IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT FCT COURT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE M. B. IDRIS

SUIT NO. PET/634/2021

BETWEEN:

VICTORIA DOMINIQUE SKEEN (Nee Akpovbo) --- PETITIONER

AND

DOMINIQUE SKEEN --- RESPONDENT

JUDGMENT

The Petitioner instituted this action before this Honourable Court by a Petition filed 23rd June 2020 against the Respondent seeking a decree of dissolution of marriage that was contracted between both parties at the Federal Marriage Registry, Ikoyi, Lagos on 24th April 2002.

The grounds upon winch the Petition was filed were that the marriage has broken down irretrievably in that since the marriage, the parties have lived apart since August 2016 for a continuous period of over five years immediately preceding the presentation of the Petition and the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.

The Respondent does not object to a decree of dissolution of marriage and therefore did not file any Answer to the Petition and was absent and unrepresented during the trial of the suit.

After a full trial and witness taken, and adoption of the counsel address, though the Respondent did not appear or file answer to the petition.

This Final Written Address is in accordance with the provisions of Order 33 Rule 2 of the High Court of the Federal Capital Territory, Abuja (Civil

Procedure) Rules 2018 ('the Rules') and filed pursuant to the order of this Honourable Court.

Fact of the case of the petitioner as contained in her Petition is that she became legally married to the Respondent on 24th April 2002, at the marriage registry in Lagos. Soon after the celebration of the marriage, the Petitioner discovered that the Respondent is committing adultery with numerous women during the marriage.

The Petitioner being aware of these conducts by the Respondent, found it intolerable to continue to live with the Respondent and therefore ceased cohabiting with the Respondent in August 2016, when she moved out of the Respondent's home; with the position remaining unchanged till date. Parties have lived apart since August 2016 for a continuous period of over five years immediately preceding the presentation of the Petition and the Respondent does not object to a decree of dissolution of marriage.

The Petitioner therefore sought inter alia the following relief in her Petition:

a. AN ORDER dissolving the marriage between the parties on the ground that same has broken down irretrievably.
b. Return of N5000 bride price to the Respondent
c. An order awarding custody of the two children of the marriage who are **DOMINIQUE SKEEN, KENDRA SKEEN**. To the Cross dependant who has had custody of them before, and now when the Petitioner deserted the matrimonial house with liberty to visit the children subject to time agreed by both of them.
d. An order directing the Petitioner to contribute to the school fees of **DOMINIQUE SKEEN, KENDRA SKEEN**. Children of the marriage depending on what is fixed as school fees at any given time.

ISSUES FOR DETERMINATION

In the light of the Petition and the evidence adduced at the trial, the Petitioner respectfully submits a sole issue for determination by this Honourable Court -

Whether the Petitioner is entitled to a decree of dissolution of marriage?

The counsel stated that whether the Petitioner is entitled to a decree o f dissolution of marriage?

Section 15(1) of the Matrimonial Causes Act, Cap M7, LFN 2004 (MCA) provides that:

> "(1) A petition under this Act 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 upon the ground that the marriage has broken down irretrievably"

Section 15(2)(e))f the MCA also provides that:

> "(2) The Court hearing a petition for a decree of dissolution of a 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 five years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted".
>
> (Emphasis Ours)

He submit that it is on the authority of the foregoing provisions of the law that the Petitioner herein brought this petition before this

Honourable Court. The case of the Petitioner as already enunciated above is that parties have lived apart since August 2016 - a period of over five years - immediately preceding the presentation of the petition and tire Respondent does not object to a decree being granted and this is evidenced by the fact that he remained absent and unrepresented (despite consistent service of hearing notices and processes) on him, throughout the proceedings.

He commend the court to the case of Harriman v. Harriman (1989) 5 NWLR (Pt. 119) at pg. 15 where the Court of Appeal held per Omo, J.C.A. that:

> "... there is only one ground for the dissolution of all marriages under the Matrimonial Causes Act, to wit, "that the marriage has broken town irretrievably" vide S. 15(1) of the Act. The sub-paragraphs of sub-section 2 thereof eight of them - (a) to (h), are only various species of the break-down, or to put it differently, a petitioner who satisfies the court on any one or more of those facts, would be entitled to a finding that the marriage has irretrievably broken down, and consequently, be entitled to a decree dissolving same. They do not constitute separate grounds on the basis of which a dissolution can be granted."

That the provision of Section 17(2) of the MCA clearly explains what it means for parties to have lived apart in the following manner:

> "in considering for the purposes of section 15(2) of this Act whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, hut no period during winch the

parties lived with each other shall count as part of the period of desertion or of the period or which the parties to the marriage lived apart, as the case may be."

