

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 8TH DAY OF JULY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 6
SUIT NO: PET/217/14

ETWEEN:

MR. FRANK CENSUS OMOSUNMOJE ----- PETITIONER

AND

MRS. ANTHONIA OMONON OMOSUNMOJE ----- RESPONDENT

JUDGMENT

The Petitioner, a civil servant has petitioned this Court for an order of dissolution of his marriage to the Respondent on the ground that the marriage has broken down irretrievably, premised on the fact of unreasonable behaviour pursuant to Section 15(2)(c) of the Matrimonial Causes Act. The Petitioner proposed to be paying N10,000.00 (Ten Thousand Naira) monthly to the custodian of the only child of the marriage Master Gideon Onolame Omosunmoje, and that the child shall continue

living with his grandmother until commencing primary school.

The Petitioner testified as PW1 on the 09/02/2016. His evidence is that he got married to the Respondent on the 19/11/2011 at Esan North East Local Government Marriage Registry, Uromi, Edo State. Thereafter, parties cohabited at Orozo, by Orozo Primary School beside RCCG, Agwan – Fadama Orozo, Abuja till June, 2013 when cohabitation ceased. The circumstances in which cohabitation ceased between the parties is that on the 21/6/2013 the Respondent parked and moved out of the matrimonial home on the pretence that she was sick leaving behind the only child of the marriage who was just over a year old. The Petitioner waited for her that day hoping that she would return but she never did. The following day the Petitioner still hoped she would return but again she did not return. The Petitioner then took the child to the Respondent's mother, but the Respondent's mother refused to accept the child. She told him to go

and look for the Respondent and hand over the child to her.

The Petitioner made efforts to trace the Respondent and found out that she was staying with her aunty in Mararaba, Nasarawa State. He traced the Respondent and handed the baby over to her, who later took the baby to her mother. Since then the Petitioner never saw the Respondent again until 2014 when she resurfaced without the child. The Petitioner requested to see his son but she told him to go to her mother's place to see his son.

According to the witness, the Respondent was violent and cruel during the marriage and had threatened him several times. She has fought him uncountable times and fought with the neighbours and drivers. He was made to pay for 2 side mirrors the Respondent broke during one of her fighting episodes. He had two other children before the marriage but the Respondent do not allow them come to the house to see him.

The Respondent who was in Court on the date the Petitioner testified informed the Court that she could not afford a lawyer and therefore was not defending the Petition. However, the Court still adjourned for cross examination of PW1 and defence if any. On the 27/9/2016 when the case came up, the Respondent was absent and not represented. The right of the Respondent to cross examine PW1 and defence was therefore foreclosed and the case adjourned for adoption of written addresses. In a sudden twist of events, on the 14/2/2017, one Bright Uchenna Uzoukwu Esq filed an application before the Court for leave to enable the Respondent to enter appearance, put in her defence and reopen the case to cross examine the PW1. The application was moved and granted.

After series of adjournment for cross examination, the Respondent's counsel came up with a proposal for settlement on the 7/2/2018 and the case subsequently adjourned for report of settlement. The Respondent went

back to sleep and after several opportunities, the Respondent was foreclosed from defence on the 10/3/2021.

D.A. Momoh Esq of counsel to the Petitioner waived his right to address the Court and urged the Court to enter judgment for the Petitioner.

As earlier noted in this judgment the Respondent moved a motion and filed her Answer and Cross Petition. After that she absconded from the proceedings. The law is now firmly settled that where there is no evidence in support of pleadings, the pleading is deemed abandoned. See Ofem & anor vs. Ewa & ors (2012) LPELR - 7852 (CA). This is moreso as pleadings are not human beings that have mouth to speak in Court. And so they speak through witnesses. If witnesses do not narrate them in Court, they remain moribund, if not dead at all times and for all times, to the procedural disadvantage of the owner. See M/V Gongola Hope vs. Smurfit Cases Ltd (2007) 6 SC (part II) page 58 at 70. In the circumstance I hold that

pleadings filed by the Respondent are deemed abandoned.

Under the Matrimonial Causes Act, there is only one ground for the dissolution of marriages and that is, the marriage has broken down irretrievably which is provided for in Section 15(1) of the Matrimonial Causes Act. The provisions of Section 15(2)(a - h) of the Act do not constitute separate grounds or separate causes of action on the basis of which a dissolution of marriage can be granted. See Harriman vs. Harriman (1989) 5 NWLR (part 119) page 6, Anagbado vs. Anagbado (1992) 1 NWLR (part 216) page 216. Ibrahim vs. Ibrahim (2007) 1 NWLR (part 1015) page 383 at 397.

