

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 11TH DAY OF MARCH, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 10
SUIT NO: PET/383/2018

BETWEEN:

MR. OLUWOLE OLADANIELS ----- PETITIONER

AND

MRS. FORTINA OLADANIELS ----- RESPONDENT

JUDGMENT

The Petitioner Mr. Oluwole Oladaniels instituted this Petition for dissolution of his marriage to the Respondent Mrs. Fortina Oladaniels celebrated at the Abuja Municipal Area Council (AMAC) Marriage Registry on the 10/6/2005. The marriage is blessed with two children Zion Oladaniels (12 years) and Levi Oladaniels (7 years). The ground of the Petition is that the marriage has broken down irretrievably while relying on unreasonable behaviour pursuant to Section 15(2)(c) of the Matrimonial Causes Act.

It is not easy to prove unreasonable behaviour. There is more to it than meets the eye. Such behaviour has to be negative. Allegations of some negative behaviour of a spouse is not enough to warrant the Court holding that the spouse is guilty of unreasonable behaviour. The behaviour must be such that a reasonable man cannot endure it. The conduct must be grave and weighty in nature as to make further cohabitation virtually impossible. See Ibrahim vs. Ibrahim (2007) 1 NWLR (part 1015) page 383.

The duty on the court is to consider whether the alleged behaviour is one in which a right thinking person would come to the conclusion that the Respondent has behaved in such way that the Petitioner could not reasonably be expected to live with him taking into account the whole of the circumstances, and the matrimonial history of the parties. See Ibrahim vs. Ibrahim (supra), Nanna vs. Nanna (2006) 3 NWLR (part 966) page 1, Katz vs. Katz (1972) 3 All ER page 219.

With that said, the evidence of the Petitioner is premised on acts of infidelity and stealing committed by the Respondent. According to Mr. Oladaniels, as at the last count, the Respondent has had extra marital affairs with 6 men. The Petitioner narrated how the Respondent stole a phone at Banex Plaza where he does business and he was arrested and handcuffed by SARS team of operatives, in the presence of his friends, Church members and the public. He was then asked to produce the Respondent and eventually the stolen phone was recovered from her and she was detained. The Petitioner spent in excess of N150,000 to try and get her out of that mess.

The witness said he tried all his best to save his marriage by counseling, but the Respondent was not ready to change. Her family members even advised him to run for his life. He further testified that the Respondent sleeps with men and she carries his 8 year old son along. He tendered a letter written by his lawyer seeking an Undertaking from the Respondent to be of good conduct as a result of her

numerous acts of infidelity which was marked as Exhibit A1, and the Respondents reply wherein she undertook to be of good conduct, marked as Exhibit A2. Petitioner also tendered several Undertakings written by the Respondent admitting to various acts of infidelity, collectively marked as Exhibit A3. The marriage certificate was also tendered in evidence as Exhibit A.

The witness stated that he has had custody of the children of the marriage and the Respondent has been enjoying full access to them. He therefore prayed for custody of the children as his sisters and parents are ready and willing to take care of the children.

Under cross examination, he maintained that the Respondent committed acts of infidelity and relied on the admission made in Exhibit A3.

At the close of his evidence parties were directed to file written addresses. **G.N. Bako Esq** of counsel to the Respondent waived his right to address the Court as the Respondent did not file any process in defence of the

Petition. Learned counsel to the Petitioner Sunny Tabi T. Esq filed the Petitioner's written address. He raised a sole issue for determination which is:

“Whether in the circumstances of this case, the Petitioner is entitled to the reliefs being sought.”

Counsel relied on the well established principle of law that, evidence/facts not denied or challenged are deemed as admitted. He cited several authorities and urged the Court to enter judgment for the Petitioner.

The grant or refusal of a petition is not at the whims and caprices of the parties. It is the duty of the party requesting for dissolution of the marriage to convince the Court that indeed the marriage has broken down irretrievably. Failure to satisfy the Court on any of the grounds listed under Section 15(2)(a - h) the Court will decline from dissolving the marriage. This was the Courts position in Akinbuwa vs. Akinbuwa (1005) 2 SMC page 81. Furthermore, marriage being a sacred institution, not just the parties, nor the community, but the state is interested in

maintaining its sanctity. Also by Section 82(1) of the Matrimonial Causes Act, a matter of fact shall only be taken to be proved if the Court is satisfied by the evidence led by the Petitioner establishing those facts. It is my considered view that the proof required by Section 82(1) above is proof orally by witnesses in the open Court.

