IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS MONDAY, THE 14TH DAY OF MARCH, 2022.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

PETITION NO: GWDPET/14/2020

BETWEEN:

NNENNA SUCCESS UBAH ..…….. PETITIONER

AND

EMMANUEL AGOMOH ..... RESPONDENT

JUDGMENT

By a Notice of Petition dated 10th November, 2020 and filed same date in the Court's Registry, the Petitioner claims the following Relief against the Respondent as follows:

An ORDER of Dissolution of marriage contracted with the Respondent on 2nd June, 2016 on the ground of Cruelty; the said Marriage has broken down irretrievably and that since the Marriage, the Respondent has behaved in such a way that the Petitioner could not have reasonably been expected to continue to live with him.

The Respondent on the Record was duly served with the Petition by substituted means on 19th March, 2021 vide proof of service filed by the Bailiff of Court. The Respondent on the record did not respond to the petition or file any process in opposition.

He was also duly served with the hearing notice for today on 24th February, 2022. Again the Respondent did not appear in court.

The matter thus proceeded for hearing. The case of the petitioner who testified as PW1 is fairly straightforward. She got married to the Respondent on 2nd

June, 2016 at the Abuja Municipal Area Council Registry, Abuja. The certificate of marriage was tendered in evidence as **Exhibit P1**.

PW1 stated that since 27th March, 2017 a period of about 5 years now, she has not seen or heard from the Respondent. That she has tried severally through calls and text messages to get to him but he has not responded.

She further stated that his family members have intervened in the matter over the cause of 2 years between 2017 and 2019 but that at each time, he does not attend the meeting.

Further that she traced her husband to Kubwa where he was staying in 2017 but by then he had moved on. That even his siblings, she understands, do not know where she stays.

That on 27th March, 2017, she went on assignment and came back to the matrimonial home and discovered that her husband has moved on from the house and since then there has been no contact.

That prior to the marriage he already had his children and she feels that it is because she was not able to conceive that he moved out of the matrimonial home.

PW1 wants the court to dissolve the marriage since parties have lived apart for over 5 years now and so that she can move on with her life.

On the application of counsel to the petitioner, the right of defendant to cross-examine PW1 and defend the action was foreclosed and the court ordered the counsel to the petitioner to orally address the court.

Learned counsel then addressed the court on the fact that parties have lived apart for over 5 years which under **Section 15 of the Matrimonial Causes Act** which is sufficient ground to situate dissolution of marriage.

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 or 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 despite the service of the originating court processes and hearing notices 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) she 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 her 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 the fact that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent having regard to the fact that the Respondent has now abandoned the matrimonial home for a period of about five (5) years now.

PW1 gave unchallenged evidence to the effect that she went on an official assignment on 27th March, 2017 and when she came back home, the Respondent has left the matrimonial home. All her efforts to trace him did not yield any positive result as he has refused to return her calls or messages. Again that all attempts at reconciliation including interventions by his family members were rebuffed by Respondent. She has not seen Respondent or heard from him since he left in 2017 and that Respondent has essentially since moved on with his life without Petitioner. 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 before the court, I find the following essential facts as established to wit:

1. **That parties got married on 2nd June, 2016 vide Exhibit P1.**

2. **That the Respondent left the matrimonial home on 27th March, 2017 for no clear reason(s) and has since then not seen or gotten in touch with Respondent.**

3. **That all attempts by her to trace him by calls or text messages were not responded to by him.**

4. **That all interventions to find solutions to the matrimonial dispute including that by his family members were rebuffed by Respondent.**

5. **That since 2017, a period of over five (5) years now, cohabitation has effectively ceased between parties.**

6. **That the Respondent has completely abandoned his responsibilities to her as a husband and she does not know of his whereabout or where he is at present.**

7. **That Respondent has since moved on with his life completely independent of the Petitioner.**

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 seized 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 five (5) 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 up to five (5) 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 harmony, then it is better they part in peace and with mutual respect for each other. 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:

1. **An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on the 2nd June, 2016.**

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Hon. Justice A.I. Kutigi

Appearances:

1. **Florence Aremu with Doose Dorothy Do-or for the Petitioner.**