

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 20, GUDU-ABUJA
ON THURSDAY THE 3RD DAY OF FEBRUARY 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE R. OSHO- ADEBIYI

PETITION NO: PET/387/2019

BETWEEN:

MR. OLADOKUN OLATUNJI DURODOLA=====PETITIONER

AND

MRS. FOLUSHO OZA VIZE OYANNA=====RESPONDENT

JUDGMENT

The Petitioner by a Petition dated the 2nd day of October 2019, brought this suit against the Respondent, praying the Court for the following reliefs:

1. A Decree for the dissolution of marriage entered between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably as there has been no conjugal relationship between the parties for 3 years and the Petitioner and the Respondent has equally lived apart for 3 years preceding the presentation of this Petition.
2. And for such orders or further orders as this Honourable Court may deem fit to make in the circumstances.

Also filed along with the Petition is the accompanying documents. The Petitioner also filed his witness statement on oath. The Court, satisfied that the Respondent has been duly served, set the matter down for hearing.

The Petitioner opened his case testifying as the sole witness adopting his witness statement on oath as his evidence in support of his case. It is the case of the Petitioner that he lawfully married the Respondent at Ikeja

Marriage Registry, Ikeja Lagos State on the 31st day of May, 1997 under the Marriage Act and a Marriage Certificate was issued to them to that effect, which is in custody of the Respondent. That the Respondent deserted the Petitioner since the year 2016, when she moved to Lagos and the Petitioner has stayed alone since then with no conjugal relations since January 2016.

That on several occasions, the Petitioner has given the Respondent lump sum amounts on three different occasions since 2015, to enhance the Respondent's skill but the Respondent has not utilized the money to acquire any skill. That the Respondent is a beneficiary of a monthly sum of N50,000.00 (Fifty Thousand Naira) only, from 2018 till date. That parties have lived apart for a continuous period of three (3) years immediately preceding the presentation of this Petition. That the Petitioner has solely been responsible for the Education and upkeep of their three (3) children and will continue to do so and it is in the interest of justice to dissolve this marriage based on these facts. The Petitioner tendered a certified true copy of parties' marriage certificate with certificate no: 549/97 dated 31/05/1997 celebrated at the marriage Registry Ikeja Lagos which was admitted in evidence as Exhibit A.

The Petitioner closed his case as the Respondent failed to present herself or her counsel in court to cross examine the Petitioner. The Respondent did not file an answer to this petition nor lead any evidence in her defence. The Court, on the application of the Petitioner's Counsel, foreclosed the Respondent. The court thereafter adjourned the case for written address.

The Petitioner's Counsel filed his written address which was adopted as argument in support of the Petitioner's case. From the address filed, Counsel raised a sole issue for determination "Whether the Petitioner has

proved the ground for divorce in this matter.” Counsel arguing the sole issue submitted that the Petitioner in this case has proved more than two (2) of the facts stated in Section 15 (2) of the Matrimonial Causes Act to be entitled to the reliefs as sought. Submitted that the Petitioner in this case has maintained that the Respondent deserted him since 2016, which deprived him of conjugal relationship since 2016, as she even wrote the Petitioner stating that “*he was free to sleep with other women so long as he does not come back to her*”. Counsel submitted further that the parties have been living apart for more than 3 years as cohabitation ceased between parties since 2016. Counsel urged the Court to hold that the uncontroverted evidence of the Petitioner has met the requirement of the Act and dissolve the marriage as same has broken down irretrievably.

The Respondent from the record of this Court, was duly served with the Petition and the Petitioner’s final address but Respondent failed to file her answer to the petition nor her final address. Respondent was duly represented by a Counsel (one James Onoja, Esq.,) at the initial stage of this case, but thereafter abandoned the case. The law is settled that the Respondent, having been served with all the processes and a date for hearing properly communicated to her, the Respondent cannot be heard to complain that she was not granted fair hearing. In this case, the Respondent failed to file an answer nor appear on the subsequent adjourned dates, therefore the Petitioner’s depositions are without an answer from the Respondent, and it is the well settled principle of law that where evidence given by a party in a proceeding is not challenged by the adverse party who had the opportunity to do so, the Court ought to act positively on the unchallenged evidence before it. This was the position of the Supreme Court as held by Per Rhode- Vivour J.S.C in the case of Cameroon Airlines V. Otutuizo (2011) LPELR 82-(SC).The evidence of the Petitioner in this case

is not challenged or contradicted by the Respondent. The effect is that the evidence of the Petitioner will be taken as accepted or established.

Having examined the Petition of the Petitioner, his evidence in chief and the written submission the Petitioner's Counsel, the issue to be determined is **"Whether from the unchallenged and uncontroverted evidence and circumstances of this case the marriage between the Petitioner and the Respondent has broken down irretrievably as to warrant a decree of dissolution of marriage sought"**

The fact that a marriage has broken down irretrievably is what the Court would look out for, in the presentation of a divorce petition, and the Court cannot make such findings unless one or more facts specified under Section 15(2) of the Matrimonial Causes Act 2004, is or are proved to support the fact that the marriage has broken down irretrievably. The facts as stated in Section 15 (2) of the Matrimonial Causes Act, that can be basis for grounds for dissolution of marriage are as follows:

- a. That the respondent has wilfully and persistently refused to consummate the marriage.
- b. That since the marriage, the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent.
- c. That since the marriage the respondent has behaved in a way that the petitioner cannot be reasonably expected to live with the respondent.
- d. That the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.
- 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.

- f. That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.
- g. That the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act.
- h. That the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

The evidence of the Petitioner in proof of these facts required for the Court to hold that the marriage has broken down irretrievably are succinctly stated in the earlier part of this judgment and I find these unchallenged and uncontroverted evidence of Petitioner satisfactory and are in conformity with the Section 15 (2) (a), (d), and (f) of Matrimonial Causes Act 2004 in establishing willful refusal to consummate the marriage by the Respondent, desertion by the Respondent and that the parties have lived apart for a continuous period of at least three years prior to the institution of the Petition which are proof that the marriage has broken down irretrievably. The Petitioner, having discharged the burden placed on him to prove the petition, I find merit in his claim, and I hereby dissolve the marriage between the Petitioner and the Respondent.

From the facts stated in the Petition, the Petitioner has been responsible for the Education and welfare of the three children of the marriage and shall continue to be responsible for their Education, welfare, and maintenance of the Children of the marriage.

Section 71 of the Matrimonial Causes Act places a wide discretion on the court in the consideration of custody of children of a marriage and in exercising that

discretion, the court must act on facts before it. I have considered the unchallenged and uncontroverted facts and evidence before me particularly the fact that the Petitioner has been taking care of the children and I find that the interest, and welfare of the children of the marriage would be better served if custody is vested on the Petitioner and I so hold.

Consequently, it is hereby ordered as follows:

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **MR. OLADOKUN OLATUNJI DURODOLA** and the Respondent, **MRS. FOLUSHO OZA VIZE OYANNA**, celebrated at the Ikeja Marriage Registry, Ikeja, Lagos State, on the 31st day of May, 1997.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.
3. Custody of the three children of the marriage (Bolaji Ometereb, Afolabi Nwamaka and Ibukun Omeize) is hereby granted to the Petitioner until they attain the age of 18 years with visitation rights granted during school holidays to the Respondent at such agreed times by both parties, such consent not to be unnecessarily withheld by the Petitioner.
4. Petitioner shall continue to be responsible for the education, welfare, and maintenance of the three children of the marriage.

Parties: Parties absent.

Appearances: No Legal representation for both parties.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
03/02/2022