

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 12

SUIT NO: FCT/HC/PET/268/2016

BETWEEN:

ATONWE EMELIA OLUWAFEMI.....PETITIONER

VS

AYORINDE OJO OLUWAFEMI.....RESPONDENT

JUDGMENT

By a Notice of Petition dated 7/10/10 and filed same day, the Petitioner herein Atonwe Emelia Oluwafemi, seeks the court the reliefs set out in Paragraph 11 of the Petition as;

- a. A Decree of Dissolution of Marriage between the Petitioner and the Respondent based on the fact that the marriage has broken down irretrievably. The ground upon which the Petitioner rely on for the court to dissolve the marriage is that, the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition, as gleaned from the pleading and evidence of the Petitioner.

The Petition was served on the Respondent on 25/1/17 and, in response Respondent filed his Answer and Cross-Petition wherein he is praying for;

- a. A Decree of dissolution of the Cross-Petitioner's marriage with the Cross-Respondent on the ground that the marriage has broken down irretrievably.

Cross Petitioner relies on the facts contained in Section 15 (2) (c) and (e) of the Matrimonial Cause Act for the Court to dissolve the marriage.

After pleadings have been settled, the case was set down for full blown trial.

Petitioner testified as PW1 and called no other witness. In the course of the examination of PW1 – the Petitioner, the original marriage certificate no 031/2003 evidencing marriage celebrated between the Petitioner and Respondent at the ANG Diocese of Abuja, in accordance with the Marriage Act on 23rd August 2003 was tendered and admitted as Exhibit "A".

PW1 told the court that she wants court to dissolve the marriage.

During cross-examination by Respondent's Counsel, PW1 told the court that she did not like the Respondents decision that the gift items given to them on their wedding day be taken to his parent's house.

At the close of the evidence of the Petitioner, Respondent/Cross Petitioner opened his case. He testified as DW1 and called no other witness and did not tender any Exhibit in court. He says he wants the court to dissolve the marriage.

During cross-examination, DW1 – the Respondent informed court that he has children but not married to the mother of the children who lives with him.

There was no re-examination of DW1.

At the close of the evidence of Respondent/Cross Petitioner, the case went into Address.

Addressing the court on 14/11/2018, Oluwole Olatunde Esq for the Respondent/Cross-Petitioner adopted the Final Written Address dated 2/5/18 but filed on 30/5/18, settled by P.I Oyewole Esq as oral submission in support of the Petition. He urge court to grant an order of dissolving the marriage. In the said Final Written Address Respondent's Counsel formulated a sole issue for determination that is;

“Whether the Petitioner has made out a case that would warrant this Honourable Court to Order a Decree of Dissolution of her marriage with the Respondent”

In the same vein, Ademola Olagoke Esq for the Petitioner/Cross Respondent adopted their Final Written Address dated 29/6/18 and filed same day settled by Noah Abdul Esq as oral submission in support of the Answer and Cross Petition. Respondent's Counsel formulated two (2) issues for determination that is;

1. Whether the Petitioner has made out a case to be entitled to a decree of dissolution of marriage.
2. Whether having to facts and evidence on record, the Cross Petitioner/Respondent is entitled to the decree of dissolution of marriage.

He urge court to grant a decree of dissolution of marriage between the Petitioner and the Respondent and dismiss the Cross-Petition.

Having carefully considered the pleadings and evidence of both parties as well as the submission of their Counsel and judicial authorities cited the court finds that only two (2) issues for determination that is;

“Whether the Petitioner has proved the ground alleged in seeking the decree of dissolution of marriage and therefore entitled to the relief sought. If not whether the Cross-Petition succeeds”

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 and to come to that conclusion, the Petitioner must prove to the reasonable satisfaction of court any of the facts prescribed by Section 15 (2) of the Matrimonial Causes Act categorized in subsection (a) – (h).

In the instant case the Petitioner relies on the facts contained in Section 15 (2) (e) of the Matrimonial Causes Act as ground for court to hold that the marriage has broken down irretrievably. The Section 15 (2) (e) reads;

“That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition”

In proof of this ground PW1 – the Petitioner stated that she seek dissolution of marriage;

“Because the Respondent abandoned the home Seven (7) years ago and has since not returned”

Respondent did not challenge this piece of evidence but sought to adduce reasons why he left their Matrimonial home. It is trite law that evidence that is neither challenge nor contradicted, the court can deem such evidence as admitted, true and correct. Thus this evidence of the Petitioner on this ground establishes that the parties are living apart without mutual consent of the parties.

