

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON THURSDAY, 16TH DAY OF MAY, 2019

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/PET/315/2018

BETWEEN

MR. FELIX ONOLEMEMEN

PETITIONER

AND

ESTHER ONOLEMEMEN

RESPONDENT

JUDGMENT

The petitioner filed his Notice of Petition for dissolution of marriage on 31/7/2018. In paragraph 11 of his petition, the petitioner seeks this relief:

A decree of dissolution of the marriage between the petitioner and the respondent on the ground that the petitioner has lived apart from the respondent for a continuous period of over six years and the petitioner finds it intolerable and cannot reasonably be expected to live with the respondent.

The respondent filed her Answer to the Petition on 5/2/2019. At the hearing of the Petition, the petitioner testified as the PW1. The respondent did not testify.

The evidence of the petitioner, Barrister Felix Onolememen, is that he has lived apart from the respondent for a continuous period of six [6] years immediately preceding the presentation of the petition. He and respondent were lawfully married at the Port Harcourt Marriage Registry on 11/12/1997. The marriage certificate dated 11/12/1997 is Exhibit A. He was born on 23/5/1969 at Uromi, Edo State while the respondent was born on 16/4/1976. He is domiciled and resident in Nigeria. He and the respondent lived at various addresses in Nigeria. He and the respondent also lived in Europe in the Republic of Ireland from 2003 to 2011 when he relocated back to Nigeria. There are no proceedings between him and the respondent except *Suit No. FCT/HC/CV/3312/2017*, which was amicably settled out of court. There is no condonation, connivance or collusion.

During cross examination, the petitioner stated that he ceased to be the legal consultant of Hi Housing Incorporated since July 2016. The company relocated to California, USA [United States of America]. When asked if he has a job with an Italian company called Moreno Group Plc., PW1 stated that the managing director of Moreno Group Plc. is his friend. He used to do legal consultancy for the company but since May 2015, the company has not paid for his services. When asked how he intends to contribute to the welfare and maintenance of the children of the marriage, Barrister Felix Onolememen said he is currently self-employed in private legal practice. From his personal income, he can make available N100,000.00 monthly for the maintenance of the children of the marriage.

At the close of the case of the petitioner on 16/4/2019, V. B. MomohEsq., who appeared for the respondent informed the Court - in line with the Answer to the petition - that the respondent is not contesting the petition; and that they do not intend to call any witness.

The Court directed the parties to file and exchange their final addresses. Cyril OriabureEsq. filed the petitioner's final address on 26/4/2019 while Stanley NdukwuEsq. filed the respondent's final address on 3/5/2019. The final addresses were adopted on 8/5/2019.

In the petitioner's final address, Cyril OriabuleEsq. stated that the issue for determination is whether, given the circumstances of this case, the petitioner is not entitled to a decree of dissolution of marriage on the ground specified in the petition. He relied on the provisions of section 15[1] & [2][f] of the Matrimonial Causes Act; and submitted that the sole ground for presenting the petition and the evidence adduced in proof thereof have satisfied the said section 15[2][f]. He referred to the case of Salawu v. Yussuf [2007] 31 NSCOR 550 to support the principle that facts admitted do not require further proof. Learned counsel for the petitioner urged the Court to grant the relief sought in the petition.

In the respondent's final address, Stanley NdukwuEsq. stated that the respondent is not contesting the decree of dissolution of the marriage on the ground specified in the petition. However, in line with paragraph 3 of the

Answer to the petition, the respondent is urging the Court to order the petitioner to contribute to the welfare and maintenance of the children of the marriage, even though the children are all over 16 years of age. He referred to section 73[1] of the Matrimonial Causes Act. Learned respondent's counsel pointed out that matrimonial causes are peculiar proceedings and the interest of the children of the marriage must be taken into account at all times whether they are minors or not.

Section 15[1] & [2][f] of the Matrimonial Causes Act provide:

[1] *A petition under this 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 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:*

[f] *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.*

The unchallenged evidence of the petitioner is that he and the respondent have lived apart since 2011, that is for a continuous period of about 6 years immediately preceding the presentation of the petition. It is trite that under

section 15[2][f] of the Matrimonial Causes Act, the law is not interested in right or wrong or guilt or innocence of the parties. Once it is proved that the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition, the court is bound to grant a decree. See Omotunde v. Omotunde [2001] 9 NWLR [Pt. 718] 252.

Since the parties have lived apart for a continuous period of about 6years immediately preceding the presentation of the petition, I hold that the petitioner has satisfied the Court of the fact under section 15[2][f] of the Matrimonial Causes Act. Thus, the petitioner has proved that the marriage between him and the respondent has broken down irretrievably.

Before I conclude, let me make a brief remark on the prayer of the respondent in paragraph 3 of the Answer to the petition, which the respondent's counsel emphasized in the respondent's final address. The said paragraph 3 reads:

That the respondent only wants the Court to order the petitioner to contribute to the welfare and maintenance of the children of the marriage as per his income at the moment, and for the Honourable Court to order the petitioner to furnish the respondent with any future employment letter and details of any income anytime he is employed in the future or makes profit out of any self employment business.

As rightly stated by learned counsel for the petitioner, the respondent ought to have filed a cross petition to seek the relief or order stated in paragraph 3

of the Answer to the petition; and having failed to file a cross petition, the Court cannot grant the relief or order in paragraph 3 thereof. Besides, it is the law that pleadings not supported by evidence are deemed abandoned. See Agballah v. Chime [2009] 1 NWLR [Pt. 1122] 373. Since the respondent did not give evidence in support of her Answer to the petition, the averments in paragraph 3 thereof are deemed abandoned.

CONCLUSION

Since the petitioner has proved that his marriage with the respondent has broken down irretrievably, the Court grants a decree *nisi* for the dissolution of the marriage between the petitioner and the respondent celebrated on the 11th day of December, 1997. It is ordered that the decree *nisi* shall become absolute after three [3] months from today [i.e. 16/5/2019].

HON. JUSTICE S. C. ORIJI
(JUDGE)

Appearance of counsel:

1. Petitioner appears in person.
2. V. B. Momoh Esq. for the respondent; holding the brief of Balafama Arebamen Esq.