

**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/124/2017

BETWEEN:

NUHU DANIEL.....PETITIONER

VS

AISHATU GARBA.....RESPONDENT

JUDGMENT

By a Notice of Petition dated 10/2/17 and filed same day, the Petitioner herein Nuhu Daniel, seeks the court the reliefs set out in Paragraph 14 of the Petition as;

- (1) An order for a Decree of dissolution of the marriage between the Petitioner and the Respondent contracted on the 15th day of December 2007.
- (2) An order of the Honourable Court granting custody of the children of the marriage to the Petitioner.
- (3) And the Omnibus relief.

The grounds upon which the Petitioner relies on for court to dissolve the marriage as gleaned from the pleadings and evidence of the Petitioner are;

- (i) Since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent
- (ii) That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition.

The Petition was served on the Respondent by substituted means vide Order of Court dated 5/12/17, to wit: by pasting at the entrance gate to the family house located at Ungwan Pate Jaji Kaduna State. On the other hand Respondent failed to file her Answer to the Petition and was not represented by counsel of her choice. The Respondent was absent throughout trial, despite service on her of Hearing Notices the Petition thus proceeded as undefended.

On 20/3/18, the Petitioner opened his case and testified as PW1. He adopted the deposition in his Witness Statement filed on 23/6/17 as oral testimony in support of the Petition. In the course of his Examination-in-Chief the following documents were tendered and admitted in evidence;

- (1) The Marriage Certificate issued by the St Peter Military Church 'PEOT' Zaria under the Marriage Act evidencing marriage between the Petitioner and the Respondent celebrated on the 15/12/2007 admitted as Exhibit "A".
- (2) A Kaduna State Registrar Certificate issued on 15/11/2007 evidencing notice entered in the Marriage Notice Book

between the Petitioner and the Respondent admitted as Exhibit "B"

- (3) Receipts (School fees) in respect of children of the marriage No. 1 – 32 from Naowa Model School and Redeemed Peoples Academy and sundry receipts for purchase Nos 1 – 7 all collectively received as bundle of documents and admitted as Exhibit C ¹⁻³² and ¹⁻⁷ respectively.

PW1 - the Petitioner wants court to grant the reliefs sought in the Petition.

At the close of the evidence of PW1 – the Petitioner, the case was adjourned for cross-examination of PW1, when the case came up for hearing, the Respondent was absent and was not represented by Counsel and upon the application of Petitioner's Counsel the court ordered the foreclosure of the right the Respondent to cross – examine PW1 and adjourned for defence and/or filing of Final Written Address. Addressing the court on 7/11/18, Chris Onwuekwe Esq, for the Petitioner adopted the Final Written Address dated 18/10/18 and filed same day as oral submission in support of the Petition, he urged court to hold that the Petitioner is entitled to the reliefs sought in the said Final Written Address, Petitioner's Counsel formulated one (1) issue for determination that is;

“Whether in view of the facts and circumstance of this case, the Petitioner is entitled to the reliefs sought in the Petition”.

Having carefully considered the pleadings and evidence of the Petitioner as well as the submission of Counsel to the Petitioner and judicial authorities cited, the court finds that only one issue call 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 reliefs sought”.

First, the Respondent was served with court processes failed to file her Answer to the Petition, the implication of this, is that the evidence of the Petitioner remains unchallenged. The court has held that where evidence is neither challenged nor controverted, court should deem that evidence as true and correct and act on it. See CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. In the case of Afribank Bank Nig. Ltd Vs Moslad Enterprise Ltd (2008) All FWLR (PT. 421) 829 @ 894 Paragraph E – F Akaahs JCA (as he then was) had this to say;

“Whether a Defendant does not produce evidence or testify or call witness in support of defence slight or minimum evidence which can discharge the onus of proof would be required to ground the Plaintiff’s Claim”.

I am however quick to add that, that minimum evidence must be credible enough for court to rely on it. See Zenegal Ltd Vs Jagal Pharma Ltd (2007) All FWLR (PT. 389) @ 950 Paragraphs F – G.

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 Sub-section (a) – (h).

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

“That since the marriage the Respondent has behaved in such a way that the Petitioner cannot be reasonably be expected to live with the Respondent”.

It is trite law that to succeed under this ground, the Petitioner must lead sufficient evidence to the reasonable satisfaction of the court, acts of the Respondent which would warrant the grant of the reliefs sought. See the case of Ibrahim Vs Ibrahim (2007) All FWLR (PT. 345) 480 – 490 Paras H – B. See also the English Case of Katz Vs Katz (1972) All ER 219.

In proof of this ground, Petitioner recounted a catalogue of the acts of the Respondent which he finds intolerable in Paragraph 11 of his Witness Statement of PW1 – the Petitioner stated;

“The Respondent exhibited intemperate behavior by abusing, threatening and uttering offensive and provocative statements against me without any justification”.

