

**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: 11

SUIT NO: FCT/HC/PET/85/14

BETWEEN:

MR. SEBASTINE AMAECHI EZE.....PETITIONER

VS

MRS. PERPETUAL CHINENYE EZE.....RESPONDENT

JUDGMENT

The Petitioner herein Mr. Sebastine Amaechi Eze filed this Notice of Petition on 19/12/14 seeking the reliefs contained in Paragraph 3 of the Petition as;

- (a) A decree of dissolution of marriage on the ground that since the marriage the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with the Respondent.
- (b) Custody of the two children of the marriage as the Respondent is a student of University of Abuja and has never cared for them and more so has no means of livelihood to carter for children.
- (c) Respondent is at liberty to visit the children at anytime she wishes.

The ground upon which Petitioner seek the court to dissolve the marriage.

- (1) Since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

The Petition was served on the Respondent on 5/11/2015. The Respondent on the other hand did not file an Answer to the Petition and was not represented by Counsel of her choice and was absent throughout trial despite repeated service of Hearing Notices. The Petition thus proceeded as "Undefended".

The Petitioner testified as PW1 and told the court that he met the Respondent in 2010 and then got married at the Abuja Marriage Registry, the marriage was blessed with three (3) children but one whom Respondent took away died. PW1 stated that;

"The Respondent started misbehaving after I registered her with University of Abuja. She goes out in the morning and comes back later in the night every day. Sometimes in a week she will not return to the house when I complain, she will flare up and start destroying Electronics in the house. She took me to Gwagwa Police Station five (5) times"

PW1 further stated that,

"She complains that I cannot satisfy her in bed and from all indication she has concluded that the marriage cannot work and that I am not meant for her"

It is also the testimony of PW1 that the Respondent left their matrimonial home on 5/8/2014 and ever since she has never returned and the parties have been living apart. And on the basis of these pieces of evidence PW1 – the Petitioner wants the court to dissolve the marriage and grant custody of the children of the marriage to him.

In the course of the testimony of PW1, the Marriage Certificate No. 830 evidencing marriage at Abuja Municipal Area Council Registry Abuja on 4/5/2012 between the Petitioner and the Respondent was tendered and admitted as Exhibit "A".

At the close of the evidence of the Petitioner, the case was adjourned for the Respondent to cross-examine PW1. On the adjourned date, the Respondent was not in court to cross-examine PW1 anupon and application of Petitioner's Counsel, Respondent was foreclosed from cross-examining PW1. The case was further adjourned for the Respondent to open her Defence.

The Petition came up for hearing of the Defence of the Respondent. Again Respondent was absent and was not represented by Counsel. The court then ordered the foreclosure of the Respondent from defending the Petition and adjourned for filing and adoption of Final Written Address.

On 2/12/2019, Austin Nworah Esq addressing the court adopted the submission in their Final Written Address, which was settled by Victor Izibili Esq filed on 9/11/2019. In the said Address Petitioner's Counsel formulated two issues for determination, that is;

- (1) Whether from the evidence before the court the Petitioner was able to establish the fact that the marriage has broken down irretrievably.
- (2) Whether in the circumstances of this case custody of the two surviving children of the marriage can be given to the Petitioner.

On issue one submits that by the evidence of the Petitioner, Petitioner has proved that the Respondent has behaved in such a way that he cannot reasonably be expected to live with the Respondent. Refer to the cases of Okoro Vs Okoro (2011) All FWLR (PT. 572) Ibrahim Vs Ibrahim (2007) 1 NWLR (PT. 1015) 383 @ 403 Living Stone Stallard Vs Living Stone Tallard (1974) 2 All ER 760 @ 771 and Bibilari Vs Bibilari (2011) 13 NWLR (PT. 1264) 207 – 426.

Submits further that the Petitioner has discharged the burden of proof imposed on him by Section 133 (1) and (2) of the Evidence Act 2011. Also refer to the cases of Nwabuoku Vs Otin (1961) ANLR 507. Muniyas Nig Ltd Vs Ashafa (2011) 6 NWLR (PT. 1242). Magaji Vs Nigeria Army (2008) 8 NWLR (PT. 1089) 338 and Afribank Nig Ltd Vs M. Enterprise Ltd (2008) 11 NWLR (PT. 1098) 223.

On issue two submits that the interest of the children at all times should be paramount, refer to the case of Odogwu Vs Odogwu (2006) 4 NWLR (PT.972) and Obajimi Vs Obajimi (2011) 21 WRN 9 Ratio 12. Submits that court should note that for more than 5 years now that the Respondent left the matrimonial home, the Petitioner has been the one in charge of the

welfare of the children and the whereabouts of the Respondent remains unknown since 5/8/14 when she left her matrimonial home.

