IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 3RD DAY OF JUNE, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 10
SUIT NO: PET/390/2018

BETWEEN:

MR. EMEKA KELVIN UZODO ---- PETITIONER

AND

MRS. UJUNWA FAVOUR UZODO ---- RESPONDENT

JUDGMENT

The Petitioner filed this petition relying on Section 15(2)(f) of the Matrimonial Causes Act forming the ground of the petition. The Petitioner prayed the Court for an order dissolving his marriage to the Respondent celebrated on 2/11/2011 at the Abuja Municipal Area Council (AMAC) Marriage Registry, Abuja. The Notice of Petition was served on the Respondent on the 25/4/2019, but she did not file any process in defence. On 16/3/2020 one **E.R. Opara Esq** appeared for the Respondent and informed the Court that

the Respondent was not defending the petition, but relying on the case of the Petitioner.

On his part, the Petitioner testified that since the marriage the Respondent has exhibited uncontrolled desire to leave the matrimonial home. The Respondent made good her desire on the 20/10/2013 when she moved all her belongings and returned to her family and she has not returned since then. That the Respondent has caused him emotional pains by leaving him and all efforts to get her to return proved abortive. The Petitioner testified that parties have lived apart since 2013 a period of more than five (5) years.

At the close of the Petitioner's evidence, learned counsel to the Respondent did not cross examine the Petitioner. Learned counsel to the Petitioner **Babatunde Adewusi Esq** also waived his right to address the Court and urged the Court to, in the light of the uncontroverted

evidence of the Petitioner, enter judgment for the Petitioner.

Section 15(1) of the Act stipulates that; 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.

By Section 15(2) of the Act, a Court hearing a petition for a decree of dissolution of marriage shall hold that the marriage has broken down irretrievably if and only if any of the conditions stipulated in Paragraphs (a) – (h) have been shown or proved to exist. In other words, a Court hearing a petition for divorce ought not to hold that the marriage has broken down irretrievably unless the Petitioner (or Cross-petitioner), as the case may be, is able to satisfy the Court on one or more of the facts stipulated in Paragraphs (a) – (h) of Section 15(2) of the Act. See Ibrahim v. Ibrahim (2007) 1 NWLR (Part 1015) 383; Damulak v. Damulak

(2004) 8 NWLR (Part 874) 151 at 166; Omotunde v. Omotunde (2001) 9 NWLR (Part 718) 525 and Odogwu v. Odogwu (1992) 2 SCNJ 357.

Now, the general principle of law as encapsulated in Sections 131 and 132 of the Evidence Act is that the burden lies on that person who would fail if no evidence at all were given on either side. In that respect, where a person asserts the existence of certain state of affairs, the law casts the onus on him to prove that which he has asserted. It is simply wrapped up in the latin maxim, *ei quis affirmat non ei, qui negat incumbit probatio* which means; the burden of proof lies on the person who asserts the affirmative of an issue.

Thus, in civil cases, the Claimant or Petitioner in the instant case will only succeed if after appraising the totality of the evidence adduced at the trial, the Court finds that the weight tilts in favour of the Petitioner. In Matrimonial

Causes, the standard of proof is settled by Section 82(1) of the Act which stipulates that:

"(1) For the purposes of this Act, a matter of fact should 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."

In Matrimonial Causes therefore, the standard of proof to be attained by a Petitioner is that to the reasonable satisfaction of the Court. The Act does not however define what reasonable satisfaction of the Court means. Thus, in the case of Omotunde v. Omotunde (2001) 9 NWLR (part 718) 263 at 284, it was held that there is no kind of blanket description or definition of the term "reasonable

satisfaction of the Court" but that its application must depend on the exercise of judicial powers and discretion of an individual Judge. The import of this definition is that, by subjecting the standard of proof to the "reasonable satisfaction of the Judge", the Act has left the determination of the issue to the discretion of the Judge and like all discretionary powers, there is no universal or standard requirement that must be satisfied.

The bottom line of the above is that, a party seeking for a decree of dissolution of marriage must adduce sufficient and credible evidence which will persuade a reasonable Court to exercise its discretion in his favour. Thus, in satisfaction of Sections 131(1) and (2) of the Evidence Act, 2011; and Section 82(1) and (2) of the Matrimonial Causes Act, 1970, a Petitioner has the burden to prove by evidence, those facts which he has averred in his quest to secure a decree of dissolution of the marriage between him and the Respondent. Thus, where the

petitioner fails to adduce sufficient evidence in support of the facts pleaded by him, the Court is entitled to resolve the matter against him.

In Nigeria, for a petition for decree of dissolution of marriage to succeed, the Petitioner must prove one (or more) of the facts contained in Section 15(2)(a) – (e) of the Matrimonial Causes Act, 1970. If the Petitioner fails to establish any of those facts, the petition will be dismissed, even if both parties desire that the decree of dissolution of the marriage be granted.

It would appear that, in a proceeding for dissolution of marriage under Section 15 of the Act, all a Petitioner needs do is to plead and adduce evidence establishing any of the facts enumerated under Section 15(2) of the Act. His duty is not to prove that the marriage has broken down irretrievably but to satisfy the Court that the Respondent is guilty of any or more of the facts listed in the said Section 15(2) of the Act. It is only where any of those facts has been

pleaded and proved, that the Court will pronounce that the marriage has broken down irretrievably. See Nwankwo vs. Nwankwo (2014) LPELR – 24396 (CA).

The Petitioner has relied on Section 15(2)(f) of the Matrimonial Causes Act. i.e. living apart for a period of three years immediately preceding the presentation of the petition. The Petitioner testified that the Respondent left the matrimonial home on the 20/10/2013 and parties have lived apart since then. This petition was filed on the 8/10/2018. It is therefore clear that the parties have lived apart for a period of five (5) years.

What better evidence can be shown of the complete death of a marriage along with all its responsibility, love and affection than the passing of time, without physical cohabitation. The parties to a marriage shall be treated as living apart unless they are living with each other in the same household. When parties petitions are found to fall under Section 15(2)(f), the Court shall not be invited to

inquire into why the parties have so lived apart. See Ochei vs. Ochei & anor (1966 – 1979) Vol. 5 (Oputa LR) page 86, Okagbue vs. Okagbue suit No. O/14D/72 (1966 – 1979) 5 (Oputa LR) page 111. In this case the evidence of living apart is clear.

I am therefore satisfied that the marriage between the Petitioner and the Respondent has broken down irretrievably on the ground of living apart for more than three (3) years. The Petition therefore succeeds, and I order that a decree nisi for the dissolution of this marriage should issue. Since there are no children of the marriage, the order shall become absolute after the expiration of three months.

Hon. Justice M.A. Nasir

Appearances:
Babatunde Adewusi Esq – for the Petitioner
E.R. Opara Esq with P.A. Okwechieme – for the Respondent