IN THE HIGH COURT OF JUSTICE OF THE CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS

COURT NO: 6

SUIT NO: FCT/HC/PET/139/2019

BETWEEN:

KEHINDE OLAMIDE DANIEL IDOWU.....PETITIONER

VS

OLUWASEUN DANIEL IDOWU.....RESPONDENT

JUDGMENT

Kehinde Olamide Daniel Idowu (Herein after referred to as the Petitioner) filed a Notice of Petition 14/2/2019, seeking for dissolution of the Marriage celebrated at Cathedral of St. James Oke-Bola Ibadan Oyo State according to the Marriage Act as stated in Paragraph 12(1) of the Petition.

The Petition was presented on the ground that;

(a) The parties to the marriage have lived apart for a continuous period of at least two (2) years immediately preceding the presentation of this Petition.

(b) That since the marriage, Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

As gleaned from the pleading and evidence of the Petitioner.

The Petition along with other court processes were served on the Respondent. On 3/9/2019 on the other hand Respondent did not file an Answer to the Petition, was absent in court and was not represented in court by Counsel of his choice. The Petition thus proceeded as undefended.

Petitioner opened her case on 14/9/2021 and testified as PW1 and adopted all the deposition in her Witness Statement on Oath filed on 14/2/2021 as oral evidence in proof of the Petition. And in the course of her Examination-in-Chief, the marriage certificate issued by the Cathedral Church of James Oke – Bola, Ibadan in respect of Marriage celebrated on 12/4/2008, between the Petitioner and the Respondent was tendered and admitted in evidence as Exhibit "A". Also the letter dated 26/2/2013 written by the Respondent to the Petitioner was admitted in Evidence as Exhibit "B". PW1 finally informed court that she wants the court to dissolve the marriage.

At the close of the evidence of the Petitioner – PW1, the case was adjourned for the Respondent to cross-examine PW1. On 10/11/2021 when the case came up, the Respondent failed to put up an appearance in court. Upon the application of Counsel for the Petitioner, the court ordered the foreclosure of Respondent from cross-examining PW1 and adjourned for the Respondent to open his Defence. Again the case came up with Respondent absent in court and not represented by Counsel. And upon another application for foreclosure of the right of the Respondent to defend the Petition, the court ordered the foreclosure of the right of the Respondent to defend the Petition and adjourned for filing and adoption of Final Written Address.

Addressing the court on 19/9/2022, Ayodeji Arowolo Esq. adopted the Final Written Address dated 11/8/2022 and filed same day as oral submission in support of the Petition. In the said Address Counsel for Petitioner formulated a sole issue for determination that is;

> "Whether considering the facts of and circumstances of the case, this Honourable Court is empowered to grant the Petitioner's order for dissolution of marriage on the ground that the marriage has broken down irretrievably"

And submits that the ground for a court to grant an Order for Dissolution of Marriage is that the marriage has broken down irretrievably. Refer to Section 15(1) of the Matrimonial Causes Act. And Petitioner must prove any of the facts contained in Section 15 (2) of the Act. Refer to the cases of Ekrebe Vs Ekrebe (1999) 3 NWLR (PT. 596) 14 and Akinbuwa Vs Akinbuwa (1980) 7 NWLR (PT. 559) 661.

Submits further that the Petitioner has led evidence in support of the grounds relied on for the Petition and same was not challenged nor controverted by the Respondent urge court to act on the evidence on the Petitioner, in line with the decision in the case of Trade Bank Plc Vs Chami (2003) 13 NWLR (PT. 386) 158 @ 220.

Submits finally that the Respondent, having admitted the evidence of the Petitioner, court is empowered to order a decree of dissolution of the marriage between the parties. Therefore urge court to grant the reliefs as prayed by the Petitioner.

Having carefully considered the unchallenged evidence of PW1 – the Petitioner, the submission of Counsel and the judicial authorities, the court finds that only one (1) issue calls for determination that is;

> "Whether the Petitioner has successfully made out a case to warrant the grant of the relief sought"

Firstly, the Respondent was duly served with the processes and Hearing Notices, but failed to file an Answer to the Petition, and absent in court. The implication of this is that the evidence of the Petitioner in proof of her case remains unchallenged and uncontroverted. And it is trite, that where evidence is neither challenged nor controverted, the court should deem the evidence as admitted, correct and act on it. Refer to Njoemana Vs Ugboma & Ors (2014) LPELR – 22 494 (CA).

However, the burden of proof imposed by Section 131-134 of the Evidence Act 2011 and Section 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act must be discharge for the Petition to succeed.

In the determination of the Petition for the 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 convinced that the marriage has broken down irretrievably. And to come to the conclusion, the Petitioner must satisfy the court of any of the facts laid down in Section 15 (2) of the Act categorize under sub-section (g) – (h).

