

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

SUIT NO: FCT/HC/PET/154/2020

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

CHINYERE IHUOMA IHEMADU.....PETITIONER

AND

OMELIHU-NTACHIDI IHEMADU.....RESPONDENT

JUDGMENT

The petitioner has filed this petition for dissolution of marriage on the following grounds:

- a. The marriage has broken down irretrievably.
- b. That the respondent has deserted and abandoned the petitioner for over two (2) years immediately preceding this petition, having formed the settled intention to permanently stay away from the matrimonial home and his family.
- c. The respondent has deprived the petitioner for her conjugal rights, including sexual intercourse.
- d. The respondent has maliciously and grossly neglected his domestic duties and responsibilities as a husband and as a father.
- e. Since the marriage, the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

The petitioner seeks for the following reliefs:

1. A decree of dissolution of marriage on the grounds of desertion, intolerance and irretrievable breakdown of marriage;

2. An order granting full custody of the three (3) children of the marriage to the petitioner;
3. An order that the respondent be responsible for the maintenance of the three (3) children of the marriage and directing him to pay for this in the sum of N300,000.00 per month;
4. An order that the respondent be made to pay the sum of N800,000.00 (Eight Hundred Thousand Naira) per session for the school fees of the three (3) children of the marriage
5. An order that cost of this petition, including the legal expenses being in the sum of N500,000.00 (Five Hundred Thousand Naira) be refused to the petitioner by the respondent.
6. An order that the respondent pay to the petitioner a lump sum, once for all payment on dissolution of the marriage in the sum of N50,000,000.00 (Fifty Million Naira).
7. An order that the respondent will be responsible for the medical care of the petitioner and the three (3) children of the marriage; and
8. An order that the ownership of the property at plot 37, 641 Road, Off 6th Avenue, Off Zainab Alkali street, Gwarinpa, Abuja, FCT be vested in the petitioner in view of the respondent's deliberate and continuing refusal to make the payment of the mortgage and his refusal to contribute to its construction.

The petition was served on the respondent in which he responded by filing an answer and a cross petition, dated the 21st day of October, and filed on the 23rd October, 2020, and the petitioner in turn filed a reply to the answer and cross-petition on the 30th November, 2020.

According to the petitioner, the parties got married at the Abuja Municipal Area Council (AMAC) Marriage Registry on the 2nd May, 2008 and cohabited after their marriage at plot 1, David D. Dodo Street, Off 2nd Avenue, Near Federal Staff Clinic, Gwarinpa, Abuja, where they were resident from 5th December, 2008 to 21st December, 2015.

It is stated that cohabitation between them ceased on the 21st December, 2015 because the respondent deserted and abandoned the petitioner for over two years immediately preceding this petition when he packed out of the matrimonial house without any provocation.

The petitioner averred that he has since refused to return after forming the intention to permanently stay away from the petitioner and the three children of the marriage. She also stated that the respondent has since been cohabiting with other women, spending all of his earning solely on himself and his girl friends to the detriment of the petitioner and their children, and that her earnings are inadequate to cope with all the family expenditures unless the respondent substantially augments it by maintaining the petitioner and the children.

The petitioner further averred that the respondent has deprived her of conjugal duties and responsibilities as a husband and father and since the marriage, the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, and that all positive methods of persuasion employed by the petitioner and concerned members of their religious faiths, friends and family members aimed at encouraging the respondent to change his attitude and conduct have proved abortive at the instance of the respondent as he disdainfully rebutted all these efforts.

The petitioner averred that there has not been any proceedings regarding this marriage prior to filing this action and that she has not condoned, connived nor is she guilty of any of the ground of the dissolution of the marriage specified in this petition.

The respondent having been served with the notice of petition responded to by filing an answer and cross-petition dated the 21st day of October, 2020 and filed on the 23rd October, 2020.

The petitioner gave evidence in support of the claim as PW1 while the respondent's counsel cross-examined her, and the respondent did not give any evidence in support of his answer and cross-petition this is because along the line during the proceedings, the parties together with their counsel met and decided to settle the main issues except the issue of the dissolution of the marriage, and such issues are the custody of the children of the marriage and the issue of property being claimed by the petitioner in the reliefs, and the court directed the parties to file their terms of settlement and adopt same together with their written final addresses, and which were done.

In the course of the proceedings, the petitioner tendered in evidence the Certificate of Marriage dated the 2nd day of May, 2008 which was marked as EXH. "A1" to prove that there is a valid marriage between the two parties.

