IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS WEDNESDAY, THE 27TH DAY OF JANUARY, 2021.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

PETITION NO: PET/97/2020

BETWEEN:

OFURE ANOSIKE IKECHUKWU ……PETITIONER

AND

1. **EMMANUEL ANOSIKE IKECHUKWU**
2. **MARYANN CHISOM IKECHUKWU**

.....RESPONDENTS

JUDGMENT

By a Notice of Petition dated 24th May, 2019 and filed same date in the Court's Registry, the Petitioner claims the following Reliefs against the Respondent:

1. **A Decree of Dissolution of marriage between the petitioner and the 1st respondent contracted on the 25th day of March 2013 on the ground that the marriage has broken down irretrievably.**

2. **A Decree of Dissolution of the marriage between the petitioner and the respondent contracted on the 25th day of March, 2013 on the ground that since 28th of September, 2015 the respondent has lived apart from the petitioner with the intention to bring Co-habitation of himself and the petitioner permanently to an end without any reasonable cause and**

without the consent of the petitioner for a continuous period of at least 3 (three) years and 2 months preceding the date of presentation of this petition.

3. **A Decree of Dissolution of the marriage contracted between the petitioner and the 1st respondent on the 25th of March 2013 on the ground that the respondent has committed adultery with the 2nd respondent, and the petitioner finds it intolerable to live with the 1st respondent.**

4. **An Order of this Honourable Court directing the 1st respondent to pay to the petitioner the sum of N900, 000.00 (Nine Hundred Thousand Naira) only being the amount with which the petitioner rented the apartment for 3 years in Peace Village Lugbe where she presently resides.**

5. **An Order of this Honourable Court directing the 1st respondent to pay to the petitioner the sum of N400, 000.00 being the sum of monies spent by the petitioner for her personal upkeeps and welfare from 28th September 2015 till the time of filing this petition.**

6. **An Order of this Honourable Court directing the 1st respondent to pay to the petitioner the sum of N500, 000.00 being the sum paid by the petitioner to Lawrence Erewele Esq. as the professional fees for prosecuting this action**.

It is important to state at the onset that because parties did not want any bitter recriminations over the dissolution of the marriage, and to allow for an amicable dissolution, **Reliefs 3-6** was subsequently withdrawn at plenary hearing.

The Respondents were duly served with the originating court processes. Learned counsel E.O. Abadaki, Esq. appeared for the Respondents and indeed filed answers to the petition which were withdrawn and struck out when parties agreed to narrow the issue in the dispute to the question of dissolution of the marriage which neither party was opposed to. Indeed the withdrawal of the answers was rooted or predicated on the withdrawal of the monetary claims by petitioner and the consensus that the marriage be dissolved.

The matter then proceeded to hearing.

The petitioner in proof of the petition as required by the Matrimonial Causes Rules testified as PW1 and the only witness. The substance and summary of her evidence is that she got married to the respondent at the Gwagwalada Marriage Registry on 26th July, 2013 vide Exhibit P1 and also at St. Gregory De Great Catholic Church Ekpoma, Edo State, a licenced place to celebrate marriage under the marriage Act vide Exhibits P2 and P3.

She stated that sometime on 26th September, 2015, the 1st Respondent and her mother in law sent her packing out of the matrimonial home and that since then, parties have live apart and all attempts at reconciliation has failed. She prayed for a dissolution of the marriage as the marriage has broken down irretrievably and parties have lived apart for nearly six (6) years and that the 1st respondent has even since Remarried.

Under cross-examination, she repeated the point that parties have lived apart for nearly six (6) years now. She also stated that there are no children in the marriage.

With her evidence, the petitioner closed her case.

Counsel to the Respondent rested the case of Respondent on that of petitioner indicating that they are not opposed to the dissolution of the marriage. Counsel on both sides of the aisle then addressed the court, urging the court to grant the petition since parties are not interested in the marriage but that with respect to cost of action, the 1st Respondent was conceding to **N50, 000**.

Having carefully considered the petition, the unchallenged evidence led and the address of counsel, the narrow issue is whether the petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of this petition. It is on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

ISSUE 1

Whether the petitioner has on a preponderance of evidence established/satisfied the legal requirements for the grant of the petition.

I had at the beginning of this judgment stated the claims of the petitioner and indicated that **Reliefs 3 – 6** were withdrawn and struck out. I had also indicated that the Respondents filed answers to the petition on behalf of the two Respondents

which were equally withdrawn and struck out when parties (Petitioner and 1st Respondent) agreed to narrow the issues in controversy to that of dissolution of the marriage which parties on both sides of the aisle agreed should be granted so that parties can move on with their lives.

