

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 6TH DAY OF MAY, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 10
SUIT NO: PET/048/2019

BETWEEN:

PIUS JEROME OGBAJE ----- PETITIONER

AND

SAFIYA DINATU OGBAJE ----- RESPONDENT

JUDGMENT

This Petition is filed pursuant to Section 15(2)(e) and (c) of the Matrimonial Causes Act. The Petitioner is praying the Court for an order dissolving his marriage to the Respondent celebrated on the 6/4/2006 at the Kaduna North Local Government Marriage Registry, Kaduna State. The Notice of Petition was served on the Respondent on the 12/12/2019 but the Respondent did not file any response by way of an Answer or Cross Petition.

The evidence of the Petitioner is that cohabitation ceased in August, 2016. The circumstances that led to this state of affairs according to the Petitioner is that sometime in 2013, following the Petitioner's discoveries of the Respondent's infidelity, the Respondent on her own volition moved to a separate room in the matrimonial home. In August, 2016 the Respondent, without any provocation moved out of the matrimonial home to an unknown destination and has since refused to return. Parties have lived apart since then, hence this petition filed on 7/11/2019.

For every petition for dissolution of marriage to succeed, the Petitioner must plead and prove that the marriage has broken down irretrievably, he would then proceed to give evidence of any of the facts contained in Section 15(2)(a) - (h) of the Matrimonial Causes Act 1990. See Ekerebe vs. Ekerebe (1999) 3 NWLR (part 596) page 514.

The unchallenged evidence of the Petitioner is that cohabitation ceased between the parties in August, 2016 and he has not seen the Respondent since then. This petition was filed on 7/11/2019 which is a period of more than 3 years since cohabitation ceased. Eventhough the Petitioner has tried to show that the Respondent has behaved in such a way that he cannot be expected to continue to live with her and has also relied on unreasonable behaviour, the evidence before the Court shows that parties have lived apart for more than 3 years immediately preceding the presentation of this petition.

By Section 15(2)(f) of the Matrimonial Causes Act:

“The Court hearing a petition for a decree of dissolution of 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.”

Such situations are such that the Court is not called upon to make enquiries as to who is responsible for the present state of affairs. Who among the parties is guilty for bringing about the manifestation of the present state of affairs between the parties. According to the court in Pheasant vs. Pheasant (1971) 1 All ER page 587, separation or living apart “is undoubtedly the best evidence of breakdown and the passing of time, the most reliable indication that it is irretrievable”. Section 15(3) of the Matrimonial Causes Act also provides:

“The parties to a marriage will be treated as living apart unless they are living with each other in the same household”.

Living apart begins to count from the date that one party recognizes and begins to treat the marriage and cohabitation as ended. See Santos v. Santos [1972] Fam. 247, Sullivan v. Sullivan (1958) NZLR 912.

By Section 15(2)(f) of the Matrimonial Causes Act, once living apart has been established, divorce becomes the only option even for the Court, as there is no discretion in the matter. The fault of the party is not to be considered at this stage, in order to decide who is the guilty party to the living apart. See Agunwa vs. Agunwa & anor (1972) 2 ECSLR page 20 at 22, Parde vs. Parde Suit No. BHC/10/2003. The evidence of the Petitioner adequately satisfied the provision of Section 15(2)(f) of the Matrimonial Causes Act.

I hold that the marriage between the Petitioner and the Respondent celebrated at the Kaduna North Local Government Marriage Registry, Kaduna State on the 4/4/2006 has broken down irretrievably and a decree Nisi

shall issue. As there are no children of the marriage, it shall become absolute upon the expiration of three months.

Signed
Honourable Judge

Appearances:

Isaac Ita Esq – for the Petitioner

Usman Sani Esq – for the Respondent