As earlier stated, unreasonable behaviour has more to it than meets the eye. There are two limbs to the provision of Section 15(2)(c) of the Matrimonial Causes Act. The petitioner must prove firstly that the respondent has behaved in a particular manner. Secondly, the Court has to consider whether, in the light of the respondent's conduct, it will be reasonable to expect the petitioner to continue to live with the respondent.

In this instance, the Petitioner has tendered Exhibit A3 which clearly showed that the Respondent admitted to acts of infidelity as alleged. In one of the letters written by the Respondent, she clearly admitted that her infidelity repeated itself 7 – 10 times within a two year period.

In paragraph 3 of Exhibit A2 dated 19/6/2017, the Respondent clearly stated thus:

“I have offended my husband at several instances by my acts of adultery with different men and I am truly sorry for all my past actions. I have apologized to him on several occasions and since the discovery was made early last year I have not seen nor heard from any of those men.”

In the case of Katz vs. Katz (1972) 1 WLR 955 at 960, the Court gave a guide as to what will constitute ‘behaviour’ within the meaning of Section 15(2)(c) of the Act as follows:

“....Behaviour...is an action or conduct by the one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct and, in my view, it must have some reference to the marriage.”

The evidence of the Petitioner has not been challenged or controverted by the Respondent who did not file any

process before the Court and thus did not lead evidence. From the evidence adduced, and taking into consideration the matrimonial history of the parties, this Court is of the considered view that the conduct of the Respondent is so grave that no reasonable man is expected continue to live with. I hold that the marriage has broken down irretrievably pursuant to Section 15(2)(c) and I hereby grant a decree nisi for its dissolution.

The Petitioner has prayed for custody of the children. This prayer is not challenged. The Petitioner has testified that he has had custody of the children, and his sisters and parents are willing to take care of the children. He added that the Respondent has been enjoying full access to the children.

In Buwanhot vs. Buwanhot (2009) 16 NWLR (part 1) the Court held that the welfare of the children of the marriage in terms of their peace of mind, happiness, education and coexistence is the prime consideration in granting custody. The conduct of the parents to the child is a factor

sometimes to be taken into consideration by the Court when exercising its discretion. However, that discretion must not be exercised as a punishment for one party or a reward for the other party. See Afonja vs. Afonja (1971) 1 UILR Page 105, Williams vs. Williams (1987) 2 NWLR (part 54) page 66.

There seem to be a working arrangement between the parties as it relates to the custody and access of the children of the marriage. Since there is evidence that the children are with the Petitioner, their father, I will adopt the reasoning of my Lord Oputa, J (as he then was) in Tagbo vs. Tagbo (1966 - 1979) Vol. 5, Oputa LR page 138, when he stated thus;

“will it not be callous and unkind to uproot this child from her familiar surroundings and from the love of a mother whom she knows, and then cast her adrift unto a father who no doubt loves her equally, but unfortunately, she does not know, but will only gradually come to know and love”.

To uproot these children from the care of their father will certainly not be in their interest at this stage. And as noted

earlier an order of custody is not a penal order on either parent and should not be construed as such. Custody is never awarded as a reward for good conduct nor is it ever denied as a punishment for the guilty party's matrimonial offences. See Eziashi vs. Eziashi Suit No. B/255/80 (unreported) 12 November, 1982, High Court, Benin, Okafor vs. Okafor (1966 - 1979) Vol. 5 (Oputa LR) page 102 at 105.

In this instance, there is a strong bond between the children and their father, the Petitioner and it will not serve their interest if that bond is broken.

For avoidance of doubt, the marriage between Petitioner and the Respondent contracted at the AMAC Marriage Registry on 10/06/2005 is hereby dissolved. I grant an order nisi for its dissolution.

Custody of the children is awarded to the Petitioner with unhindered access to the Respondent.

Signed
Honourable Judge

Appearances:

Sunny Tabi Esq – for the Petitioner

G.N. Bako Esq – with him G.C. Ehiorobo Esq for the
Respondent