IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI – YUSUF

DELIVERED ON THE 25TH MARCH, 2021

SUIT NO.FCT/HC/CV/381/2019

BETWEEN

MRS OLUCHI BLESSING OKONKWO…… PETITIONER

AND

MR MARTIN CHIGEKWU OKONKWO……..... RESPONDENT

JUDGMENT

The Petitioner took out this petition the 23rd of September, 2019 against the Respondent seeking for the following relief:

(a) A DECREE OF DISSOLUTION OF THE MARRIAGE contracted between the Petitioner and the Respondent on 3rd May,2014 on the ground that the marriage has broken down irretrievably; and that since the marriage the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent.

THE GROUNDS UPON WHICH THE PETITION IS PREDICTATED ARE AS FOLLOWS:-

i) The Respondent has since the marriage been very cruel in behavior, attitude, action and conduct towards the

Petitioner through verbal insults, physical assaults on the person of the Petitioner at no or the slightest of any provocation

ii) The Respondent since the marriage has been in the habit of raining verbal insults on the Petitioner at the flimsiest excuse both indoors and sometimes in the public glare.

iii) The Respondent since the marriage has been in the habit of going out to drink and keeping late nights outside the matrimonial home, leaving the Petitioner alone at home and at any attempt by the petitioner to talk to the Respondent for a change of lifestyle, the Respondent usually quarrel and threaten to beat and batter the person of the Petitioner

iv) The Respondent apart from habitual verbal assault and battering of the person of the Petitioner subsequently neglected, refused and stopped providing for the feeding, care, welfare and up keep of the Petitioner

v) The Respondent deliberately abandoned the Petitioner to provide, carter, keep and feed herself and even the Respondent in the marriage

vi) That the actions of the Respondent as alleged in the forgoing made the Petitioner to report the Respondent to his family and friends for intervention but this only made

matters worse as the Respondent out rightly refused to hear any advice or interventions

vii) The Petitioner having had so much frustrations with the attitude of the Respondent, which started affecting her health and began to make her health to fail due to emotional and psychological trauma and stress. The Petitioner moved out of the matrimonial home on 1st September, 2018 to save her life from going into depression and any unpleasant consequences.

viii) The Petitioner and the Respondent have lived apart since then and have continued so up till the presentation of this petition.

The Respondent was duly served with the Notice of petition and Hearing Notices via substituted means at No 12 Bola Arowolo Street, Atunrashe Estate, Gbagada Lagos State. The certificates of service are as contained in the record of the court. The Respondent however failed to respond to the processes of this court.

At the hearing of the petition on the 11th March, 2020 the Petitioner testified as P.W 1; that she lives at No.10, 14 Road 1st Avenue Gwarimpa Abuja. That she works with a private Organization as an Administrator. That she got married to the Respondent on the 3rd of May, 2014 at Our Lady's of Queen

Apostle Church, a licensed place of worship and that they were issued with a marriage certificate. The marriage certificate was admitted in evidence and marked as Exhibit A.

It is further the evidence of the Petitioner that after the marriage, parties lived in House 12 Bola Arowolo Street, Gbagada Lagos State: that the Respondent never showed her care; that he was in the habit of always going out and coming home late or never bothers to come back home until the next day. She states that the Respondent treated her badly, emotionally and physically; that when she was admitted in the hospital for some days, the Respondent never showed care. She stated further that she had to leave their matrimonial home because she had started developing heart issues due to the constant pains in her chest. That she left the matrimonial home on the 1st September, 2018 and since then efforts to reconcile them by her family has proved abortive; that she believes the Respondent is no longer interested in the marriage. The P.W.1 urged the Court to dissolve the marriage.

The matter was adjourned at various times for the Respondent to cross examine the Pw1 and also put in his defence; hearing notices were served on him, he however chose or refused to appear in court. The Respondent was foreclosed from cross examining the Pw1 as well as defending the matter.

Learned counsel to the Petitioner waived his right to file a final written address. The matter was therefore adjourned for Judgment.

It is to be noted that the failure of the Respondent to challenge the evidence of the Petitioner will not automatically shift the burden of prove on the Respondent. The burden rests on the Petitioner. See Section 82 Matrimonial Causes Act

(1) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.

Thus, the law is that a Petitioner who desires dissolution of a marriage must discharge the standard of prove stipulated by the Matrimonial Causes Act and establish in evidence one of the facts set out under S 15 and S 16 of the same Act.

Section 15(1) A petition under this Act by a party to marriage for a decree of dissolution of the marriage may be presented to the

court by either party to the marriage upon the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts:

(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 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 three 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 or restitution of conjugal rights made under this Act;

(h)That the other party to the marriage has been absent from the Petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

(3) For the purpose of subsection (2) (e) and (f) of this Section the parties to a marriage shall be treated as living apart unless they are living with each other in the same household.

Having carefully gone through the evidence before the court, I find that the sole issue which calls for determination is

Whether the petitioner has successfully made out a case to warrant the grant of the reliefs sought

In determining the petition for dissolution of marriage under s.15(1) Matrimonial Causes Act, once the court is satisfied that the marriage has broken down irretrievably, then the court can go ahead to dissolve same. The petitioner must however prove one or any of the conditions earlier stated.

