

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

ON THE 14TH MAY, 2020

BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E ANENIH

(PRESIDING JUDGE)

SUIT NO: PET/252/16

BETWEEN

MRS NGOZI PHINER UDEZE.....PETITIONER

AND

MR IFEANYI DICKSON UDEZE.....RESPONDENT

JUDGMENT

Before the court is a petition filed on the 29th September 2016 by the Petitioner, Mrs. Ngozi Phiner Udeze against the respondent Mr. Ifeanyi Dickson Udeze seeking for decree of dissolution of their marriage which was solemnized on the 22nd November 1997 at the Marriage Registry Kano.

The petitioner's ground for the decree of dissolution of marriage sought is that the marriage has broken down irretrievably. And the petitioner prays the Court for the following reliefs;

1. A decree of dissolution of marriage between the Petitioner and the Respondent on the ground that the marriage aforesaid has broken down irretrievably and that the parties to the marriage no longer have love and affection for each other.
2. The custody of the children of the marriage.
3. An Order of Court directing the Respondent to take good care of the children by way of maintenance and payment of their

educational school fees henceforth to the University level.

The facts relied upon by the Petitioner as constituting the ground specified above for a decree of dissolution of their marriage are as follows:

1. Cruel, wicked and irresponsible behavior of the respondent that the petitioner cannot be reasonably be expected to live with the respondent;
2. Willful desertion by the Respondent;
3. By reasons of the matters aforesaid, the petitioner has lost love, trust and affection for the respondent.

On the 5th June 2017, the petitioner in proof of her case testified as (PW1), on the 22nd May 2018 she continued her evidence and tendered one document which is the Certified True Copy of Marriage Certificate dated 22nd November 1997 and it was marked as Exhibit A.

From the record of the Court, the Crux of the Petitioner's case is hereunder summarized:

The petitioner instituted divorce proceeding against her husband Mr. Ifeanyi Dickson Udeze as a victim of cruel, wicked and irresponsible behavior, willful desertion and loss of love, trust and affection. That they got married under the Act at the marriage registry in Kano State in 1997 and lived together in Kano after their marriage. After the Petitioner gave birth the respondent failed in all his promises. He became aggressive and was always beating her which lead to miscarriage of her third pregnancy. That the respondent continued to ill treat her until she came to Abuja with their two younger children for NYSC in 2010. And that she tried everything she could to make the marriage work but the respondent didn't see reason hence she

had to come to Court. She testified further that she does not want the respondent to keep her children away from her. She prayed the court to grant the decree of dissolution of marriage, that she intends to abandon all the other reliefs she had claimed.

The Respondent filed an answer to the petition on the 19th October 2017. But he never came to court to testify nor move his interlocutory application and answer to the Petition. The Respondent was represented by counsel but he himself never appeared in court.

The petitioner, at the close of evidence filed her final written address on the 30th April 2019 and adopted same on the 25th February 2020.

The petitioner in her final written address formulated one issue for determination which is:

Whether given the circumstances of this case, the petitioner is entitled to the sole relief sought in this Petition i.e the dissolution of the marriage between her and the respondent.

The petitioner's counsel, Isaac Enamudu Esq, submitted inter alia that she is entitled to the relief sought because during her evidence she was able to prove before the court that she has stayed apart from the respondent since 2010 preceding 2016 when petition for dissolution of marriage was filed.

He stated that the only relief sought is a decree of dissolution of the marriage between the petitioner and the respondent and that the petitioner has abandoned the other reliefs.

In conclusion counsel to the petitioner submitted that she has been able to prove her case on a preponderance of evidence having satisfied one or more grounds for the dissolution of marriage as contained in section 15 of the Matrimonial Causes Act.

I have considered the petitioner's case as presented before the court

and I am of the view that the issue for determination here is:

Whether the petitioner has successfully established that the marriage being the subject matter of this petition has broken down irretrievably.

The law is trite that dissolution of marriage contracted pursuant to our Marriage Law is guided by Matrimonial Causes Act, 1970. Under the said law, a petition 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 and that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition. See

DAMULAK V. DAMULAK (2004) 8 NWLR PT 874 PAGE 151

See also

SECTION 15(1) OF MATRIMONIAL CAUSES ACT 1970 which is hereunder reproduced;

15. (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-

(a) that the respondent has willfully and persistently refused to consummate the marriage;

(b) that since the marriage the Respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(c) that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(d) that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;

(e) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;

(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;

(g) that the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;

(h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

The above issue formulated for determination by the Court deals with whether the Petitioner is entitled to the relief of dissolution of

marriage.

