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

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

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

PETITON NO: PET/024/2019

BETWEEN:

WILLIAM EGOSA OSAHON …….. PETITIONER

AND

1. MRS CAROLINE OSAHON
2. MR AKINYEMIJU AKINBULIJO **…..... RESPONDENTS**

JUDGMENT

By a Notice of Petition dated 22nd October, 2019, the Petitioner claims the following Reliefs against Respondents thus:

i. **A Decree of Dissolution of the Marriage between the Petitioner and the 1st Respondent which was conducted on the 14th of November, 2003 at the AMAC Marriage Registry Area 10 Garki Abuja FCT, Nigeria.**

ii. **And for such Order or other Orders as the Honourable Court may deem fit to make in the circumstances of the case.**

The case was initially filed before Honourable Justice V.V.M Venda, now retired. On the record, the 1st Respondent was served with the originating court processes but no indication that the 2nd Respondent was served.

Upon transfer of the matter to this court, the petitioner sought for an order to serve the 2nd Respondent by substituted means and this was granted on 9th November, 2020. He was then duly served with the originating processes and

hearing notice. He never appeared in court or filed any process. The 1st Respondent on the record was served with hearing notices but she equally failed to appear or file any process in opposition.

The matter then proceeded to hearing. The petitioner testified in person as PW1 in proof of his case and adopted his written witness deposition. The substance of his evidence is that he met 1st Respondent in Abuja and they got married on 14th November, 2003 at the Marriage Registry of Abuja Municipal Area Council (AMAC) FCT. After the marriage they cohabited at different places in the FCT and that the marriage is not blessed with children.

PW1 stated that the marriage started on a promising note but in due course he started noticing some unusual behavior on the part of 1st respondent including sinister association with the opposing sex and going out to unknown destination and spending long hours outside the matrimonial home without his knowledge and consent and that whenever he confronts her, she tells him that he has no right to tell her where to go and who to see. He became concerned about her behavior and then he started keeping a watchful eye as his suspicion of her heightened.

PW1 stated that the behavior of 1st Respondent became worse leading to serious quarrel, near physical combat, loss of affection and love and irreconcilable difference between them. That the marriage between parties will have long ended but for the maturity he displayed as the 1st Respondent refused to listen to his advise and warning.

PW1 stated further that sometimes in 2013, the 1st respondent left the matrimonial home without his knowledge and when she came back, he sought to know where she went, and she became wild with anger and started insulting him and telling him that she cannot be dictated to and that she has a right to go wherever she wants without his permission.

PW1 stated that he then told her that he is no longer comfortable staying with her and having conjugal relationship with her and that the marriage had broken down. That the 1st respondent started begging him and when he demanded to know where she was going to, that she confessed to having a love affair with 2nd respondent. PW1 said that since he discovered her wayward and adulterous life, he stopped eating her food and having conjugal relationship with her because he was afraid of been poisoned.

That her adulterous way of life has made cohabitation with 1st respondent intolerable and uncomfortable, and has destroyed the marriage beyond repairs. That he has suffered exceptional hardship occasioned by the way of life of 1st respondent and that the marriage has broken down irretrievably and he can no longer live with her. PW1 tendered in evidence the Certified True Copy (CTC) of the marriage certificate dated 14th November, 2003 together with the affidavit deposed to at the High Court of FCT for correction of name and age of petitioner which were admitted as **Exhibits P1 a** and **b**.

On the basis of his evidence, he prayed the court to dissolve the marriage.

As stated earlier, both respondents never appeared in court or filed any process in opposition. On application of counsel to the petitioner, their right to cross-examine petitioner and also to defend the action was foreclosed and addresses ordered. The right to defend an action and fair hearing is important in any well conducted proceedings but it is right that must be circumscribed within proper limits and not allowed to run wild. No party has till eternity to defend any action. The respondents were given every opportunity to defend this action but they chose not to exercise their right. That is their prerogative. I say no more.

The petitioner then filed his address on 12th December, 2021 at the Court's Registry. One issue was raised as arising for determination to wit:

"Whether based on the totality of the material evidence before the Honourable court, the petitioner is not entitled to the reliefs sought in this case?"

The issue raised by petitioner largely captured the essence or crux of the issue to be determined by this uncontested petition, which will however be slightly amended hereunder. 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 Respondents despite the service of the originating court processes 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 Respondents are 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 his petition seeks for dissolution of the marriage with 1st respondent on the ground that the marriage has broken down irretrievably and essentially predicated the basis of the petition on the intolerable behaviour of 1st respondent including acts of complete disrespect to the marriage institution, absence of control or respect for petitioner, waywardness, adultery, insults, fights and complete absence of care, love and attention which has resulted into irreconcilable differences between parties.

