IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS TUESDAY, THE 14TH DAY OF JANUARY, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/GWD/PET/6/19

BETWEEN:

TITI WORDI ……PETITIONER

AND

DANLADI ADAHAMA AGOWA .....RESPONDENT

JUDGMENT

By a Notice of Petition dated 15th April, 2019, the Petitioner claims the following Relief against Respondent as follows:

a. **A Decree of Dissolution of Marriage with the Respondent on the ground of cruelty and desertion of the matrimonial home since 2014, incompatibility and that since the marriage, the Petitioner and Respondent have not live together up to three (3) months and cannot at the moment live as such any longer.**

From the Records of court, the Respondent could not be served personally with the originating court processes. The petitioner then brought an application for substituted service which was granted on 17th June, 2019. The processes were duly served on the Respondent on 30th September, 2019. The Respondent however never appeared in court or filed any process in opposition despite service of Hearing notices at different times all through the course of this proceeding. The matter then came up on 3rd October, 2019 when service was reported and the court adjourned the matter to 22nd October, 2019 for hearing and ordered hearing notice

to be served on him. The respondent was again served hearing notice vide proof of service filed by the bailiff of court dated 7th September, 2019 but he did not appear or file any process in opposition.

The matter thereafter proceeded to trial. The petitioner testified in person and the only witness. The substance and summary of her unchallenged evidence is that she got married to the Respondent at the AMAC Registry, Abuja on 22nd August, 2014 in accordance with the Marriage Act and tendered a copy of the marriage certificate which was admitted as Exhibit P1. That after the marriage they cohabited at Beside Gosap Primary School, Municipal Area Council, FCT Abuja.

The Petitioner testified that immediately after the wedding, the Respondent was in the habit of assaulting and beating her with little or no excuse. That he will drag her on the ground and sometimes even strip her naked in the process. That barely three (3) months into the marriage, in November 2014, they had a serious fight where the Respondent again beat her and stripped her naked. She at that point told the Respondent to leave her house and that the Respondent then packed his belongings and left and that since he left about five (5) years now, till today, she has not seen or heard from him and that they have lived apart since November 2014.

The petitioner then urged the court to grant the petition since the marriage has broken down and parties lived apart for nearly 5 years now. The court, upon application by counsel to the petitioner, then gave a considered Ruling predicated on the peculiar facts of the case foreclosing the right of Respondent to cross examine and to defend the case.

Counsel to the petitioner then applied that he be allowed to address orally in the peculiar circumstances of the case which the court granted. Learned counsel to the petitioner then addressed the court urging the court to grant the petition since it is undefended and the marriage on the evidence has broken down with no desire on either side to continue with the relationship and most importantly that parties have lived apart for nearly five (5) years now. The address forms part of the record of court and I shall where necessary in the course of this Judgment refer to it.

I only wish to briefly state here that the respondent from the records has had more than ample time to defend this action if he wanted. He never availed himself of the

opportunity. The principle appears settled that while the right to be heard is of wide application and great importance in any well conducted proceedings, it is however a right that must be confined within circumscribed limits and not allowed to run wild. See **LONDON BOROUGH OF HOUNSLOW v. TWICKENHAM GARDEN DEVELOPMENT LIMITED (1970) 3 All ER 326 at 347.** A party certainly does not have till eternity to prove or defend any action as the case may be.

Having carefully considered the petition, the unchallenged evidence led and the address of counsel, the narrow issue is whether the petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of this petition. It is on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

ISSUE 1

Whether the petitioner has on a preponderance of evidence established/satisfied the legal requirements for the grant of the petition.

