

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 20, GUDU-ABUJA
ON THURSDAY THE 10TH DAY OF FEBRUARY 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE R. OSHO- ADEBIYI

PETITION NO: PET/050/2021

BETWEEN:

MRS. VICTORIA ADEBOLA AKHIGBE=====PETITIONER

AND

MR. OSCAR AKHIGBE=====RESPONDENT

JUDGMENT

By a Notice of Petition dated and filed on the 5th day of February 2021, the Petitioner seeks the court for the following order;

- a. A decree of dissolution of marriage on the ground stated in Section 15 1(C) of the Matrimonial Causes Act (Cap.M7, Laws of the Federation of Nigeria, 2004), with proviso made for an Order of 'Decree Absolute' upon the effluxion of time stipulated in the Matrimonial Causes Act after the pronouncement of the Order of Decree Nisi aforesaid.

The ground the Petitioner is relying upon is that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. The Petition was served on the Respondent on the 8/3/2021, the Respondent however did not file an answer to the Petition.

The Petitioner opened her case and testifying as the sole witness, adopted her witness statement on oath as her oral evidence in support of her case. It

is the case of the Petitioner that she and the Respondent lawfully married at the Marriage registry, Kabba, Kogi State on the 20th of April 2013 under the Marriage Act. That the marriage is blessed with five children. That parties cohabited together before the marriage from 2001 to 2008 when the Respondent abandoned the Petitioner and the children and relocated to Abuja without making any provision for the welfare and upkeep of Petitioner and the children of the marriage. That Petitioner after about five years of staying apart, traced the Respondent through the help of his relative to where he lived in Abuja. That parties reconciled for the sake of the children whereupon they decided to become lawfully married under the Act. That since the marriage and owing to the disagreements between parties over many years before and during the marriage, the relationship between Petitioner and Respondent deteriorated to the point that it affected their ability to communicate effectively with each other as a couple. That the relationship between parties is sour and it has become impractical for parties to maintain conjugal relations which eventually ceased. That the Respondent has always maintained a lifestyle of utter disregard to petitioner's feelings and welfare of the children, having failed to contribute to the welfare and upbringing of the children since the marriage, rather, the Respondent is in a habit of extorting monies from Petitioner and the children of the Marriage. That Petitioner has suffered emotion trauma as a result of the Respondent's continuous neglect and that the marriage has broken down irretrievably. That both parties maintain joint custody of the children of the marriage. Petitioner tendered a copy of the marriage certificate between parties celebrated at Kabba, Kogi State on the 20th day of April 2013 which was admitted in evidence as Exhibit A.

The Respondent did not file an answer to the Petition; however, Respondent informed the Court that he is not opposed to the Court

dissolving the marriage. Respondent further informed the Court that there have not been conjugal relations between parties for over a year and urged the Court to dissolve the marriage between parties.

The Petitioner's Counsel addressed the Court orally and urged the Court to grant the prayer sought in the Petition, the Petitioner having satisfied the facts as stated in her statement on oath.

Having carefully considered the pleadings and evidence of the Petitioner as well as the submission of counsel to the Petitioner, the issue to be resolved is "Whether the Petitioner has proved her case to be entitled to the reliefs sought".

First, the Respondent who was served with court processes, did not file an answer to the Petition, and in fact, informed court that he is not opposed to the Petition. The implication of this is that the evidence of the Petitioner remains unchallenged. The Courts have held that where evidence is neither challenged nor controverted, the court should deem that evidence as true, correct and act on it. See CBN VS IGWILO (2007) 14NWLR (PT. 1054) 393 @ 406.

In the determination of a Petition for dissolution of marriage under Section 15 (1) of the Matrimonial Causes Act, it is competent for a marriage to be dissolved, once a court is satisfied that the marriage has broken down irretrievably. For the Court to reach that finding, the Petitioner must establish any of the facts set forth in Section 15 (2) of the Matrimonial Causes Act categorized in sub-sections (a) - (h), to the reasonable satisfaction of the Court.

In the instant case, Petitioner is relying on on the fact ascontained in Section 15(2) (c) as the ground for this Court to hold that the marriage has broken down irretrievably. The said Section 15(2)C provides;

“That since the Marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.”

The evidence of the Petitioner in proof of this fact relied upon is 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) (c), of the Matrimonial Causes Act 2004 in establishing that since the marriage the respondent has behaved in a way that the petitioner cannot be reasonably expected to live with the respondent.

The Petitioner, having discharged the burden placed on her to prove the petition, I find merit in her claim, and I hereby dissolve the marriage between the Petitioner and the Respondent.

Having dissolved the marriage between the parties, it is Hereby ordered as follows:

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **MRS. VICTORIA ADEBOLA AKHIGBE**and the Respondent,**MR.OSCAR AKHIGBE**, atthe Marriage Registry in Kabba, Kogi State on the 20th day of April 2013.
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. Although Petitioner did not pray for custody in her reliefs, she however in her evidence, urged the Court to grant joint custody of the five children of the marriage to both parties, which was not opposed by the Respondent. The court is aware that three(3) of the children are adults having attained the age of 18 and over.

Consequently, joint custody of the remaining two children (Rejoice Akhigbe, and Emmanuel Akhigbe) is hereby granted to both the Petitioner and the Respondent until they attain the age of 18.

Parties: Parties absent.

Appearances: T. A. Apor, Esq., for the Petitioner.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
10/02/2022