

**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/140/2016

BETWEEN:

MRS SUSAN EKORMA KUMUYI.....PETITIONER

AND

MR OPELUWA ADELEKE KUMUYI.....RESPONDENT

JUDGMENT

By a Notice of Petition dated 31/5/18 and filed on the same day, the Petitioner herein – Mrs Susan Ekorma Kumuyi is seeking the reliefs set out in Para 11 of the Petition as follows:-

- (a) A Decree of Dissolution of the marriage between the Petitioner and the Respondent on the ground that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent as disclosed by the facts averred in this Petition with a Proviso for its consummation into an Order of Decree Absolute upon the effluxion of the time stipulated in the Matrimonial Causes Act after the pronouncement of Decree Nisi aforesaid.

- (b) That the Petitioner may be granted such further reliefs as the court may deem fit.

The facts upon which Petitioner seek the reliefs are as stated in Para 9 of the Petition:

- a. The Petitioner and the Respondent married at the Federal Marriage Registry, Abuja sometime in May 2014.
- b. The Respondent who has always exhibited continuous disagreement and disrespect for the Petitioner, suddenly become violent against the Petitioner which has made the life of the Petitioner miserable and unbearable.
- c. The Respondent continued to render the life of the Petitioner miserable since the Respondent consistently threatens the life of the Petitioner.
- d. The Respondent found it difficult to tolerate/or accommodate the Petitioner and all effort to change the behaviour of the Respondent towards the Petitioner since the marriage has proved abortive.
- e. That it is impossible for the Petitioner to continue to cohabit in the marriage with the Respondent without the Petitioner running the risk of losing her life.

With leave of Court granted on 15/6/16 the Petition and other processes were served on the Respondent by substituted means to wit; by posting

through DHL Courier. Upon being served the processes, the Respondent, with leave of court, filed an Answer under protest seeking the court to strike out the Petition of the Petitioner. The court in its considered Ruling on 11/6/18 dismissed the application of Respondent and subsequently the Respondent on 20/6/18 filed an Answer to the Petition and Cross-Petition seeking the following orders.

- a. An Order of Dissolution of Marriage on the ground that the marriage has broken irretrievably.

The facts relied upon by the Respondent for seeking the reliefs are as stated in Para 8, 9, 10, 11, 12, 16, 17, 18, 19 and 20 of the Answer.

Para 8: The Respondent admit that he got married to the Petitioner on 24th of May 2014. Shortly after the marriage the couple started having disagreement over attitudinal difference most of which were often resolved within days or weeks of the quarrel.

Para 9: The Respondent avers that he initially perceived this as one of those teething problems in marriage, aggravated in their case by reason of their long distance courtship and hoped the couple would overcome it later in marriage.

Para 10: The Respondent avers that on the 8th December, 2015 to his utter dismay, the Petitioner deserted their matrimonial home on the frivolous excuse that the Respondent refused to speak with her after a misunderstanding.

Para 11: The Respondent avers that on one particular occasion, while the couple were studying in the U.K., the Petitioner went for a party with one of her friend but did not return until about 2.am.

Para 12: Prior to the Petitioner's return at 2.am, the Respondent who was married about her welfare and safety had called the Petitioner's phone severally but the Petitioner didn't pick nor return any of the calls. By 2am when the Petitioner returned, and upon seeing that the Respondent was upset with her late night, became confrontational and started challenging the Respondent to discuss their marital issues right there and then before her friend who had accompanied her home.

Para 16: The Respondent avers that family members friends and loved ones have intervned in the matter. Even this Hon. Court has ordered for reconciliation meeting, but all the meetings have failed solely at the instance of the Petitioner.

Para 17: Despite the Respondent's initial resolve and openness to settlement, the Petitioner has totally shut her mind to it and none of the mediators can boast of knowing what the real issues are with the Petitioner, and she has refused to give any cogent reason to them.

Para 18: The Respondent avers the Petitioner appears to all as bitter, unforgiving and unwilling to be reached, everybody that

once mediated in the settlement at one point or the other has had to give up on mediating between them.

Para 19: The Respondent avers that after being deserted by Petitioner, on several occasions, he came to meet with the Petitioner at her parents' house in Abuja in the bid to find out what the issues are and how it can be resolved but all effort to speak to her with a view to appease her proved abortive. The Petitioner instead of yielding positively to all pleas and entreaties from Respondent and his family members remained adamant on dissolving the marriage.

