IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA

THIS MONDAY, THE 13TH DAY OF SEPTEMBER, 2021.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

PETITION NO: PET/09/2021

BETWEEN:

MR. JOSEPH AKPABIO……PETITIONER

AND

OZIOMA ARDUA.....RESPONDENT

JUDGMENT

By an Petition dated 10th February, 2021, the Petitioner claims the following Relief against Respondent:

a. **A Decree of dissolution of marriage on the ground that the marriage has broken down irretrievably in that since the marriage the Respondent has subjected the Petitioner to threats, attacks, verbal abuse and denial etc. and the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with her; and that the Respondent has lived apart from the Petitioner for a continuous period of at least 8 years immediately preceding the presentation of this petition and the Respondent does not object to the dissolution of the marriage.**

From the Records, there is a pending application for service of the originating processes on Respondent by substituted means. When the matter however came up for hearing, on 13th September, 2021, one Emmanuel Bisong of counsel appeared for the Respondent and informed court that he has the instructions of the

Respondent not to contest the petition since parties have lived apart for over (8) eight years now.

The application for substituted service was then withdrawn and struck out and the matter proceeded for hearing. In proof of his case, the petitioner testified as PW1 and the only witness. The substance of his unchallenged evidence is that he got married to the Respondent in 2011 at Aba South Marriage Registry Aba, Abia State. PW1 testified that when the Respondent left the matrimonial home, she left with the original marriage certificate. That when this action was to be filed, he travelled to the marriage Registry at Aba to get a Certified True Copy (CTC) of the certificate, but that he could not obtain one because the Registry got burnt together with all records of marriages conducted at the Registry during the END-SARS riots by unknown hoodlums.

In the circumstances, PW1 stated that he was compelled to swear to an affidavit of loss to that affect at the High Court, Abia State which was tendered and admitted as **Exhibit P1.**

PW1 testified further that barely a year into the marriage in 2012, the Respondent left the matrimonial home on the pretext of visiting her parents but never returned. He then travelled to see the parents of the Respondent but did not meet his wife there. He kept disturbing the parents and even involved his family members to see her parents but the Respondent refused to come back to the matrimonial home.

PW1 stated that after a lot of meetings with her parents, they informed him that the Respondent is no longer interested in the marriage and that they cannot force Respondent to return to the matrimonial home against her will. Accordingly they advised him to send his people to come and collect the bride price which they collected in 2013, and that since then, they have lived apart and that parties have moved on with their lives.

On the basis of these clear facts, he urged the court to dissolve the marriage.

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

On the part of the Respondent and as stated earlier, she did not file any answer or process in challenging the petition. Indeed counsel to the Respondent stated in

court that Respondent 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 2011 since the parties have been staying apart for over eight 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 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 his 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 the Respondent left the matrimonial home in 2012 to visit her parents and has refused to return despite all his efforts and intervention of his family members. That they have live continuously apart now for over a period of eight years.

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 in 2011 vide Exhibit P1.**

2. **That the Respondent left the matrimonial home in 2012 to visit her parents and has refused to return home.**

3. **That all interventions to see that Respondent returns to the matrimonial home failed.**

4. **That the parents of the Respondent informed petitioner that the Respondent is no more interested in the marriage and that they cannot force her to return.**

5. **That the parents of the Respondent advised him to come and collect back his bride price which his people collected in 2013.**

6. **That since 2012, a period of over eight years now, cohabitation has ceased between the parties and he has not seen or set his eyes on Respondent and that parties have move on with their lives independent of each other.**

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 eight (8) 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 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 eight 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 28th day of September, 2011.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Ofem Obeten, Esq., for the Petitioner.**

2. **Emmanuel Bisong, Esq., for the Respondent.**