On what may constitute “living apart” the court in the case of *Nnana Vs Nnana* (2006) 3 NWLR (PT. 966) 1 @ 10 Ratio 3 stated;

“It is not enough to show that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the Petition, but the desertion within Section 15(2) (e) and (f) must be one where any of the parties have been abandoned and forsaken without justification thereby renouncing his or her responsibilities and evading its duties”

It is also the law that in the consideration of living apart, the court will not be concerned with determining which party was at fault or is responsible for the living apart.

From the evidence of the Petitioner the court can deduce that both parties have lived apart for more than 3 year as prescribed by Section 15 (2) (f) of the Matrimonial Cause Act. The response of the Respondent gives credence to the evidence of the Petitioner. The court also find from the evidence

that both parties did not give their respective consent to their living apart. This court therefore holds that the evidence of the Petitioner which was not challenged is sufficient to hold that the marriage between the parties have broken down irretrievably I so hold.

On the Cross Petition of the Respondent, seeking the court to dissolve the marriage Cross Petitioner relies on two grounds, as prescribed by Sections 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 this ground, the party relying on it must prove to the reasonable satisfaction of court, facts which would warrant the grant of the relief sought. See Ibrahim Vs Ibrahim (2007) All FWLR (PT. 346) 489 – 490. And such acts of the Respondent must be weighty as to make co-habitation impossible. See Damulak Vs Damulak (2004) 8 NWLR (PT. 874) 151 @ 154 Ratio 2

In proof of this ground Cross-Petitioner stated

“We have been having series of quarrels. On a particular morning my wife made a Statement” very soon you will not be a man in bed”. At another event after having my dinner, I had serious stomach pain, which made me to result in taking palm oil as a local remedy that

made it to subside, at this point I thought of food poisoning and I stopped eating at home”

This pieces of evidence was not challenged by the Cross-Respondent, however the onus is on the Cross-Petitioner to provide specific acts of the Cross-Respondent which he finds intolerable. The question is, has the Cross-Petitioner discharged this onerous burden on the basis of the evidence in support of this ground? I am of the firm view that the acts or conduct of the Cross-Respondent which the Cross-Petitioner stated are not weighty enough for the court to arrive that indeed the marriage has broken irretrievably. I say so because the evidence of the Cross-Petition on food poisoning is in the realm of speculation and not as a matter of fact. Therefore this ground relied upon for court to dissolve the marriage cannot avail the Cross-Petitioner.

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”

I have considered the entire evidence of DW1 – the Cross-Petitioner in support of this ground and I find that the Cross-Petitioner failed to lead evidence of the parties having lived apart for any duration of time, which may lead the court to hold that the marriage has broken down irretrievably. It is trite law that where no evidence is led on facts

pleaded; such pleaded facts are deemed abandoned. See Enechukwu Vs Nnamani (2009) All FWLR (PT. 492) 1087. The Petitioner having not led evidence in proof on this ground relied on for dissolution of marriage. It is therefore deemed abandoned consequently this ground cannot avail the Petitioner as ground for court to dissolve the marriage I so hold.

From all of these, the Petitioner having proved the ground relied on for the dissolution of marriage her Petition succeeds, judgment is therefore entered as follows;

- (1) The marriage celebrated between the Petitioner Atonye Emelia Oluwafemi and the Respondent Ayorinde Ojo Oluwafemi at ANG Diocese of Abuja on 23/8/2003 according to the Marriage Act has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the parties. The said order shall become absolute after a period of three (3) months from today.

The Cross Petition of the Respondent fails and is accordingly dismissed.

Signed

HON. JUSTICE O. C. AGBAZA

Presiding Judge

7/2/2019

APPEARANCE:

ADEMOLA .A. OLAGOKE FOR THE PETITIONER

OLUWOLE OLATUNDE FOR THE RESPONDENT/CROSS-PETITIONER.