In the circumstances, it was only the petitioner that led evidence situating that parties have lived apart for nearly six (6) years now. In law, it is now an accepted principle of general application that in such circumstances, the 1st Respondent is assumed to have accepted the evidence adduced by Petitioner and the trial court is entitled or is at liberty to act on the Petitioner's unchallenged evidence. See **Tanarewa (Nig.) Ltd. V. Arzai (2005) 5 NWLR (Pt 919) 593 at 636 C-F; Omoregbe v. Lawani (1980) 3-7 SC 108; Agagu v. Dawodu (1990) NWLR (Pt.160) 169 at 170.**

Notwithstanding the above general principle**,** the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case of **Nnamdi Azikiwe University v. Nwafor (1999) 1 NWLR (Pt.585) 116 at 140-141** where the Court of Appeal per Salami J.C.A. expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence... the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. **The Supreme Court in Duru v. Nwosu (1989) 4 NWLR (Pt.113) 24** stated thus:

"…a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a

prima-facie case, in which case the trial judge does not have to consider the case of the defendant at all."

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff or petitioner in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the presence and/or absence of the defendant or respondent. See **Agu v. Nnadi (1999) 2 NWLR (Pt 589) 131 at 142.**

This burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings. Indeed **Section 82 (1) and (2) of the Matrimonial Causes Act** (The Act) provide thus:

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.**

Now in the extant case, the petitioner from her petition seeks for the dissolution of the marriage with respondent on the ground that the marriage has broken down irretrievably and essentially predicated the ground for the petition on the fact that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the 1st respondent.

That sometime on 26th September, 2015, the 1st Respondent and his mother forced the Petitioner out of the matrimonial home and since then she has been denied access to the home and that all efforts at reconciliation has failed and that 1st Respondent has essentially since moved on with his life without Petitioner and even remarried. It is doubtless therefore that the petition was brought within the purview of **Section 15 (1) (c), (e) and (f) of the Act.** It is correct that **Section 15(1) of the Act** provides for the irretrievable breakdown of a marriage as the only ground upon which a party may apply for a dissolution of a marriage. The facts that may however lead to this breakdown are clearly categorised under **Section**

15(2) (a) to (h) of the Act. In law any one of these facts if proved by credible evidence is sufficient to ground or found a petition for divorce.

Now from the uncontroverted evidence of petitioner before the court, I find the following essential facts as established, to wit:

1. **That parties got married on 25th March, 2013 vide Exhibit P1.**

2. **That the Petitioner was forced out of the matrimonial home in September 2015 by 1st Respondent.**

3. **That since 2015, a period of nearly six (6) years now, cohabitation has effectively ceased between parties.**

4. **That the Respondent has completely abandoned his responsibilities to her as husband as he has refused to take care of her or provide for her needs and that there is no love in the relationship.**

5. **The respondent has since moved on with his life completely independent of the petitioner and has even remarried.**

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the 1st Respondent. The law has always been that where evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it. See **Agagu v. Dawodu (supra) 169 at 170, Odunsi v. Bamgbala (1995) 1 NWLR (Pt.374) 641 at 664 D-E, Insurance Brokers of Nig. V. A.T.M Co. Ltd. (1996) 8 NWLR (Pt.466) 316 at 327 G-H.**

This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts. Consequently where a defendant chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G Oyo State v. Fair Lakes Hotels Ltd. (No 2) (1989)5 NWLR (Pt .121) 255, A.B.U. v Molokwu (2003)9 NWLR (Pt.825) 265.**

Indeed the agreement by parties that the marriage should be dissolved, confirms in all material particulars the fact that the marriage has broken down irretrievably and that they have lived apart now for nearly six (6) years.

By a confluence of these facts, it is clear that this marriage exists only in name. As stated earlier, any of the facts under **Section 15 (2) a-h** (supra) if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for up to six (6) years show clearly that this marriage has broken down irretrievably and parties have no desire to continue with the relationship; this fact alone without more can ground a decree of dissolution of marriage. If parties to a consensual marriage relationship cannot live any longer in peace and harmony, then it is better they part in peace and with mutual respect for each other. The unchallenged petition on dissolution of the marriage in the circumstances has considerable merit. The only point to perhaps add is the concession by 1st Respondent that he concedes to the sum of N50, 000 been awarded as cost of the action to Petitioner. The court here, again, will defer to the wish of parties.

In the final analysis, and in summation, having carefully evaluated the petition and the unchallenged evidence, I accordingly make the following orders:

1. **An order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and 1st Respondent on 26th July, 2013.**

2. **Reliefs 3 – 6 having been withdrawn are struck out.**

3. **I award cost of this action in the sum of N50, 000 payable by 1st Respondent to the Petitioner.**

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Hon. Justice A.I. Kutigi

Appearances:

1. **Lawrence Erewele, Esq., with Osaretin Aimuan, Esq., for the Petitioner.**

2. **E. O. Abadaki, Esq., with O.G. Balogun, Esq., for the Respondents.**