IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 7TH DAY OF JULY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 6
SUIT NO: PET/246/18

ETWEEN:

IJEOMA UREKWERE OKEOMA ---- PETITIONER

AND

1. KINGSLEY IFESINACHI OKEOMA ---- RESPONDENT
2. ULOMA AKUNNE ---- CO – RESPONDENT

JUDGMENT

The Petitioner filed this Petition on the 25/05/2018 seeking for the following reliefs against the Respondent and one Uloma Akunne as Co-respondent.

"1. An order of decree of dissolution of marriage between the Petitioner and the Respondent contracted on the 22/5/2009 and celebrated on the 20/6/2009 on the grounds that the marriage for all intents and purpose has broken down irretrievably by reason of adultery and intolerable behaviour.

2. *An order of this Court granting custody of the only child of the marriage to the Petitioner.*

3. *An order for the payment of N5,000,000.00 (Five Million Naira) only by the co-respondent Uloma Akunne to the Petitioner as general damages for the adultery which the co-respondent committed with the Respondent.*

4. *And for such order or further orders as this Court may deem fit to make in the circumstance."*

On the 16/10/2019 upon application by the Respondent counsel, the name of the co-respondent was struck off this Petition. The Petitioner testified for herself on the 3/2/2020 as PW1. Her evidence is that parties cohabited at Kubwa phase 2 site 2, Abuja. That the marriage is blessed with one child, Kingsley Ugochukwu Okeoma who is 7 years old. She said on the 25/12/2015 at about 8pm, the Respondent called her to his room and told her that he will be travelling for the yuletide season.

Little did she know that he was going to get married to another woman.

On 2/1/2016, the Respondent came and moved his things out of the matrimonial home to an unknown destination. She tendered the certificate of marriage dated 22/5/2009 marked as Exhibit A.

Under cross examination PW1 stated that parties signed terms of settlement which she abides by. She further confirmed that parties have lived apart since 2/1/2016 and at the time the Respondent moved out, they had no issues. She denied that the separation was a result of interference from family and friends. She admitted that there was distrust in the marriage because the Respondent was putting up a questionable character and preferred to stay out of the marriage because he had mistress.

The Respondent filed an Answer and Cross Petition. He testified on 12/11/2020 as DW1. He confirmed that parties have filed terms of settlement. He then prayed the

Court to dissolve the marriage. He tendered a copy of the certificate of marriage which was marked as Exhibit D rejected. DW1 was not cross examined.

Emeka U. Kingsley Esq filed the Respondents address dated 11/1/2021. A sole issue was formulated therein as follows:

> *"Whether from the evidence adduced by the Respondent the marriage between the parties could be held to have broken down irretrievably owing to the fact that both parties to the marriage have lived apart for a period of two years."*

Learned counsel submitted that there is only one ground for the dissolution of all marriages that is that the marriage has broken down irretrievably which is provided for under Section 15(1) of the Matrimonial Causes Act. He cited **Harriman vs. Harriman (1989) 5 NWLR (part 119) 6, Anagbodo vs. Anagbodo (2005) 2 SMC**

He added that from the evidence the Respondent moved out of the matrimonial home without returning

since early 2016 and that parties have lived apart for two years. Counsel referred to the case of **Erhahon vs. Erhahon (1997) 6 NWLR (part 510) 667** where the Court held:

> *"It is not in the habit of Court to keep up a marriage which only exist in a shell or by name."*

Reference as made to the following authorities:**, Sowande vs. Sowande (1969) 1 All NLR 486 – 487, Damulak vs. Damulak (2004) 8 NWLR (part 874) 151, Ekrebe vs. Ekrebe (1993) 3 NWLR (part 596) 514.** He urged the Court to grant the Cross Petition.

On his part learned counsel to the Petitioner **Ananti Igbonusi Esq** filed the Petitioner's written address dated 27/1/2021. He raised one issue for determination as follows:

> *"Whether from the evidence adduced by the Petitioner, the marriage between the parties have broken down irretrievably owing to the fact that*

both parties to the marriage have lived apart for a period of two years."

Learned counsel submitted that the evidence of the Petitioner that parties have lived apart for two years immediately preceding the presentation of this petition was not challenged or contradicted by the Respondent. He therefore urged the Court to grant the Petition and dissolve the marriage. Reference was made to **MTN Nig. Comm. Ltd vs. A.C.F.S. Ltd (2016) 1 NWLR (part 493) 339, Ekrebe vs. Ekrebe (1993) 3 NWLR (part 596) 514.**

The law has long been settled that irretrievable break down is the sole ground of divorce in Nigeria as rightly submitted by both counsel across the divide. This is provided in Section 15(1) of the Matrimonial Causes Act. It states:

"A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented by either party to

the marriage upon the ground that the marriage has broken down irretrievably".