By provisions of Section 15 (1) of the Matrimonial Cause Act, the sole ground for either party to a marriage to seek dissolution of their marriage is that the marriage has broken down irretrievably; and the court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, and only if, the petitioner satisfies the court of one or more of eight factual situations listed in paragraphs a - h of section 15 (2) Matrimonial Causes Act listed above. For support of this principle I refer to:

LT. COL. SHEHU IBRAHIM (RTD) V. MERCY IBRAHIM (2006) LPELR-7670(CA) (P. 16-17, paras. E-F) where his Lordship Justice Ariwoola J.C.A postulated that:

“The law also provides for the facts, one or more of which a petitioner must establish before a Court shall hold that a marriage has broken down irretrievably. It reads thus - Section 15(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-- (a) that the Respondent has willfully and persistently refused to consummate the marriage; (b) that since the marriage, the Respondent has committed adultery and the petitioner finds it intolerable to live with the Respondent; (c) that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; (d) that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition; (e) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted; (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; (g) that the other party to the marriage has for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act; (h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead"

The factual situation relied upon in the present Petition is the one provided in Section 15 (2) (c) and (f) of Matrimonial Causes Act, which is to the effect that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent and that the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.

This provision of the Matrimonial Causes Act on living apart has been described as the most radical departure from the old law. It is a non-fault provision which does not concern itself with whether either party to the marriage is at fault or not. The provision is mandatory and confers no discretion on the Court to exercise once it is shown that the parties to a marriage have lived apart for the statutory period. See

MRS. VICTORIA ABIMBOLA BAKARE v. MR. BANKOLE JOHN BAKARE (2016) LPELR-41344(CA) (P. 15, Paras. A-E) where his Lordship Justice Danjuma J.C.A resonated that:

"The appellant would appear to have alluded to a ground of living apart for a period from 2010. The law in that respect is that the parties must be proved to have lived apart for a continuous period of 2 years and the respondent does not object. The period of living apart was not proved to be a continuous one. The petition was not therefore, proved; the sanctity of marriage and the Court's role in even proceeding with a decree nisi before a decree absolute to

provide a window for possible amicable settlement or reconciliation clearly shows that the legislative intent is not to abruptly issue decrees for the dissolution of marriage."

And

DR JOSHUA OMOTUNDE V. MRS YETUNDE OMOTUNDE
[2001] 9 NWLR (PT. 718) 252 at 284.

The petitioner's evidence on oath which remains unchallenged and un-contradicted reveals that the respondent and petitioner got married 22nd November 1997, and in 2010 they ceased cohabitation.

Under the facts relied upon by the petitioner she canvassed that before their marriage in 1997 the respondent had during their courtship deceitfully promised to love her to the end of age and establish a business for her to earn a living but shortly after the said marriage the respondent willfully denied her the opportunity to establish a business to earn a living and abandoned her as a non-working house wife without care for her wellbeing and that the respondent finally lost all his love for the petitioner after her 5th child for the respondent. And he started telling the children of the marriage that the petitioner is a wicked woman. That the respondent abandoned his fatherly role towards the children and the petitioner.

The petitioner informed the Court that there are five children of the marriage, who are:

Ifenna Dickson Udeze (male) born on 4th December 1996,
Kosisochukwu Emmanuel Udeze (male) born on 19th January 1997

Mmesoma Peace Udeze (female) born on 22nd September, 2000

Chinaza Favour Udeze (female) born on 10th December 2003

Ifeanyi Michael Udeze (male) born on 26th June 2005

The Petitioner in the course of her evidence in chief abandoned her prayers B and C which are:

1. Custody of the children of the marriage
2. An Order of Court directing the respondent to take good care of the children by way of maintenance and payment of their educational school fees henceforth to the university level.

It is imperative to note that where the parties to a marriage have lived apart from each other (whether rightly or wrongly) for a continuous period of, at least, three (3) years immediately preceding the presentation of the petition the court cannot but find and hold as asserted that the marriage between the Petitioner and the Respondent has broken down irretrievably.