Para 20: The Respondent sadly admits that his differences with Petitioner are irreconcilable. The Respondent is petrified by the Petitioner's adamancy and refusal to yield to pleas even from her parents'. He would therefore feel most unsafe to continue in marriage with a person engulfed in so much bitterness and unforgiveness.

On 5/11/18, the Petitioner opened her case and testified as PW1 and stated that she got married to Respondent on 22/5/14 at the Abuja Marriage Registry. The Marriage Certificate issued by the Marriage Registry in Abuja was admitted in evidence as Exhibit "A". The Petitioner testified that after the marriage, she co-habit with the Respondent but that co-habitation ceased December 2015 because Respondent started drinking heavily and resulted into violence and had to leave.

Cross-examined and when asked the nature of the violence, stated when he is under the influence of alcohol, becomes abusive in language towards her and has slapped, push and insult her in front of his friends several times but could only recalled two occasions. That on one occasion, a friend was having a birthday party and invited Respondent to come along but said he had things to do. That at the time of leaving at the end of the party, had difficulty in getting a taxi because the place was outside town. On getting home with her friend who accompanied her because it was late, she tried to explain to Respondent reason for returning late, but Respondent raise his voice, insulted, slapped and beat her up in the presence of her friend. That she cannot remember the exact date this incidence occurred but was sometime December, 2014. That in another occasion, his friend's child was having a birthday, she was not feeling to well and asked for leave to go back to the house but Respondent got angry and verbally abuse he in front of his friends and they had to take her away from there. Stated she reconciled her differences with Respondent and apologized to him the next day but did not know whether he forgivesher as he only said it was okay in response. But that she forgives him but could not forget and it affected her deposition towards Respondent that she should be more careful. She also stated after the incidents, Respondent had beat her a few times but cannot remember the other instances. She also stated that she reported Respondent to family and friends and they tried to speak to both of them and encouraged Respondent to come and look for her after she had left the matrimonial home in December, 2015. She admitted that Respondent reached out to her after leaving the matrimonial home on phone and have come to Abuja to see

her on two or three occasion and has told him why she left his house. She also admitted that as at the time she met Respondent, he was taking alcohol, but stated she is not aware that Respondent has ever been queried in his office over drinking habit.

At the close of evidence of the PW1 – the Petitioner, the Petitioner, the matter was adjourned for the Respondent to open his defence. On 20/3/19, the Respondent testified as DW1 and adopted his answer to the Petition and his verifying affidavit as his evidence in this case.

When Cross-examined, stated co-habitation ceased between him and Petitioner on 8th December, 2015. He also stated that the Petitioner left the matrimonial home because they had misunderstanding.

At the close of evidence, the matter was adjourned to 16/5/19 for filing and adoption of Final Address. In her Written Address filed on 16/5/19, with leave of court, A. A. Ibikunle-Awopetu, Mrs, Counsel for Respondent, two (2) issues was raised for determination;

- (1) Whether the Petitioner has proved her Petition to be entitled to the reliefs sought.
- (2) Whether the Petitioner has not behaved in such a way that the Respondent cannot reasonably be expected to live with her.

In the Written Address of Petitioner settled by Obe Okpachu Joseph, two (2) issues were also raised for determination;

- (1) Whether the Petitioner has proved her Petition to be entitled to the reliefs sought.

- (2) Whether the Respondent has not behaved in such a way that the Petitioner cannot be reasonably be expected to live with him.

Having considered the pleadings and evidence of the parties as well as the submission of both counsel, the court finds that two (2) issues calls for determination, that is;

- (1) Whether the Petitioner has proved her case as to be entitled to the reliefs sought in her Petition.
- (2) Whether the Respondent has made out a case to be entitled to the relief sought in his Answer/Cross-Petition.

In the determination of a Petition for the dissolution of marriage under 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 in sub-section (A – H).

In this instant case, the ground upon which the Petitioner rely on for the dissolution of the marriage are those facts as stated in Section 15 (2) (C) of the Matrimonial Causes Act.

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 lead sufficient and credible evidence to the satisfaction of court acts which will warrant the grant of the reliefs sought. See the case of Ibrahim Vs Ibrahim (2007) 1 NWLR PT. 1015 383 at 388 – 389, Ratio 7. On what constitute conduct or acts the Petitioner finds cannot reasonably be expected to live with, it has been held in Ibrahim Vs Ibrahim (Supra) that the conduct or act must be grave and weighty in nature as to make co-habitation virtually impossible. See also the English Case of Katz Vs Katz (1972) ALL E.R, 219.