I had at the beginning of this judgment stated the claims of the petitioner. Similarly I had also stated that the respondent despite the service of the originating court processes and hearing notices did not file anything or adduce evidence in challenge of the evidence adduced by petitioner. In law, it is now an accepted principle of general application that in such circumstances, the defendant is assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the petitioner's unchallenged evidence. See **Tanarewa (Nig.) Ltd. V. Arzai (2005) 5 NWLR (Pt 919) 593 at 636 C-F; Omoregbe v. Lawani (1980) 3-7 SC 108; Agagu v. Dawodu (1990) NWLR (Pt.160) 169 at 170.**

Notwithstanding the above general principle**,** the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he or she seeks. I find support for this in the case of **Nnamdi Azikiwe University v. Nwafor (1999) 1 NWLR (Pt.585) 116 at 140-141** where the Court of Appeal per Salami J.C.A. expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence... the mere fact that a case is not defended does not entitle

the trial court to overlook the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. **The Supreme Court in Duru v. Nwosu (1989) 4 NWLR (Pt.113) 24** stated thus:

"**…a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a prima-facie case, in which case the trial judge does not have to consider the case of the defendant at all."**

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff or petitioner in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the presence and/or absence of the defendant or respondent. See **Agu v. Nnadi (1999) 2 NWLR (Pt 589) 131 at 142.**

This burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings. Indeed **Section 82 (1) and (2) of the Matrimonial Causes Act** (The Act) provide thus:

1) **For the purposes of this Act, a matter of fact shall be taken to be proved, if it is established to the reasonable satisfaction of the court.**

2) **Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.**

Now in the extant case, the petitioner from her petition seeks for the dissolution of the marriage with respondent on the ground that the marriage has broken down

irretrievably and essentially predicated the ground for the petition on that fact that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

It was also further averred as a ground that due to this state of affairs, the Respondent left the matrimonial home in November, 2014 and that there has been no communication between parties since then. It is doubtless therefore that the petition was brought within the purview of **Section 15 (1) (c), (e) and (f) of the Act.** It is correct that **Section 15(1) of the Act** provides for the irretrievable breakdown of a marriage as the only ground upon which a party may apply for a dissolution of a marriage. The facts that may however lead to this breakdown are clearly categorised under **Section 15(2) (a) to (h) of the Act.** In law any one of these facts if proved by credible evidence is sufficient to ground or found a petition for divorce.

Now from the uncontroverted evidence of petitioner before the court, I find the following essential facts as established, to wit:

1. **That parties got married on 22nd August, 2014 vide Exhibit P1.**

2. **That the Respondent left the matrimonial home in November 2014, barely three (3) months into the marriage.**

3. **That since November 2014, a period of nearly five years now, cohabitation has effectively ceased between parties.**

4. **That even before the Respondent left the matrimonial home, he has behaved in an intolerable manner by the incessant physical beatings and mental torture petitioner went through that she cannot any longer live with him in peace and harmony.**

5. **The respondent has since moved on with his life completely independent of the petitioner.**

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the Respondent who was given all the opportunity of doing so. The law has always been that where evidence given by a party to any

proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seize of the proceedings to act on the unchallenged evidence before it. See **Agagu v. Dawodu (supra) 169 at 170, Odunsi v. Bamgbala (1995) 1 NWLR (Pt.374) 641 at 664 D-E, Insurance Brokers of Nig v. A.T.M Co. Ltd. (1996) 8 NWLR (Pt.466) 316 at 327 G-H.**

This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale, the weight of evidence tilts. Consequently where a Respondent chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the plaintiff or petitioner. See **A.G Oyo State v. Fair Lakes Hotels Ltd. (No 2) (1989)5 NWLR (Pt .121) 255, A.B.U. v Molokwu (2003)9 NWLR (Pt.825) 265.**

Indeed the failure of the Respondent to respond to this petition confirms in all material particulars the fact that the marriage has broken down irretrievably and that they have lived apart now for nearly five (5) years.

By a confluence of these facts, it is clear that this marriage exists only in name. As stated earlier, any of the facts under **Section 15 (2) a-h** (supra) if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for up to five (5) years show clearly that this marriage has broken down irretrievably and parties have no desire to continue with the relationship; this fact alone without more can ground a decree of dissolution of marriage. If parties to a consensual marriage relationship cannot live any longer in peace and harmony, then it is better they part in peace and with mutual respect for each other. The unchallenged petition in the circumstances has considerable merit.

In the final analysis, and in summation, having carefully evaluated the petition and the unchallenged evidence, I accordingly make the following order:

1. **An order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on 22nd August, 2014.**

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Hon. Justice A.I. Kutigi

Appearances:

1. M.A. Alemeru Esq., for the Petitioner.