The petitioner being the PW1 testified that she got married to the respondent on the 2nd day of May, 2008 at the Marriage Registry of Abuja Municipal Area Council, and this is by virtue of the marriage certificate, EXH. 'A1', and that they have children by names:

1. Chikayima Ihemadu born on 14th September, 2008;

2. Chizitaram Ihemadu born on the 26th September, 2010; and
3. Nmesomachi Ihemadu born on the 29th May, 2014.

The PW1 testified further that she seeks for the dissolution of the marriage because the respondent has deserted her and the children, and has failed to perform conjugal duties with her, and has also failed to maintain her and the children of the marriage, and then, he deserted them since the 21st December, 2015 and has not returned till date.

The PW1 was asked during cross examination whether if she is shown receipts of payments for her maintenance and the children, and she answered that those payments are previous payments for outstanding school fees for the children.

When asked as to who own plot 37, 641, Road, Off 6 Avenue, Off Zainab Alkali Street, and the PW1 answered that is a house under mortgage belonging to both of them. She also testified that there was emotional abuse on her side, even though no evidence in that regard, but it is something she suffered.

The respondent did file his answer and cross-petition, however, he did not give evidence in support of the cross-petition, and therefore, the counsel to the petitioner first adopted his final written address, and then followed by the counsel to the respondent.

In his final written address, the counsel to the petitioner raised this sole issue for determination:

Whether or not the marriage has actually broke down irretrievably?

The counsel submitted that it is the prayer of both parties that the court grants the relief for dissolution of

marriage and the petitioner in her evidence had reiterated her prayer for the dissolution. He submitted that her evidence in that regard is uncontroverted and unchallenged by the respondent who never bothered to testify despite being represented by counsel.

The counsel further submitted that while the pleadings of parties cannot be evidence, there is uncontroverted evidence that both parties were indeed married and a marriage certificate was issued which was also tendered in evidence and that both parties cohabited at the same address until their separation, and he cited the case of **Ezennah V. Attah (2004) NSCQLR Vol. 17 p. 615 at 659**. He then urged the court based on the foregoing to draw the inference and decide that both parties are not interested in the marriage, and also urged the court to consider the express provision of section 15(1) and (2) especially as it relates to the fact both parties have lived apart for over two years and also because the respondent has no objection to the dissolution of the marriage, and further urged the court to adopt the position of the court in the case of **Omotunde V. Omotunde (2001) NWLR (pt 718)** where the court held that where both parties want a divorce, the court is bound to grant it. He also cited the case of **Kalejaiye V. Kalejaiye (1986) Vol. 11 OLRN 162**, and finally urged the court to grant the prayer of the petitioner for the dissolution of the marriage between the two parties.

The counsel to the respondent in his final written address adopted the issue for determination already formulated by the counsel to the petitioner and submitted that it is apparent from the processes and the reliefs sought by the respondent/cross-petitioner that there is an absence of love and attention between the parties which necessitated the respondent to leave their matrimonial

home at plot 1, David D. Dodo Street, Off 2nd Avenue, near Federal State Clinic, Gwarinpa, Abuja on the 21st December, 2015.

The counsel commended to the court the provision of section 15(2) (e) and (5) of the Matrimonial Causes Act and submitted that it is clear from the pleadings that parties had lived apart for a clear period of three years immediately preceding this petition for dissolution of marriage between the parties, and recited the case of **Megwalu V. Megwalu (1994) 7 NWLR (pt 359) 718 at 730** where the Court of Appeal held that the petitioner must prove at least one of the specified facts in the Matrimonial Causes Act which has been established by the respondent/cross-petitioner. He submitted that parties are bound by their pleadings and facts not denied are deemed admitted, and he cited the cases of **Imam V. Bayero College of BUK (1970) NMLR 39** and **Odede & Anor V. Jonah & Anor (2019) LPELR – 49040 CA** and submitted that the facts pleaded in the answer and cross-petition were not denied specifically or by implication by the petitioner/cross-respondent, and he urged the court to hold that the marriage between the parties has broken down irretrievably and that the court should order a decree of dissolution of marriage.

Let me adopt the issue already formulated and adopted by the both counsel to the two parties, that is to say:

Whether or not the marriage has actually broken down irretrievably?

