

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 17TH DAY OF OCTOBER, 2023
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: PET/144/2021

BETWEEN:

ULONNA ODOCHI INYAMA EZEObI --- PETITIONER
AND
JUDE OBIORA EZEObI --- RESPONDENT

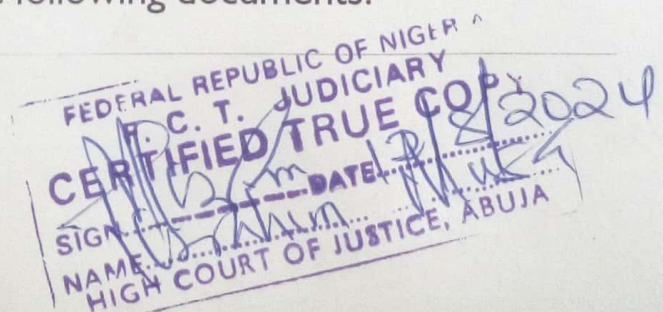
JUDGMENT

This Petition was presented by the Petitioner for a decree of nullity of her marriage to the Respondent on the ground that the Respondent was, at the time of the marriage, lawfully married to are Chiamaka Marylin Ezeobi.

Upon receipt of the Notice of Petition, the Respondent filed an Answer and Cross Petition on the 2/3/2022 wherein he also prayed the Court for decree of Nullity of the marriage on the ground that he was legally married before the Petitioner craftily drafted him into a marriage with her. He also wants the Court to direct the Petitioner to forthwith stop using his surname 'Ezeobi'.

The Petitioner filed a Reply to the Respondents Answer on the 3/11/2022.

The Petitioner testified on the 12/1/2023. She adopted her witness statement on oath and tendered the following documents:



- Certificate of marriage marked as Exhibit A
- CTC of Notification of Declaration of Nullity marked as Exhibit A1.
- CTC of judgment dated 17/9/2018 marked as Exhibit A2.

The Petitioner got married to the Respondent at the Federal Marriage Registry, Abuja on the 9/11/2017 upon the belief that the Respondent was divorced from his previous marriage to one Chiamaka Marilyn Ezeobi. The Respondent had shown her a Certificate of Nullification of Marriage issued by the Onitsha Inter – diocesan Tribunal dated 1/6/2017.

According to the Petitioner, the practice in the Catholic Church is that before such a certificate of nullification is issued, the applicant must have presented a judgment of the Court dissolving the marriage for the tribunal to issue the certificate.

The Petitioner however discovered that the Respondent only obtained the decree absolute for the dissolution of his previous marriage to Chiamaka Merylin Ezeobi on the 16/12/2018. She felt betrayed and left the Respondent on the 17/6/2018, and parties have lived apart since then. The Petitioner said she no longer wants to associate with the Respondent.

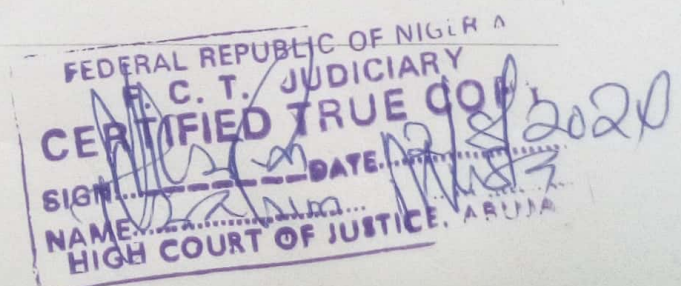
Under cross examination, PW1 said that she only got to know about the Respondent's marriage to Chiamaka Merilyn Ezeobi, until



after contracting marriage with him. The Respondent from the records was given the opportunity to defend this action if he wanted. He never availed himself of the opportunity. Upon the application by Petitioners counsel, Respondent was subsequently foreclosed from defence.