In the instant case, the Petitioner relied on the fact contained in Section **15 (2) (c) of the Matrimonial Causes Act which provides**;

"That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent".

It therefore means that for the Petitioner to succeed, the Petitioner must lead credible and or convincing evidence to the reasonable satisfaction of the Court to such particular conduct of the Respondent, which would warrant the relief sought; and such act must be weighty and grave in nature to make further co-habitation virtually impossible. See the case of **Ibrahim Vs. Ibrahim (2007) ALL FWLR (PT.346) 474** & section 15(c) & 16 of the MCA

There must be a conduct or act that can be described as a behaviour for which the Court will hold that the Petitioner cannot reasonably be expected to live with. See LT. ADEYINKA A. BIBILARI (RTD) v. NGOZIKA B. ANEKE BIBILARI (2011) LPELR-4443(CA)

"*The Matrimonial Causes Act ascribed a Section to the standard of proof in matrimonial matters or Causes. S.82 (1) and (2) of the Matrimonial Causes Act stipulates as follows: (1) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court. (2)*

Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact, or as to that other matter. From the above provision, the Court will pronounce a Decree of dissolution of marriage if satisfied on the evidence that a case for the petition has been made. Thus the matrimonial offence must be strictly proved once the Court is reasonably satisfied of the existence of a ground to grant the divorce. The Court will then proceed to hold the marriage has broken down irretrievably. The standard of prove is not on a balance of probabilities or preponderance of evidence as in general civil cases. The standard of proof is on the petitioner but taken as discharged once it is established to the reasonable satisfaction of the Court..."

It is the evidence of the Pw1 that the Respondent has treated her *badly, emotionally and physically*; that she had to leave the matrimonial home when the attitude of the Respondent was affecting her health. It is equally her evidence that efforts made to reconcile parties didn't yield any result and that she knows the Respondent is no longer interested in the marriage as both have lived apart since 1st September, 2018. These assertions however were not substantiated with cogent evidence. The issue of her being admitted in the hospital is not particularized or supported

with credible evidence. There is no medical report or credible evidence to buttress her facts. She equally states in evidence that when she was sick, the Respondent didn't show her care; that the attitude of the Respondent is affecting her health. It is also the evidence of the pw1 that her family members tried to reconcile parties; that her family visited the Respondent's village. The village or the name of the family members who visited the village is not in evidence; no other witness was called to corroborate her evidence. The Pw1 also stated in evidence that the Respondent goes out and comes back late in the night or does not even come back home some nights. All these assertions were not supported with credible evidence

As stated earlier the Pw1 has a bounden duty to prove that the Respondent has behaved in such a way that she is not expected to live with him. See section 15 (2) (c) & 16, 82 MCA

Also section 16 MCA provides thus;

16 (1) Without prejudice to the generality of Section 15 (2) (c) of this Act, the Court hearing a petition for a decree of dissolution of marriage shall hold that the petitioner has satisfied the Court of the fact mentioned in the said section 15(2) (c) of this Act if the Petitioner satisfies the Court that-

a. Since the marriage, the Respondent has committed rape, sodomy, or bestiality; or

b. Since the marriage, the Respondent has, for a period of not less than two years-

   (i) Been a habitual drunkard, or

   (ii) Habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation, or has, for a part or parts of such a period, been a habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated; or

c. Since the marriage, the Respondent has within a period not exceeding five years-

   (i) Suffered frequent convictions for crime in respect of which the Respondent has been sentenced in the aggregate to imprisonment for not less than three years, and.

   (ii) Habitually left the Petitioner without reasonable means of support; or.

d. Since the marriage, the Respondent has been in prison for a period of not less than three years after conviction for an

offence punishable by death or imprisonment for life or for a period of five years or more, and is still in prison at the date of the petition; of.

e. Since the marriage and within a period of one year immediately preceding the date of the petition, the Respondent has been convicted of-

    (i) Having attempted to murder or unlawfully to kill the Petitioner, or

    (ii) Having committed and offence involving the intentional infliction of grievous harm or grievous hurt on the Petitioner or the intent to inflict grievous harm or grievous hurt on the Petitioner; or

f. The Respondent has habitually and willfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the Petitioner-

    (i) Ordered to be paid under an order of, or an order registered in, a court in the Federation, or.

    (ii) Agreed to be paid under an agreement between the parties to the marriage providing for their separation; or

g. The Respondent-

(i) is, at the date of the petition, of unsound mind and unlikely to recover, or.

(ii) Since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution.

From the available facts and evidence led before the court, it is clear that the Petitioner has failed to establish cogent and satisfactory evidence that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him and I so hold.

Consequently, the Notice of Petition with Pet/381/19 filed on the 23-09-2019 fails and same is hereby struck out.

ASMAU AKANBI – YUSUF

(HON. JUDGE)

APPEARANCES;

Felix Tyokase Esq for the Petitioner.