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

THIS MONDAY, THE 1ST DAY OF FEBRUARY, 2021.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

PETITION NO: PET/029/2019

BETWEEN:

TEMITOPE HILDA UVIEGHARA HENSHAW ……PETITIONER

AND

ITA NTA HENSHAW .....RESPONDENT

JUDGMENT

By an Amended Petition dated 8th December, 2020, the Petitioner claims the following Reliefs against Respondent:

a. **A Decree of dissolution of marriage on the ground that since the marriage the respondent has lived and is living apart with the petitioner for more than two years immediately preceding the presentation of this petition, making it impossible for the marriage to be consummated.**

From the Records, the originating process was duly served on the Respondent. When the matter came up on 2nd December, 2020, counsel to the Respondent, **Chakpor Dauda Esq**., informed the court that they have the instructions of Respondent not to oppose the petition. The matter was then adjourned to 1st February, 2021 for hearing.

The matter then came up on 1st February, 2021 and the Respondent in open court indicated that he was not interested in the marriage and wants it dissolved.

The uncontested petition thereafter proceeded to hearing. The petitioner testified as PW1 and the only witness. The substance of her evidence is that she met the Respondent in 2014 and barely six (6) weeks into the marriage, they got married at the Federal Marriage Registry Abuja on 26th September, 2014. The certificate of marriage was tendered as **Exhibit P1**.

She stated that they cohabited in her house for about two (2) years and they had problems relating to the traditional wedding which Respondent was expected to undertake which he did not and that in August 2017, he left or moved out of the matrimonial home and that she had not seen him since then, a period of about three (3) years until she saw him in court today. On the basis of the clear fact that the Respondent has moved on with his life, she prays for a dissolution of the marriage.

Counsel to the Respondent did not cross-examine petitioner and with her evidence, the petitioner closed her case.

On the part of the Respondent and as stated earlier, he did not file any answer or process in challenging the petition. Indeed he stated in court that he was not interested in the marriage and prays that it be dissolved.

At the close of the trial, Counsel to both parties briefly addressed the court and they both urged the court to dissolve the marriage contracted in May, 2012 since the parties have been staying apart for over two years now and both have clearly evinced their intention for the marriage to be dissolved.

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. Similarly I had also stated that the Respondent despite the service of the originating court process did not file anything or adduce evidence in challenge of the evidence

adduced by petitioner. In law, it is now an accepted principle of general application that in such circumstances, the 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 that fact 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 was also further averred as a ground that due to this state of affairs, the Respondent left the matrimonial home in 2017 due to disagreement relating to the failure of Respondent to under take or carry out their traditional wedding and that since he left, she had not seen or set her eyes on the Respondent until they met in court. 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 the petitioner and the respondent before the court, I find the following essential facts as established to wit:

1. **That parties got married on 25th September, 2014 vide Exhibit P1.**

2. **That parties had disagreements in relation to the failure of Respondent to perform traditional marriage rites despite repeated demands.**

3. **That the Respondent left the matrimonial home in August 2017.**

4. **That since 2017, a period of over three years now, cohabitation has ceased between the parties and she had not seen or set her eyes on Respondent until she met or saw him in court.**

5. **That even before Petitioner left the matrimonial home, parties were in constant disagreements with complete absence of love and trust in the marriage.**

6. **That both parties have agreed that the marriage be dissolved.**

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the Respondent who was given all the opportunity of doing so. 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 seize 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 failure of the Respondent to respond to this petition confirms in all material particulars the fact that the marriage has broken down irretrievably and that they have lived apart now for over two (2) years. He attested to this position himself at the hearing when he stated that he was not interested in the marriage and wants it dissolved.

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 of the Matrimonial Causes Act**, if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for more than two 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 with mutual respect for each other, then it is better they part in peace. This clearly is the earnest desire of parties. The unchallenged petition in the circumstances has considerable merit.

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

An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on the 25th September, 2014.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Joseph Nyong, Esq., for the Petitioner.**

2. **Chakpo Dauda, Esq., for the Respondent.**