However, the Court cannot make a finding of irretrievable break down of marriage in the absence of proof of any of the facts specified under Sections 15(2)(a)-(h) and 16(1) of the Matrimonial Causes Act. It follows therefore that in the absence of proof of any of the facts listed, the Court cannot suo motu grant a decree on the ground that the marriage has broken down irretrievably. See: **Harriman vs. Harriman (1989)5 NWLR (Part 119)6.**

The standard of proof in any of the facts in Section 15(2)(a)-(h) and 16(1) is to establish the fact to the reasonable satisfaction of the Court. See Section 82 of the Matrimonial Causes Act.

The Petition is premised on living apart for two years immediately preceding the presentation of this petition, as stipulated under Section 15(2)(e) of the Matrimonial Causes Act. It provides as follows:

"(2) The Court hearing a petition for a decree of dissolution of 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:

.....

(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."

The Petitioner had testified that parties have lived apart since the 2nd of January, 2016 and the petition was filed on the 25th of May, 2018 which is a period exceeding two years immediately preceding the presentation of this petition. From the evidence adduced, the Respondent did not object to the grant of the decree of dissolution prayed by the Petitioner. The Respondent

merely informed the Court that parties had filed Terms of Settlement.

By Section 15(3) of the Matrimonial Causes Act,

> *"Parties to a marriage will be treated as living apart unless they are living with each other in the same house hold."*

The test of what amount to living apart is whether there is any kind of communal living between the parties. Where the answer is negative, then there is living apart as envisaged under the Act. See: **Fuller vs. Fuller (1973)1 WLR 730.** Separation or living apart "is undoubtedly the best evidence of break down and the passing of time, the most reliable indication that it is irretrievable." See: **Pheasant vs. Pheasant (1971)1 All ER 587.**

Therefore, when a party to a marriage relies on and proves that, as a matter of fact, he or she has lived apart from the other spouse for a period of at least two years and the Respondent does not object to a decree of dissolution being granted, the Court should not be

invited under Section 15(2)(e) and (f) of the Act to inquire into why the parties have so lived apart and it is not necessary to prove any other matrimonial offence. No wonder parties decided to abandon the ground of unreasonable behaviour and adultery. The Court's rarely keep up a marriage which had obviously broken down completely. See: Sowande vs. Sowande (1969)1 All NLR 486 – 487.

The purpose of the law in this regard is to give a marriage which is already dead a decent burial without necessarily apportioning fault. See: Santos vs. Santos (1972)2 WLR page 289.

The evidence adduced by the Petitioner in this instance adequately satisfied the provision of Section 15(2)(e) of the Matrimonial Causes Act. Thus, the petition succeeds and I order a decree nisi to issue, which shall become absolute after the expiration of three months.

On the issue of custody and other reliefs sought by the Petitioner, parties agreed and filed terms of

settlement on the 25th of September, 2019 duly signed by the parties. Both Counsel adopted the said terms and urged the Court to enter same as part of the judgment of the Court. By their terms parties agreed as follows:

"TERMS OF SETTLEMENT

The parties having agreed to amicably settle part of this matter out of Court, do hereby forebear all and any existing, future or contiguous rights in the above suit/petition except as regards dissolution of marriage and as contained in this present terms, and submit to a consent judgment of the Court in settlement of part of the claims and reliefs as it relates to (being open ended), before the Court, and hereby agrees as follows:

a) *That the parties agree that the Petitioner be granted custody of* ***Kingsley Ugochukwu Okeoma*** *(born on the 16th of July, 2012, herein after referred to as 'the child') until he is of age to decide his preference of which of the parties to reside with.*

b) That the Respondent shall have unfettered access to the child of the marriage and shall also have the opportunity of spending time with the child, two times in a month, upon prior notice to the Petitioner. The Petitioner shall accompany the Respondent and the child during such outings (subject to her wishes).

c) The Petitioner shall also brief the Respondent about the welfare and health challenges (if any) of the child from time to time including his whereabouts as may be reasonably demanded by the Respondent, or as may be necessitated by the circumstances prevailing at a particular time.

d) The Respondent shall be and continue to be responsible for the payment of school fees and academic needs/medicals of the child of the marriage upon request from the Petitioner/or the school.

e) The Respondent shall provide for the maintenance, welfare and advancement of the child of the marriage, at the monthly rate of N35,000.00 (Thirty

Five Thousand Naira), which may be increased upon further decision by the parties.

f) *Civilities and decorum should be maintained by both parties (The Petitioner and the Respondent) towards each other as they take care of the child of the marriage with utmost interest of their good upbringing.*

g) *Upon the Petitioner remarrying, this agreement shall continue to be in-force.*

Signed and delivered for the within named Petitioner *Signed and delivered for the within named Respondent"*

The above terms which have been willfully and mutually agreed upon, are adopted and made to form part of the judgment of this Court.

Hon. Justice M.A. Nasir

Appearances:

Gbenga Femi Akande Esq – for the Petitioner

Emeka U. Kingsley Esq – for the Respondent