Now what is the implication of the Respondent not leading evidence in support of his pleadings? In **Omo – Agege v.s Oghojafor & ors (2010) LPELR – 4775 (CA)**, the Court held that averments in pleadings are mere paper tigers and are not evidence. A party must lead evidence oral or documentary in support of facts stated in his pleadings. Thus the law is firmly settled that a party who does not give evidence in support of his pleadings, or in challenge of the evidence of the adverse party is deemed to have accepted the evidence of the adverse party notwithstanding the general traverse. See **Akinlola vs. Balogun (2000) 1 NWLR (part 642) page 532 at 545**. The Supreme Court in **Newbreed Org. Ltd vs. Erhomosele (2006) LPELR – 1984 (SC)** stated that such pleadings not supported by evidence, oral or documentary is deemed by the Court as having been abandoned. See also **Miss Ezeanah vs. Alhaji Attah (2004) 2 SCNJ page 200 at 235**. This Court will therefore deem the Answer and Cross Petition filed by the Respondent as abandoned.

It is pertinent to state that both learned counsel waived their right to address the Court. Therefore, the only issue that has arisen

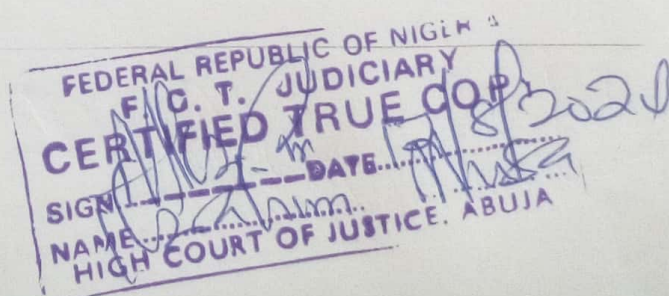


is "whether the Petitioner has presented sufficient evidence to merit the grant of a decree nullifying her marriage to the Respondent."

In **Mbonu vs. Mbonu (1976) 1 FNR 57** the Court held that:

"A void marriage is one that will be regarded by every Court in any case in which the existence of the marriage is in issue as never having taken place...It is a marriage that is invalid ab initio. From its inception, it never existed due to certain prior existing circumstances or failure to adhere to certain prescribed requirements while the marriage is being contracted..."

Where either party to a statutory marriage is at the time of the marriage lawfully married (customarily or statutorily) to another person, such marriage will be void. See Section 33(1) of the Matrimonial Causes Act. The Petitioner herein had tendered Exhibit A2, the Judgment of the Court delivered on the 17/9/2018 dissolving the marriage between the Respondent and one Chiamaka Marylin Ezeobi. The Judgment clearly identified the marriage of the Respondent to Chiamaka Marylin Ezeobi as having been contracted on the 1/6/2013 at the Federal Marriage Registry, Ikoyi Lagos. The Decree nisi for dissolution of the marriage was granted on the 17/9/2018. This goes to show that on the 9/11/2017 when the Respondent contracted his marriage with the Petitioner, he was still legally married to Chiamaka



I had stated that the Respondent did not adduce evidence in challenge of the evidence adduced by the Petitioner. In law, it is now an accepted principle of general application that in such circumstance, the defendant is assumed to have accepted the evidence adduced by plaintiff, and the trial Court is entitled or is at liberty to act on the Petitioner's evidence. See **Agagu vs. Dawodu (1990) NWLR (part 160) 169 at 170.**

From the foregoing and having found that the testimony of the Petitioner is unchallenged, I find merit in the Petition and judgment is entered for the Petitioner in the following terms:

- (1) The Court hereby pronounce a Decree of Nullity of the purported marriage conducted between Ulonna Odochi Inyama Ezeobi, (the Petitioner) and Jude Obiora Ezeobi (the Respondent) on the 9/11/2017 at the Federal Marriage Registry, Abuja on the ground that the marriage is void.
- (2) The Court hereby grants an order nullifying the said marriage.

M.A. Nasir. 17/10/2023

Hon. Justice M.A. Nasir

Appearances:

Mojirayo Ogunlana – Nkanga Esq – for the Petitioner

Haruna Wada Esq – for the Respondent.