He urged court to grant all the prayers of the Petitioner.

Having considered the pleadings, the evidence of the Petitioner, which remained unchallenged, as well as the submission of Counsel and the judicial authorities cited the court finds that only one (1) 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, in this Petition, it is on record that the Respondent did not file an Answer to the Petition and was not in court to cross-examine the evidence of the Petitioner. Therefore the evidence of the Petitioner in proof of the Petition remained unchallenged and uncontroverted. The implication of this is that the evidence of the Petitioner is taken as true and correct and the court can act on it. See *Aniowu Vs Aniowu* (2009) All FWLR (PT. 497) 121 @ Ratio 12. In *Afribank (Nig) Ltd Vs Moslad Enterprise Ltd* (2008) All FWLR (PT. 421) 879 @ 894 E – F Akaahs JCA (as he then was) had this to say;

“Where a Defendant does not produce evidence or testify or call witness in support of his 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 to ground Plaintiff's Claim. See *Zeneca Ltd Vs Jagal Pharma Ltd* (2007) All FWLR (PT. 387) @ 950 Paras F – G.

In the determination of the 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 the court any of the facts as prescribed by Section 15(2) of the Matrimonial Causes Act categorized under sub-section A – h.

In the instant Petition, Petitioner relies on the fact stated in Section 15(2) (c) of the Matrimonial Causes Act as ground for court to hold that the marriage has broken down irretrievably. The said 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 Petitioner must lead sufficient evidence to the reasonable satisfaction of the acts of the Respondent which could warrant the grant of the relief sought. See *Ibrahim Vs Ibrahim* (2007) All FWLR (PT. 340) 489 – 490. And such acts of the Respondent must be weighty as to make cohabitation virtually impossible. See the case of *Damulak Vs Damulak* (2004) 8 NWLR (PT. 874) 151 @ 154.

In proof of this ground, Petitioner testifying as PW1 narrated a catalogue of the acts of the Respondent which he now finds he cannot be expected to

live with. These acts were summed up earlier in the course of these judgment and they remained unchallenged and uncontroverted. This court having found these pieces of evidence credible and sufficient to believe that they are weighty enough to make co-habitation impossible, this is moreso since the Respondent is said to have left the matrimonial home for an unknown place. And also since the PW1 in his testimony stated that the Respondent has concluded that the marriage cannot and that Petitioner is not meant for her. It is in the light of these unchallenged evidence that the court holds that the marriage between the parties have broken down irretrievably. I so hold.

On the Petitioner's claim for custody of the two (2) surviving children of the marriage, it is the cardinal principal of law that it is the interest of the children of the marriage that should be paramount consideration. See Section 71 of the Matrimonial Causes Act which reads;

"In the proceedings with respect to the custody, guardianship, welfare advancement or education of children of marriage, the court shall regard the interest of those children as the paramount consideration and subject thereto, the court may make such order in respect of those matters as it thinks"

In the case of Damulak Vs Damulak (Supra) 171 Para C – E. the court applied this rule and defined what may be constitute paramount welfare of the child in custody case when it held thus;

"What constitutes the paramount welfare of the child in custody cases is a composite of many factors such as emotional attachment

to a particular parent mother or father the in adequacy of facilities such as educational, religious or other opportunities for proper upbringing. What the court deals with is the lives of human being and ought not to be regulated by rigid formula. All relevant factors ought to be considered the paramount consideration being the welfare of the child”

In his evidence Petitioner told the court that since the Respondent left the matrimonial home with one of the children who died in her care, the two other children have been living with him. I have considered the facts and evidence before me and I find that the interest and welfare of the children would be better served if they remain in the custody of the Petitioner. I so hold.

From all of these, the Petition succeeds and judgment is entered for the Petitioner in the following terms.

- (1) The marriage celebrated between the Petitioner – Mr. Sabastine Amaechi Eze and the Respondent – Mrs. Perpetual Chinenye Eze on 4/5/2012 at Abuja Municipal Area Council Marriage Registry Abuja accordingly to the Marriage Act has broken down irretrievably and I hereby pronounce Decree Nisi dissolving the marriage between the parties. The said Order shall become absolute after a period of three (3) months from today.
- (2) Custody of Oluebube Eze born on 3rd May 2011 and Chinaecherema Eze born on 30th April 2013 both of them children of the marriage are hereby granted to the Petitioner,

with access of the Respondent to them at reasonable time of the day.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

2/3/2020

APPEARANCE:

AUSTIN NWAROH WITH HIM VICTOR IZIBILI FOR THE PETITIONER

NO REPRESENTATION FOR THE RESPONDENT