The grant or refusal of a petition is not at the whims and caprices of the parties. It is the duty of the party requesting for dissolution of the marriage to convince the Court that indeed the marriage has broken down irretrievably. Failure to satisfy the Court on any of the grounds listed under Section 15(2)(a - h) the Court will

decline from dissolving the marriage. This was the Courts position in Akinbuwa vs. Akinbuwa (2005) 2 SMC page 81. This is because marriage is a sacred institution and not just the parties, nor the community, but the state is interested in maintaining its sanctity. Also by Section 82(1) of the Matrimonial Causes Act, a matter of fact shall only be taken to be proved if the Court is satisfied by the evidence led by the Petitioner establishing those facts.

This petition is premised on unreasonable behaviour pursuant to Section 15(2)(c) of the Matrimonial Causes Act. It is not easy to prove unreasonable behaviour. There is more to it than meets the eye. Such behaviour has to be negative. Allegations of some negative behaviour of a spouse is not enough to warrant the Court holding that the spouse is guilty of unreasonable behaviour. The behaviour must be such that a reasonable man cannot endure it. The conduct must be grave and weighty in nature as to make further cohabitation virtually

impossible. See Ibrahim vs. Ibrahim (2007) 1 NWLR (part 1015) page 383.

There is evidence in this instance that the Respondent is a violent person who fights a lot. She has fought with neighbours and drivers. The Petitioner has been made to pay for the replacement of 2 side mirrors the Respondent has destroyed. There is evidence also that the Respondent on the 21/6/2013 packed her things and left the matrimonial home leaving a child of barely 2 years, and never returned.

The evidence of the Petitioner has remained unchallenged and uncontroverted by the Respondent who did not defend the suit. The evidence of the Petitioner herein is not manifestly incredible.

The question is can a reasonable right thinking person keep up with this conduct of the Respondent? There is a duty on the Court to consider the matrimonial history to come to a conclusion, while analyzing the conduct that is complained of, whether same is grave and

weighty enough to warrant the Court holding that the conduct is unreasonable to hold that the marriage has broken down irretrievably. See Livingstone – Stallard vs. Livingstone – Stallard (1974) 2 All E R page 766 at 771.

In marriage, allowance should be made for the ordinary wear and tear of the marriage, and it is not every incident that happens in the matrimonial home that may make one spouse to come to the conclusion that he/she cannot reasonably be expected to live with the other. See Nanna vs. Nanna (2006) 3 NWLR (part 966) page 1, Katz vs. Katz (1972) 3 All ER page 219.

However, from the evidence in this instance, I am satisfied that the conduct of the Respondent is one which no right thinking man will want to keep up with. Imagine a fighter as a wife, a person that is insensitive to the emotion of others, leaving behind a 1 year plus child and absconding from the matrimonial home. I believe the Petitioner and I am satisfied that the action of the

Respondent constitutes unreasonable behaviour which the Petitioner is not expected to continue to live with.

From the evidence also, the Respondent left the matrimonial home in 21/6/2010 leaving the child behind. It is not controverted that cohabitation ceased since that time. A petition by the provision of Section 15(1) of the Act may be presented by either party to the marriage upon the ground that it has irretrievably broken down. The Court shall hold the marriage to have broken down irretrievably if satisfied that the Respondent had deserted the Petitioner for a continuous period of at least one year before the presentation of the petition. See subsection 2(d) of the Section 15 of the Act.

The Respondent in my view also constructively deserted the Petitioner without any just cause and has since not returned to the matrimonial home. This is also good ground for divorce.

The Petitioner has proposed to pay N10,000.00 (Ten Thousand Naira) to monthly to the custodian of the child.

He also proposed that the child shall continue live with his grandmother until he commences primary school.

This arrangement is certainly not out of place and same receives the blessings of this Court.

In the circumstance, I order that the marriage between the Petitioner and the Respondent be and is hereby dissolved. A decree nisi shall issue which shall become absolute after the expiration of three months. The child of the marriage Master Gideon Onolame Omosunmoje shall continue to live with Respondent's grandmother. The petitioner shall pay N10,000.00 (Ten Thousand Naira) monthly to her for the child's upkeep.

Signed
Honourable Judge

Appearances:

D.A. Momoh Esq – for the Petitioner

Bright Uchenna Uzoukwu Esq – for the Respondent