IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: PET/166/2019

DATE: : THURSDAY 17TH JUNE, 2021

BETWEEN

JENNIFER ADAKU IWUCHUKWU ...PETITIONER

AND

DERIK NNAMDI IWUCHUKWU… RESPONDENT

JUDGMENT

By a Notice of Petition for the decree of dissolution of statutory marriage dated the 1st day of March and filed same date, Petitioner approached this Honourable Court for the following:-

1. An Order of the Court for a Decree of dissolution of the marriage between the Petitioner and the Respondent conducted at the marriage Registry, Port – Harcourt, Rivers State, on the 5th of December, 2009, same having broken down irretrievably.

2. An Order of the court granting custody of the children to the Petitioner.

3. Any other Order or Further Orders that this Honourable Court may deem fit to make in the circumstance of this case.

The grounds upon which the Petition is brought is that:-

a. Since the marriage the Respondent has behave in such a way that the Petitioner finds it in - tolerable to live with him as there is no more love between the Petitioner and Respondent and the marriage between the Petitioner and the Respondent has broken down irretrievably.

b. The Respondent constructively deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of this petition.

c. The Petitioner and the Respondent have lived apart since 17th December, 2015 for a continuous period of more than two years immediately preceding the presentation of this

petition and the Respondent does not object to a decree being granted.

The Petitioner made the following proposed arrangement for the children;

That the Petitioner is to have custody of the two children of the marriage while the Respondent can visit the children in the Petitioner's house from time to time.

That the Petitioner will continue to bring the children of the marriage in the fear of God and with high moral standard which she has been doing.

That the Petitioner has been the only one taking care of the children, their medical expenses, school fees, their clothing and everything the children needs.

Upon service of the said petition on the Respondent, the Respondent failed to file his response to the said petition and that he is not objecting the reliefs sought by the Petitioner.

The petition was set down for hearing on 11th February, 2021.

The Petitioner adopted her witness statement on oath.

The facts of the petition as distilled from witness statement oath are as follows:-

That the Petitioner and the Respondent married on the 5th day of December, 2009 at the marriage registry, Port – Harcourt, River State.

That the Petitioner and the Respondent lived in the Respondent's father's house which was completed

and furnished by the Petitioner with her personal money until when they moved to No. 15 Thompson Khegbo Street, Rumuodumanya, Port – Harcourt, Rivers State.

That the Petitioner takes care of the house hold needs, fed the Respondent, bought him a car, clothes and pays the children's school fees and medical bills.

That the irreconcilable problem started sometime in December, 2015 when the Respondent began to threaten the life of the Petitioner for her failure to give him money and even threatened the Petitioner's life and further said he will make her lose her job.

That the Respondent has long stopped having sexual relationship with her and has even stopped picking her calls.

The Petitioner tendered the following documents in evidence and were admitted;

i. Exhibit “A” CTC of marriage certificate.

ii. Exhibit “B” printed email correspondence

iii. Exhibit “C” certificate of compliance

iv. Exhibit “D” receipts of School fees 30 in numbers.

There was no cross – examination nor re-examination thus; PW1 was discharged.

COURT:-

At this juncture, it is important to observe that Respondent did not oppose the dissolution of the marriage as the Respondent had failed and or neglected to file its reply to the petition and

conceded to the dissolution of the marriage through his Lawyer C.C. Ibezim in Court.

Matrimonial causes matters are in a world of their own. The procedure for the dissolution of marriage under the Act are provided under the Act No marriage will be dissolved merely because the parties have agreed that it be dissolved.. It will not be dissolved merely because it is a contract between two willing parties.. Marriage is a very important institution.

It is the foundation of a stable society.. It is the nucleus of society in that, it is the families that make the society.. Marriages that are entered into and ran out of by mere agreement of parties certainly will not augur well for the society.

The policy of the law therefore is to preserve the institution of marriage. That is why marriage will not be dissolved on agreement of parties to it.

A decree for the dissolution of marriage would therefore only be granted if the petitioner has proved that the marriage had broken down irretrievably and that the petitioner finds it intolerable to live with the Respondent. See section 15 of the Matrimonial Causes Act… see also the case of ***DOMULAK VS DOMULAK (2004) 8 NWLR (Pt. 874) 651.***

Dissolution of marriage contracted pursuant to our marriage law is guided by Matrimonial Causes Act, Cap 220 LFN 1990.

Under the said Act, specifically section 15(1), a Petition by a party to a marriage for a decree of dissolution of the marriage may be presented to the

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

Under section 15(2) of the Act, the court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, and 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 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 preceeding the determination 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 the 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 or registration 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.

For emphasis, one or more of the conditions enumerated under section 15(2) Matrimonial Causes Act (MCA) suffice to hold the marriage has broken down irretrievably.

In ***HARRIMAN VS HARRIMAN (1989) 5 NWLR (Pt. 119) 6 UCHE OMO, JCA (as he then was)*** held that under the matrimonial causes Act, 1970, there is only one ground for the dissolution of marriages,

and that is that the marriage has broken down irretrievably, which is provided for under Section 15(1) of the Act.