It is doubtless therefore that the petition was brought within the purview of **Section 15 (1) (b) and (c) 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 within the confines of **Section 15 (1) (c)** to wit:

1. **That the parties got married on 14th November, 2003 vide Exhibit P1.**

2. **That the marriage started on a promising and blissful note until the 1st respondent started behaving badly by going out to unknown destination without the knowledge and consent of petitioner.**

3. **That whenever he confronts her over her behavior, it results to serious quarrel and near physical fight as the 1st respondent insists that the petitioner has no right to tell her where to go and when and whom to associate with.**

4. **That the unbearable attitude of 1st respondent led to complete loss of affection, love and irreconcilable difference between them and that the marriage would have long ended but for his patience and maturity.**

5. **That the 1st Respondent has refused to listen to his advice and warnings and has continued with her waywardness including raining insults on him whenever he questions her movements or when she goes out to wherever she wants without his permission.**

6. **That conjugal relationship between them has ceased and that he is even afraid to eat her food.**

7. **That the intolerable behavior of 1st respondent has caused him exceptional hardship as cohabitation with 1st respondent is unpleasant and uncomfortable and that the marriage has broken irretrievably and beyond repair.**

8. **That to continue in the marriage will impose on him further exceptional hardship.**

In law, two sets of facts call for proof under **Section 15 (2) (c)** and they are:

1. The sickening and detestable or condemnable conduct of the Respondent; and

2. The fact that the petitioner finds it intolerable to continue to live with the Respondent.

These two facts are severable and independent and both must be proved. The petitioner must prove the detestable act and condemnable conduct and then proceed to prove that he finds it intolerable to live with the Respondent. See **Nanna V Nanna (2006) 3 NWLR (pt.966) 1 at 30 B-E.**

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the 1st Respondent who was given all the opportunity of doing so and has clearly established the facts under **Section 15 (2) (c)**. 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 Respondents and in particular 1st Respondent to respond to this petition confirms in all material particulars the fact that the marriage has broken down irretrievably and that by the facts petitioner has stated and streamlined above in great detail, which as stated severally was not challenged or impugned, the 1st Respondent has clearly behaved in such a way that the petitioner cannot reasonably be expected to live with her. The petitioner has thus creditably established his petition within the purview of **Section 15 (2) (c) of the Matrimonial Causes Act**.

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 petitioner for divorce. The evidence of petitioner on the detestable and unbecoming behaviour of 1st respondent is one the court finds neither incredible or improbable and situates that the marriage has broken down irretrievably and the petitioner cannot be expected to live with the 1st respondent in an atmosphere devoid of care, love and attention with no respect for the rules and obligations of a matrimonial home.

If parties to a consensual marriage cannot live any longer in peace and with mutual respect for each other and the marriage institution then it is better they part in peace.

This will appear to be the earnest desire of both parties especially the petitioner.

Before I round up, it will be noticed that I had not said anything on the complaint of adultery forming part of the ground of petition within the purview of **Section 15 (2) (b) of the MCA**. Let me say some few words even if it no longer has any bearing on the fate of the case to put parties and especially counsel on what to look out for when a petition is founded on Adultery.

In this case and on the evidence, no evidence of such quality was presented by petitioner to support the case of Adultery. Adultery in law has been defined as consensual sexual intercourse between two persons of opposite sexes, at least one of whom is married to a person other than the one with whom the intercourse is had, and since the celebration of the marriage. Thus, to establish adultery, first there must be sexual intercourse, secondly the sexual intercourse must be voluntary, and thirdly, at least one of the parties must be married. It is recognised and accepted that, apart from direct evidence, which is very rare, adultery is usually proved by circumstantial evidence. These could take various forms, but a few are:

i. **Familiarity and opportunity: If parties are intimate and they have been together in circumstances in which it could be reasonably inferred that they have committed adultery, then they will be presumed to have done so unless there is evidence to the contrary. This was the finding of the Federal Supreme Court in the case of Akinyemi V Akinyemi (1963) 2 SCNLR 303.**

ii. **Venereal disease: if the petitioner can prove that the respondent had contacted a venereal disease from a third party during the marriage, this will give rise to a presumption of adultery. Gleen V Gleen (1900) 77 T.L.R. 62;**

iii. **Brothel: if a spouse visits a brothel with a third party, it will be presumed that such a spouse has committed adultery;**

iv. **Confessions and admissions of adultery: these types of evidence are usually carefully scrutinized because of the danger of fabrication. The court takes into account all circumstances including the desire for a divorce of the party confessing. In such a case, the court usually insists that the evidence be corroborated, although it may not necessarily**

refrain from pronouncing a decree simply because the evidence is not corroborated. Caution is simply advised in acting on such.

v. **The birth of a child, the period of gestation being a very important factor to take into consideration. The list, of course, is not exhaustive. See Alabi V Alabi (2007) LPELR – 8203 (CA).**

The petitioner as alluded to above never led any credible evidence to situate his case within any of the parameters above. The only point of note petitioner alluded in his evidence on adultery is the alleged oral confession he said 1st respondent made to him. The 1st Respondent however never appeared in court to verify or situate the credibility of this alleged confession. The original source of the information did not therefore give evidence in this case and this undermines the probative value of the confession. There is nothing in evidence to support or corroborate that she made any confession of adultery to petitioner and this undermines such alleged confession. In any event, the said admission or confession is at best even hearsay and inadmissible and cannot be relied on in proving the truth of the matter stated in it. See **Section 38 of the Evidence Act**. The case for adultery has thus not been made out and is thus discountenanced.

As stated earlier, I only treated this aspect of adultery to provide some guide and insight to parties and counsel who situate Adultery as one of the grounds for a petition and for them to understand its parameters and legal threshold. No more. This however did not affect the case because as alluded to already any of the facts under **Section 15(2) a-h of the MCA**, if proved by credible evidence is sufficient to ground a petition for divorce and in this case the unchallenged evidence led has fallen within the purview of **Section 15 (2) (c)**. The petitioner has creditably made out a case that the 1st respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with her.

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

An ORDER of Decree Nisi is granted dissolving the marriage celebrated between the petitioner and 1st respondent on 14th November, 2003.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. Paul Asimiakpeokha Esq., for the Petitioner.