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

THIS THURSDAY, THE 2ND DAY OF JUNE, 2022.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

PETITION NO: GWD/PET/042/2021
MOTION NO: GWD/336/2021

BETWEEN

SUSTAIN KEHINDE ABAYOMI …….. PETITIONER

AND

IFEOLUWA BABATUNDE ABAYOMI …… RESPONDENT

JUDGMENT

By a notice of petition filed on 29th January, 2021, the Petitioner seeks for the following relief against Respondent as follows:

A Decree of Dissolution of marriage between petitioner and the Respondent on the grounds mentioned above.

The Respondent was duly served with the petition on 8th February, 2022 and subsequently served hearing notices at different times all through the course of this proceedings. He never appeared or filed any process in opposition.

The matter therefore proceeded to trial. The petitioner testified in person and the only witness. The substance and summary of her unchallenged evidence is that she met the respondent sometime in 2015 and he showed interest in her but that before she gave him a response, she told him of the peculiar health challenges she has as a sickle cell patient with attendant challenges. He assured her that he could cope and she introduced him to her parents.

A wedding date was subsequently fixed but he never contributed to the wedding claiming that he had not been paid at his work place. Her family foot the bill for the marriage. PW1 further stated that after the marriage she found that he had lost his job and duped several people of their money claiming he will facilitate the citing of an MTN Mast on their property. He was working with MTN before he lost his job and used that to lure people to pay him for the MTN Mast.

She was severally threatened by people he duped and was compelled to pay part of the moneys he collected and also that she had to bail him out on a couple of occasions after his arrest.

PW1 also testified that there were several acts of infidelity on the part of Respondent with her receiving calls from other ladies and in the process of his escapade, he infected her with a venereal infection. That though he denied, her saving grace was that she had never been with any other man except him.

She stated that though they were able to settle this problem as he apologised but the threat to her life continued because he kept collecting and duping people of their money.

Further that the untoward and detestable behaviour of respondent became unbearable and was affecting her mental and physical health. That sometime in December 2017, he came to see her in Ede as they maintain two (2) homes. He was in Lagos while she was Ede. She told him that because of the impact of his behaviour on her health, she wanted a break from the relationship so that she can take proper care of herself. He left her home in December 2017 and thinking he had left Ede, but apparently he did not. The following day at work, a lady came with military men to harass her that he husband slept with her in a hotel and told her he was going to the ATM machine to withdraw some money and then absconded.

PW1 stated that since 2017, she had not seen or had any physical contact with respondent except through whatsapp messages. That he told her, her siblings and parents that she should go to court to dissolve the marriage as he does not have any money to spend.

That the last conversation they heard was last year through whatsapp and he told her to move on with her life. That he has a post on his facebook page displaying another lady as his wife. That they have live apart now since

December 2017. She tendered in evidence **Exhibits P1a and b and P2 a and b**.

The petitioner then urged the court to grant the petition since the marriage has broken down irretrievably and parties have lived apart for nearly five (5) years now and most importantly that the Respondent has since moved on with his life and with apparently a new wife.

As stated earlier, the Respondent did not file any defence to the petition and never appeared in court. On application of counsel to the petitioner, the right of respondent to cross-examine petitioner and to defend the petition was foreclosed and addresses ordered. The petitioners counsel was granted leave to address the court orally since the petition was largely unchallenged.

Learned counsel to the petitioner then addressed the court urging the court to grant the petition since it is undefended and parties have lived apart for nearly 5 years preceding presentation of the petition and the marriage on the evidence has broken down with no desire on either side to continue with the relationship. The address forms part of the record of court and I shall where necessary in the course of this Judgment refer to it.

I only wish to briefly state here that the Respondent from the records has had more than ample time to defend this action if he wanted. He never availed himself of the opportunity. The principle appears settled that while the right to be heard is of wide application and great importance in any well conducted proceedings, it is however a right that must be confined within circumscribed limits and not allowed to run wild. See **LONDON BOROUGH OF HOUNSLOW v. TWICKENHAM GARDEN DEVELOPMENT LIMITED (1970) 3 All ER 326 at 347.** A party certainly does not have till eternity to prove or defend any action as the case may be.

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 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) 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 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.

It was also further averred as a ground that due to this state of affairs, the Respondent left the matrimonial home in December 2017 and since then, there has been no physical contact 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 petitioner before the court, I find the following essential facts as established, to wit:

1. **Parties got married on 1st October, 2016.**

2. **That the Respondent left the matrimonial home in December 2017 and has not gotten in touch with petitioner except for a few exchange of messages through Whatsapp..**

3. **That since 2017, a period of nearly 5 years, cohabitation has effectively ceased between parties.**

4. **That even before petitioner left the marriage, he had engaged in the untoward behavior of duping people which led to threats on her life. Exhibit P2(a), the message exchanges between petitioner and a friend of respondent is clear evidence of the threat to petitioner and also situates that respondent has been duping people of their moneys.**

5. **That the respondent also engaged in extra marital affairs leading to venereal infection and harassment by his lady friends which has caused her extreme emotional distress.**

6. **The respondent has told petitioner, her parents and siblings that he is no more interested in the marriage and that she should take steps to have it dissolved as he does not have money to go to court.**

7. **That the Respondent has completely abandoned Petitioner and abdicated his responsibilities as a husband since 2017.**

8. **That the Respondent has since moved on with his life independent of 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 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 nearly 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** if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for up to 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 within the confines of **Section 15 (2) (e) and (f) of the MCA**. If parties to a consensual marriage relationship cannot live any longer in peace and harmony and with respect to the institution of matrimony, then it is better they part in peace and with mutual respect for each other. The unchallenged petition on dissolution of the marriage in the circumstances has considerable merit.

In the final analysis, and in summation, having carefully evaluated the petition and the unchallenged evidence, I accordingly make the following orders:

1. **An order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on 1st October, 2016.**

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Hon. Justice A.I. Kutigi

<u>Appearances:</u>

1. ***Emmanuel Tayo Ogunjide, Esq., with Solomon Kolawole, Esq., for the Petitioner.***