PW1 inform court in Paragraph 14;

“That the Respondent who was aware that I was suffering from Osteoarthritis on my left hand, one night while I was asleep, grabbed the affected hand twisted it and placed in on my back with the intention of infliction serious pains on me”.

PW1 further told the court that the Respondent had on one occasion threatened to deal ruthlessly with him for not revealing his personal identification Number (Pin) or his Bank ATM Card. PW1 stated in Paragraph of his Witness Statement that;

“One night while I was asleep the Respondent placed a pillow on my head, seat on it in an attempt to suffocate me to death. When I suddenly woke up, struggled to push her off my head”.

I have considered the entire evidence of the Petitioner in proof of the ground and I find them grave and weighty enough to make further co-habitation impossible and therefore sufficient to hold that this ground relied on for the dissolution of marriage avails the Petitioner. I so hold.

On the grounds of desertion as pleaded, as contained in Section 15 (2) (d) of the Matrimonial Cause Act which reads;

“That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition”.

It is the evidence of PW1 - the Petitioner in Paragraph 28 of his Witness Statement;

“The last time I had sexual intercourse with the Respondent was in April 2014 shortly before the Respondent unjustly deserted the marriage”.

In further proof of this ground PW1 stated that all effort and entreaties I made to ensure that the Respondent returns to her matrimonial home were vehemently resisted and rebuffed by the Respondent and her family.

“That I and the Respondent have continued to live separately apart from each other from September 2014 when Respondent abandoned our matrimonial home till date”.

It is trite law that to succeed under this ground of desertion, the Petitioner must prove that co-habitation has come to an end and that there is no intention of the deserting spouse to permanently withdraw from co-habitation. See Family Law in Nigeria E – I Nwogugu HEBN Publishers 1990 Ibadan, 178 – 179. And in the case of Nnana Vs Nnana (2006) 3 NWLR (PT.960) 1 @ 10 Ratio 5 the court defined desertion as;

“Desertion within the meaning of Section 15 (2) (c) and (f) of the Matrimonial Causes Act must be one where any of the parties have been abandoned and forsaken without justification thus renouncing his or her responsibilities and evading its duties”.

From the evidence of the Petitioner, I find that the parties are physically separated, secondly, that there was no mutual consent for the separation, thirdly, there is no just cause for the withdrawal of co-habitation, fourthly that the Respondent has intention to remain permanently separated from the Petitioner. I therefore find the evidence of the Petitioner as supportive of the ground of desertion and also in conformity with the law and thus sufficient to hold that the marriage has broken down irretrievably. I so hold.

On the Petitioner's claim for custody of the children, who from the evidence of PW1 the Petitioner have been abandoned by the Respondent, with the Petitioner. Thus have been with the Petitioner as can be gleaned from that evidence. The grant or otherwise of custody of the children of the marriage is a discretionary one by the court which exercise must be done judiciously and judicially, placing reliance on cogent facts and not according to its whims. It is trite that, it is the interest of the children that is of paramount consideration. See Section 71 (1) of the Matrimonial Cause Act. What a court may consider in the determination of the issue of custody of children of the marriage in Matrimonial cases, the court held in the case of Damulak Vs Damulak (2004) 8 NWLR (PT. 874) 151 @ 156.

“In all matters relating to custody and welfare of the children of the marriage the dominant issue that calls for careful examination and consideration is absolute interest of that child or children”.

The Petitioner in support of his relief for custody of the children of the marriage led evidence that the Petitioner have abandoned him and the children, he has been responsible for the upkeep and accommodation of the children as well as their school fees as evidenced by Exhibits C¹ -³². These pieces of evidence in my view establishes that the welfare of the children will be best served if the children are left in the care and custody of the Petitioner, I so hold.

From all of these and having considered the evidence of the Petitioner in support of grounds and facts relied on for the dissolution of marriage and support grounds and facts relied on for the dissolution of marriage and

which was not challenged nor controverted by the Respondent, the court having found them satisfactory and in conformity with the law, the court holds that the marriage between the parties have broken down irretrievably.

In conclusion, the Petition succeeds in its entirety and judgment is entered in favour of the Petitioner in the following terms;

- (1) This marriage celebrated between the Petitioner Nuhu Daniel and Aishatu Garba – the Respondent on 15/12/2007 at St Peter’s Military Church ‘PEOT’ Zaria 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 shall become absolute after a period of three (3) months from today.
- (3) Custody of Master Daniel Manji born on 5/11/2008 and Master Daniel Senji born on 7/2/2001 both of them children of the marriage are hereby granted to the Petitioner. There shall however be reasonable access to the Respondent to the children of the marriage during school holidays or at other times of specific request of the Respondent, this however, shall not affect the school periods of the children of the marriage.

Signed

HON. JUSTICE O. C. AGBAZA

Presiding Judge

4/2/2018

CHRIS ONWUEKWE FOR THE PETITIONER

NO APPEARANCE FOR THE RESPONDENT.