In this instant case, the Petitioner gave evidence of catalogue of acts or conduct of the Respondent which she finds not reasonably be expected to live with to include violence, abusive in language and insult in front of his friend, slapping, pushing, beating, threats to life. Ordinarily these alleged acts by the Petitioner are acts or conducts, weighty and grave in the face of the law to warrant the court to find in favour of the Petitioner. See Ibrahim Vs Ibrahim (Supra) at 388 – 389 Ratio 7. But the question is; whether the Petitioner from the evidence adduced has been able to prove these acts against the Respondent.

It is trite law that he who asserts must prove and the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side. See Section 132 of the Evidence Act 2011 (As Amended). See also case of Chemiron Int'l Ltd Vs Stabilini Visinoni Ltd (2018) ALL FWLR PT 965, 48 (SC). In other words, the burden of proving these acts alleged lies on the Petitioner would fail if no evidence was adduced on either side. The Respondent in his pleadings and evidence has stoutly and vehemently denied the allegation of of the Petitioner. However, the

Petitioner did not lead any evidence in proof of her allegation and claims as desirable by the law. See Chemiron Int'l Ltd Vs Stabilini Visinomi Ltd (Supra), neither did she corroborate her evidence by the evidence of a witness. Granted the acts or conducts alleged by Petitioner against Respondent are weighty and grave in the face of the law which ordinarily would have availed Petitioner if proven, the Petitioner, however, in her evidence failed to prove the acts alleged against Respondent. It is therefore the finding of court that this ground for dissolution of marriage did not avail the Petitioner. I therefore resolved the issue 1 in the negative. I so hold.

On issue 2, whether the Respondent has made out a case to be entitled to the relief sought in his Answer/Cross-Petition. A Cross Petition is like counter-claim and its law that a Cross-Petition is entirely a different and independent action from the main claim and being a separate and independent action; to succeed the Cross-Petitioner has the onus to discharge the burden of proof of the Cross-Petition.

In this instant, the Respondent/Cross-Petitioner seek the dissolution of the marriage between him and Petitioner on the ground that the marriage has broken down irretrievably consequent desertion of the Matrimonial home by Petitioner since December, 2015 that is Section 15 (2) of the Matrimonial Causes Act, coupled with the facts as stated in the Respondent's Answer, in particular Paras 8, 9, 10, 11, 12, 16, 17, 18, 19 and 20.

Section 15 (2) (d) reads:-

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

The court interpreted “desertion” and “living apart” in the case of *Nnana Vs Nnana* (2006) 3 NWLR (PT 966 1 at 6 that “It is not enough that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the Petition, but that the desertion within Section 15 (2) a 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”.

The evidence of the Respondent/Cross-Petitioner – DW1 in proof is that the Petitioner deserted the matrimonial home since December, 2015 and all efforts to make her return home proved abortive and has treated the marriage as having come to an end. The evidence of the Respondent/Cross-Petitioner – DW1 was never challenged or controverted by the Petitioner and it is law that the court should accept and act on an unchallenged and uncontroverted evidence. See the case of *Ozigbu Engineering Co. Vs Iwuamadi* (2009) 16 NWLR PT 1166 44 at 63 Para D – F. In any event, the Petitioner had admitted in her evidence that she deserted the matrimonial home in December, 2015. This ground for dissolution of marriage by the Respondent/Cross-Petitioner therefore avail him. Consequently, I therefore resolved the issue in the affirmative and in favour of the Respondent/Cross-Petitioner.

From all of these, the court finds that this Petition succeeds in favour of Respondent/Cross-Petitioner. Accordingly Judgment is hereby entered as follows:-

1. The marriage celebrated between the Petitioner – Mrs Susan Ekorma Kumuyi and the Respondent – Mr Opeluwa Adeleke Kumuyi at the Federal Marriage Registry Abuja 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.

HONOURABLE JUSTICE O.C. AGBAZA

(Presiding Judge)

16/1/2020

JEREMIAH IDAKWOJI – FOR THE PETITIONER

A.A. IBIKUNLE –AWOPETU – FOR THE RESPONDENT/CROSS-PETITIONER