It is on record before this Honourable Court that since August 2016, when the Petitioner moved out of the Respondent's home, when it became unbearable to continue to live with him, the parties have not seen each other and did not visit or resume living together at any point in time. The Petitioner has therefore satisfied the requirement of living apart for a continuous period especially as there is no contrary evidence disputing this.

Furthermore, there is no doubt that the Respondent, by his conduct, does not object to the decree of dissolution of marriage as he was absent and unrepresented and failed to adduce any evidence to rebut the claims and assertions of the Petitioner. In Omotunde v. Omotunde (2001) 9 NWLR (Pt. 718) 252 at p. 284, para. E, the Court of Appeal, per Adekeye, J.C.A., in considering Section 15(2)(f) of the MCA held:

"The sect, on has the factor of absence of fault element characteristic of other matrimonial offences - the law behind the section that is 15(2) (f) as far as the living apart is concerned is not interested in right or wrong or guilt or innocence of the parties Once the parties have lived apart, the court is bound to grant a Decree." (Emphasis Ours).

In the afore-referenced authority, the Court of Appeal took cognizance of the fact that matrimonial offences are generally not focused on the fault element i.e., the law is not concerned in the right or wrong or guilt or innocence of parties. Applying the foregoing, once it is clear that parties have lived apart for the statutorily prescribed timeframe (in this case two years without objection), a decree of dissolution can be

awarded and the fault of the party who created the situation that necessitated the living apart is irrelevant. This is because it is the intendment of the law to give a marriage which is already dead a decent burial without necessarily apportioning fault. He commend the court to Fuller v. Fuller (1973) 1 WLR 730 and Santos v. Santos (1972) 2 WLR page 289.

He therefore urge the court to hold that the Petitioner has demonstrated that parties have lived apart for a continuous period of at least five years and the Respondent does not object to a decree of dissolution of marriage.

Assuming without conceding, that the Petitioner has been unable to satisfy the requirements of Section 15(2)(e) of the MCA, the Petitioner averred that the Respondent committed adultery with different women, and she found it intolerable to continue to live with the Respondent. These set of facts are uncontroverted and as such are deemed admitted and binding on the Respondent. It s trite law that facts admitted need no further proof. We commend Your Lordship to the cases of Eresia Eke v. Orikoha (2010) 8 NWLR (Pt. 1197) 421; Ajibade v. State (2013) 6 NWLR (Pt. 1349) 25; Anike v. S.P.D.C.N. Ltd. (2011) 7 A WLR (Pt. 1246) 227.

He submit that the Petitioner has conveniently settled the requirement of Section 15(2)(b) of the MCA which provides:

> "(b) that since the marriage the Respondent has committed adultery and the petitioner finds it intolerable to live with the respondent"

It is instructive to note that the Respondent failed to file an Answer to the Petitioner's Notice of Petition. It is a settled principle of pleadings that facts not disputed, challenged, or controverted are taken as

admitted. That is, that the defendant who fails to traverse or join issues with the claimant on his averments is deemed to admit the facts pleaded against him. Please the case of Mekwunye v. Hnoukhuede (2019) 13 NWLR (Pt. 1690) 439 at p. 505, Para. C.

Furthermore, there has been no breach of the Respondent's right to fair hearing. This is because where a party has been accorded reasonable opportunity of being heard and for no justifiable or cogent reason, neglects to attend the sittings of the court, he is thereafter deemed to have abandoned his case and cannot thus complain of breach or denial of fair hearing. Please see the case of Audit v. I.N.E C. (No.1) (2010) 13 NWLR (Pt. 1212) 431, p. 535, Para. E.

Hence, the Respondent cannot complain of denial of his fair hearing seeing as he remained absent and unrepresented throughout the proceedings before this Honourable Court. On the basis of the above, the Petitioner urges the court to grant all the reliefs sought in the Petition for dissolution of marriage between the Petitioner and Respondent before this Honourable Court.

In conclusion base on the entirety of the Applicant’s submission, it is clear that the Applicant has fulfilled the requisite pre-conditions for the grant of the prayers contained in this application as it has demonstrated the impracticability of effecting personal service on the Respondent. The Applicant has also demonstrated that the proposed alternative mode of service would be effective in bringing the pendency of this suit to the attention of the Respondent. The grant of this application is therefore vital for this suit to be expeditiously adjudicated upon by this Honourable Court.

Consequently, the Applicant urges this Honorable court to grant the prayers as contained in the Applicant’s motion as same is in the interest

of justice and fair hearing as provided by section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and it will be unfair for the applicant to suffer undue delays and injustice in the prosecution of this suit due to the inability to effect personal service of the originating process on the Respondent. He urge the court to so hold.

In view of the above, it's my humble view that the Applicant has succeed in proving its case against the Respondent and therefore Judgment is hereby entered in favor of the Petitioner as prayed. I so hold.

Sign

Hon. Judge

11/11/2021