In the instant case, Petitioner relies on the fact of Section 15(2) (c) and (e) of the Matrimonial Causes Act. The Section 15 (2) (c) reads;

> "That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent"

To succeed under the above, the Petitioner must lead evidence to the reasonable satisfaction of the court, of such particular acts or conduct of the Respondent which would warrant the grant of the relief sought. And such acts must be weighty and grave in nature to make further co-habitation virtually impossible. See the case of Ibrahim Vs Ibrahim (2007) All FWLR (PT. 346) @ 489 Paragraph H – B. See also the English case of Katz Vs Katz (1972) All ER 219.

In proof of this ground, Petitioner testifying as PW1 stated in her Witness Statement that;

> "The crises of the marriage became unbearable after three years into the life of the marriage due to persistent argument and irreconcilable difference with the Respondent"

> "That the Respondent most times refused to cohabit with me which sometimes lasted for three months without the Respondent uttering a word to me. Respondent became totally unpleased with every step and decision I take"

PW1 stated further that;

> "I became psychologically traumatized emotionally unstable and mentally stressed and I made all efforts within my reach to reconcile the difference which failed totally"

All of these acts or conduct of the Respondent to the Petitioner are acts of cruelty and cruelty on the part of the Respondent to the Petitioner have been held by the court as satisfactory to establish the facts of Section 15 (2) (c) of the Matrimonial Causes Act. See the case of Damulak Vs Damulak (2004) 8 NWLR (PT. 817) 151 @ 154 Ratio 1 and 2. I have earlier stated that the conduct or behaviour of Respondent relied on for the grant of the relief sought must be grave and weighty to the reasonable satisfaction of the court to enable it come to the conclusion that further co-habitation between the parties is virtually impossible. And after a careful consideration of the evidence of PW1 – the Petitioner which remained unchallenged, I find that the behaviour or conduct of the Respondent as stated by the Petitioner are weighty and grave enough to hold that this ground relied on by the Petitioner for the dissolution of the marriage been proved to the reasonable satisfaction of the court and therefore hold that the marriage has indeed broken down irretrievably.

On the ground of Section 15(2)(e) of the Matrimonial Causes Act, which reads;

> "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"

In prove of this ground, the Petitioner's evidence in Paragraph 10,11,12,13,14,15,16 and 17 is that,

> "The Respondent and I became stranger for a longtime while living under the same roof without co-habiting. On the 25th day of February, 2013 a friend of the Respondent called me that he would like to have a discussion with me as regards my marriage with the Respondent and we fixed an appointment. In that meeting, he informed me that the Respondent has sent him to inform me of his decision to end our marriage and that I should take it in good faith"

PW1 further informed the court that Respondent gave her a letter on 26/2/2013 in which he stated that he is tired of the marriage and would like her to move out of his house, refer to Exhibit "B". Subsequently Petitioner called Respondent's parents to intervene in the matter, necessitating Respondent's father to come to Abuja.

PW1 stated that;

> "The Respondent told his father that no living human being can settle the matter, that all he wants is for me leave his house. That I packed my loads out of the Respondent's house on the 3rd day of April 2013, both the Respondent and I have been living apart from the 3rd day of April 2013, a continuous period of five (5) years plus and counting"

By the computation of time from the period the Petitioner moved out of their home on the prompting of the Respondent on 3/4/2013 to the time of filing this Petition on 14/2/2019 is more than two years of living apart. In the case of Nnana Vs Nnana (2006) 3 NWLR (PT. 966) 1 @ 10 the court held that;

"it is not enough to show that the parties have lived apart for a continuous period of two years the desertion within the meaning of Section 15(2) (e) (f) of the Matrimonial Causes Act must be one where any of the parties abandoned and forsaken, without justification, thus renouncing his or her responsibilities and evading its duties"

This court having found that the parties have indeed lived apart for a period of over two (2) years and Exhibit "B" which implies that the Respondent does not object to a decree being granted, which facts remained unchallenged and uncontroverted and which the court also finds credible and supportive of the Petitioner's case, holds that the marriage has broken down irretrievably.

Form all of these and having considered the evidence of the Petitioner in support of the grounds and facts relied on for the dissolution of the marriage, which remained unchallenged, this court having found them satisfactory and in conformity with the law, particularly Section 15 (2) (c) and (e) of the Matrimonial Causes Act, holds that the union has broken down irretrievably. The Petition succeeds and Judgment is hereby entered as follows;

(1) The marriage celebrated between the Petitioner - Kehinde Olamide Daniel Idowu and the Respondent - Oluwaseun Daniel Idowu on 12/4/2008 at the Cathedral Church of St. James Oke – Bola, Ibadan. Oyo State according to the Marriage Act has broken down

irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the parties.

(2) The said Order Nisi shall become Absolute after a period of three (3) months from today.

Signed
HON. JUSTICE C.O. AGBAZA
Presiding Judge
12/12/2022

APPEARANCE:

AYODEJI AROWOLO ESQ. - FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT.