitioner is seeking a Decree of Dissolution of Marriage on the ground that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him, and also 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.

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 Petitions, a decree shall be pronounced if the Court is satisfied on the evidence that a case for the Petition has been proved.

In this Petition, one of the grounds is 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.

In some cases, the courts have held that non-participation in the proceedings by a Respondent after service of court processes may be regarded as evidence of non-objection. See *Aderinwale v. Aderinwale (1976) 4 CCHCJ p.1201*. I subscribe to this reasoning that where a Respondent fails to file an answer or participate in other aspects of the proceedings, the court can infer from his absence that the Respondent is not opposed to the dissolution of the marriage.

Thus, based on the Respondent's absence throughout the proceedings, it is deemed that the Respondent does not object to a decree being granted. This matter was filed on the 22nd of April 2024, and the Petitioner in her uncontradicted evidence testified that both parties have lived apart since the 10th of December, 2021 when the Respondent sent her out of their matrimonial home. This is beyond the two years prescribed by the Matrimonial Causes Act.

I therefore hold that the Petitioner has successfully 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*.

The sole issue for determination is resolved in favour of the Petitioner.

In this Petition, apart from seeking dissolution of the marriage, the Petitioner is also seeking an order of this Honourable Court directing the Respondent to return her personal properties in the Respondent's house as follows:

1. Set of chairs;
2. Washing machine;
3. Three curtains; and
4. Gas cooker and the gas cylinder.

At the hearing, the Petitioner testified that the properties listed above belong to her. The Respondent did not challenge or controvert this allegation at the hearing, and he is deemed to have admitted it.

In the event, I am of the view that the Petitioner is entitled to the return of the said properties from the Respondent.

Having resolved the sole issue for determination in favour of the Petitioner, I hold that this Petition succeeds and I hereby make the following orders:

- a) That the marriage be dissolved on the ground 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; and***
- b) An Order that the Respondent return the personal properties of the Petitioner as follows:***
 - i. Set of chairs;***
 - ii. Washing machine;***
 - iii. Three curtains; and***
 - iv. Gas cooker and the gas cylinder.***

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. The Respondent shall pay the sum of ₦200,000.00 (Two Hundred Thousand Naira) as costs for this Petition.

***P.A. AKHIHIRO
JUDGE
13/02/2026***

COUNSEL:

- 1. O.F. Asemokhai Esq., with M.A. Abu Esq-----Petitioner***
- 2. Unrepresented-----Respondent***