The standard of proof in matrimonial matters is as embodied in Section 82 (1) of the MATRIMONIAL CAUSES ACT which provides thus:

SECTION 82: -

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.*

See also, on standard of proof in Matrimonial Causes the case of;

DR. JOSHUA OMOTUNDE V. MRS. YETUNDE OMOTUNDE (2000) LPELR-10194 (CA) (Pp. 62-63, PARAS. D-E) Where His Lordship Justice Adekeye JCA reasoned thus:

"Section 15(2) (1) of the Matrimonial Cause Act states that 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 standard of proof in matrimonial matters is as embodied in section 82(1) of the Act which reads that:- For the purposes of this Act: a matter shall be taken to be proved if it is established to the reasonable satisfaction of the court'. In my view, what is reasonable satisfaction of court is difficult to define. There is no kind of blanket description for same either - but it must depend on the exercise of judicial powers and discretion of an individual Judge. It however entails adducing all available evidence in support of an assertion before the court. By section 15(2)(1) of the Act: a court hearing a petition for the dissolution of a marriage shall hold the marriage to have broken down irretrievably if the parties to the marriage lived apart for a continuous period of three years immediately preceding the presentation of the petition. The law is that the provision is mandatory and the court has no discretion to exercise. The section has the factor of absence of fault element characteristic of other matrimonial offences-the law behind the section that is 15(2)(1) as far as the living apart is concerned is not interested in right or wrong or guilt or innocence of the parties. Once the parties have lived apart, the court is bound to grant a Decree”

The Petitioner gave evidence during examination in chief that the Respondent and herself have lived apart since 2010 and effectively ceased cohabitation for a continuous period of about six years immediately preceding the presentation of this petition.

The respondent did not appear in Court nor challenge the evidence of the petitioner. The evidence of the petitioner remains unchallenged and the law is trite that where evidence by a party to any proceedings

was not challenged or controverted by the opposite party who had the opportunity to do so, it is always open to the court seized of the case, to act on such unchallenged or uncontroverted evidence before it. See

OBINECHE & ORS v. AKUSOBI & ORS(20 10) 12 NWLR (Pt. 1208) 383 S.C. or (2010) LPELR-2178(SC) (P.37, Paras.E-F).

KWANDE & ANOR v. MOHAMMED & ORS(2014) LPELR-22575(CA) (P.40,paras.D-F) where his Lordship Justice Gumel J.C.A. postulated that:

"It is well settled that where evidence given by a party in a proceedings is not challenged by the adverse party who has the opportunity to do so, the court ought to act positively on any such unchallenged evidence before it. See ODULAJA v. HADDAD (1973) 11 SC 35 and NWABUIKU v. OTTIH (1967) 2 SCNLR 232, both decision were cited and applied by this court in AKINGBEHIM v. CHIEF MRS. THOMPSON (2008) 6 NWLR (Pt. 1083) 14."

Thus the Petitioner by her evidence has satisfied the court that cohabitation ceased since 2010. In line with the holding of the court in the case of OMOTUNDE V. OMOTUNDE (Supra) this court has little or no option in the circumstance other than to resolve the sole issue for determination in favour of the Petitioner.

The court is mindful that the reliefs of maintenance, upkeep and custody of the children have been abandoned by the Petitioner.

Suffice to say that, I am of the view that relevant facts have been placed before the court establishing the ground for consideration for dissolution of the marriage. The evidence adduced in proof of this Petition establishes the grounds specified in Section 15 1 and (2) (c), (d) and (f) of the Matrimonial Causes Act 1970 for the dissolution of marriage. This is even more so when the respondent has not objected

to the dissolution of the marriage. I find that this marriage has broken down irretrievably and hereby so hold.

Consequently and in the light of the foregoing, it is hereby ordered as follows:

1. That the Marriage had and solemnized on the 22nd November 1997 at the Marriage Registry, Kano between the petitioner, MRS NGOZI PHINER UDEZE and the respondent, MR. IFEANYI DICKSON UDEZE shall be and is hereby dissolved on the ground that same has broken down irretrievably by reason of the fact that the petitioner and respondent have lived apart for a continuous period of over three years, immediately preceding the presentation of this petition.

Decree Nisi will issue forthwith and shall be made absolute after three months from the date hereof if there be no cause to the contrary.

Signed

Honourable Judge

REPRESENTATION

Isaac Enamudu Esq for the Petitioner

Ifeanyi Ogenyi Esq for the Respondent