From the evidence before the court, both Petitioner and Respondent have lived apart since 17th December, 2015.

I am of the view that sometimes in trying to be legalistic, we lose the essence of Christian marriage which parties in this case have entered into.

The philosophy of Christian marriage is vividly captured in the first chapter of the book of Genesis when man first saw a woman created from his rib by Yahweh and he exclaimed;

> ***"This at last is bone from my bone and flesh from my flesh. This is to be called a woman for she was taken from a man, this is why a man***

leaves his father and mother and joins himself to his wife and they become one body" see (Genesis 2:18 – 24).

By this Biblical instruction, marriage should be anchored on mutual love, tolerance, affection, understanding, trust and forgiveness.

It is true that the marriage between the Petitioner and Respondent has indeed broken down irretrievably, which by my judgment was all caused by the unbridled selfishness of the Respondent who hasboth refused to ensure the oath of marriage he took is kept alive in the best interest of the children.

I am but only a Judge. I use evidence, law and procedure to hand down judgment.

Having come to the conclusion that the said marriage between Petitioner and Respondent,

evidenced by certificate at the Marriage Registry, Port-Harcourt, Rivers State on the 5th December, 2009 has broken down irretrievably, a case for the dissolution of the said marriage would have been made out.

Accordingly, by the power conferred on me as judge of the High Court, of the FCT, Abuja, I hereby issue a decree Nisi for the dissolution of that marriage between Petitioner and Respondent duly registered at the Marriage Registry, Port-Harcourt on the 5th December, 2009.

May God almighty, bear me witness…Amen.

I now turn to the issue of custody of the children of the marriage.

Custody of a child in matrimonial causes connotes not only the control of the child but carries with it

the concomitant implication of the preservation and adequate care of the child's personality, physically, mentally and morally.

In otherwords, this responsibility includes his/her needs in terms of food, shelter, clothing and the live. See ***ALABI VS ALABI (2008) ALL FWLR (Pt. 418) 245 at 257 page 296 paragraph C (C A).***

May I once more observe that in determining the welfare of children in matrimonial proceedings, It is certainly not the success of the Petition or Cross Petitioner as it were that is often considered.

In other words, it is not the law that a party who succeeds in the proceedings shall always be awarded the custody of children of the marriage.

Often, it is the welfare of the children that is of paramount importance and parameters to be used in the determination of the issue of custody.

It is the evidence of Petitioner in the petition that the two children of the marriage, Chimdumebi Gabriel Iwuchukwu and LotannaGlovanniIwuchukwu are in her custody and that she is the one taking care of their school fees and medication. It is the evidence of Petitioner further that she has good accommodation and shall provide clothing for the children and continue to bring the children in the fear of God. All these assertion were not controverted by the Respondent.

The children are only victims of the selfishness of their two parents who have refused, though not on all situation, to stay together as husband and wife.

The age of the children, education, welfare general upbringing and the arrangement for their accommodation, the conduct of the parties to the marriage are the factors always borne in mind by the judge in his determining who to have custody. See ***ODUCHE VS ODUCHE (2005) LPELR 5976 (CA).***

I have gone through the documentary and oral evidence adduced by Petitioner in support of her petition and the fact that Respondent failed to defend the petition thereby leaving only the evidence of the Petitioner before the court.

The law on documentary evidence is settled peradventure in the anals of ourjurisprudence.

Documentary evidence is the yardstick or a hanger by which to assess the veracity of oral testimony or

its credibility. See the case of ***FASHONU VS ADEKOYA (1974) 1 ALL NLR (Pt. 1), KUNDELY VS MIL. GOVT. GONGOLA STATE (1988) 2 NWLR (Pt. 77) 475.***

Indeed where there is documentary evidence on an aspect of a party's case, no oral testimony is admissible on that aspect.

This is so because our adjectival law does not admit oral evidence on an aspect covered by documents.

A party cannot benefit from documentary and oral evidence at the same time.

He can only lead evidence on one and not the two. See ***BROSSETTE MANUFACTURING NIGERIA LTD VS M – S OLA ILEMOBOLA LTD & ORS (2007) 5 S C 84.***

It is my judgment that the Petitioner has established with concrete evidence especially Exhibit 'C' which are receipt of payment of school fees that she can adequately cater for the welfare of the Children. I shall therefore enter Judgment for the Petitioner as follows:-

1. An Order of the Court for a Decree of dissolution of the marriage between the Petitioner and the Respondent conducted at the marriage Registry, Port – Harcourt, Rivers State, on the 5th of December, 2009, same having broken down irretrievably is **hereby granted.**

2. An Order of the court granting custody of the children to the Petitioner is **hereby granted.**

Justice Y. Halilu
Hon. Judge
17th June, 2021

APPEARANCES

NnamdiAkuneto – for the Petitioner.

Charity C. Ibezim – for the Respondent.