Thus, it is the duty of this court to evaluate the evidence of the petitioner with a view to ascribe a probative value to it. See the case of **Popoola V. Marquis (2010) All FWLR (pt 527) p. 757.**

Looking at the evidence of the petitioner and the question and answer conversation between the witness and the counsel to the respondent/cross-petitioner, nothing that was asked which shows that the evidence has been challenged during cross-examination, and has also not been controverted by any evidence, and the court has to act upon the evidence in proving that the marriage has broken down irretrievably. See the case of **Babaiya V. Sikeli (2005) All FWLR (pt 289) p. 1236 at pp. 1254-1255; paras. G-A** where the Court of Appeal, Kaduna Division held that evidence which is not challenged through cross-examination, and not controverted by other evidence and is not by itself incredible is qualified to be accepted and acted upon by the trial court. In the instant case, the PW1, being the sole witness of the petitioner has not been challenged during cross-examination, and therefore, this court has to act upon the evidence, and to this, it is hereby accepted in prove of the fact that the marriage has broken down irretrievably. More so, no evidence was given by the respondent/cross-petitioner, even though he has filed an answer to the petition and cross-petition, and to this, I refer to the case of **Kaydee Ventures Ltd V. Hon. Minister, FCT (20120 All FWLR (pt 519) p. 1084 at 1103, paras. C-E** to the effect that when an averment has not been supported by evidence, that averment is deemed abandoned, and must be struck out, and I will not hesitate to strike out the answer to the petition and the cross-petition filed by the respondent, and they are hereby struck out.

The two parties and other counsel have by the leave of the court agreed to settle the matter amicably with the exception of the issue of dissolution of the marriage, and by this, it can be inferred that the petitioner has succeeded in proving the claim for the dissolution of the marriage as it has

broken down irretrievably. See the provision of section 15(1) and (2) (d) and (e) of the Matrimonial Causes Act which provides:

“(1) A petition under the Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably.

(2) The court upon hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts:

(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.”

It is in evidence that the respondent has deserted the petitioner and the children of the marriage since the 21st December, 2015, and this petition was filed on the 30th October, 2019, this is barely three years and ten months, which is beyond the least period of one year, and this the respondent under section 15(2) (d) of the Matrimonial Causes Act has been duly satisfied by the petitioner, and also the respondent under paragraph (e) of subsection (2) of section 15 of the Matrimonial Causes Act has been duly satisfied, and therefore, the petitioner has been able to

establish that the marriage between the two parties has broken down irretrievably, and to this, I so hold.

A decree nisi for the dissolution of the marriage between the petitioner/cross-respondent and the respondent/cross-petitioner is hereby granted.

With respect to the rest of the claims or reliefs, the parties and their counsel have agreed as follows:

- (A) 1. The children shall reside with the petitioner/cross-respondent and shall spend one out of every four weekends of every month with the respondent/cross-petitioner shall be entitled to custody of the children which should be mutually agreed by the parties.
 - ii. The children shall spend a week out of every school vacation/holiday with the respondent/cross-petitioner. The particular week of holiday to be mutually agreed between the parties.
- (B) An order directing the respondent/cross-petitioner to pay a minimum sum of N100,000.00 (One Hundred Thousand Naira only) monthly to the petitioner/cross-respondent as maintenance allowance for the three children of the union. This monthly minimum maintenance sum is however subject to relative increase in the income of the respondent/cross-petitioner.
- (C) An order directing the respondent/cross-petitioner to pay 70% of the annual school fees for the three children of the union per term while the petitioner/cross-respondent pay 30% therein.
- (D) An order directing the respondent/cross-petitioner to pay to the petitioner/cross-respondent the sum of N10,000,000.00 (Ten Million Naira Only) payable

at the rate of N2,000,000.00 (Two Million Naira only) per year. The first payment to be made within one year from the date of the dissolution.

- (E) An order directing the respondent/cross-petitioner to register the three children of the union for medical care at the Federal Medical Centre, Jabi, Abuja and to foot the medical bills arising there from.
- (F) An order directing the respondent/cross-petitioner to forfeit and transfer all the ownership rights on the mortgaged property known as plot 37, 641 Road, Off 6th Avenue, Off Zainab Alkali Street, Gwarinpa, Abuja, FCT to the petitioner/cross-respondent and the three children of the union.

This term of settlement is made this 3rd day of February, 2021.

Now be it determined that the terms of settlement is hereby adopted as the consent judgment of this court that in addition the clauses (a) (i) and (ii) above, the respondent/cross-petitioner is directed to do or perform the acts as are encapsulated in paragraph (b) (c) (d) (e) and (f) of the terms of the settlement.

Hon. Judge
Signed
9/5/2022

Appearances:

H.O. Kobi Esq appeared for the respondent.