

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT: COURT 11 JABI – ABUJA
DATE: 13TH OF JULY, 2020
BEFORE: HON. JUSTICE M.A. NASIR
SUIT NO: PET/161/2019

BETWEEN

MRS. OLUWAKEMI DEBORA FAKUNLE
(Nee: Olayinwola) ----- PETITIONER

AND

MR. AKINYEMI KOLAWOLE FAKUNLE ----- RESPONDENT

JUDGMENT

The Petitioner Mrs. Oluwakemi Debora Fakunle, a civil servant has taken out this petition for dissolution of marriage against her husband the Respondent, Mr. Akinyemi Kolawole Fakunle. The ground of the Petition is that the marriage has broken down irretrievably and the facts are as follows:

- The Respondent has willfully and persistently refused to consummate the marriage.
- Petitioner and Respondent have lived apart continuously since 2012, a period of over 3 years.

- That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

The Respondent was served with the Notice of Petition on the 3/4/2019 and this was followed by the service of hearing notices, but the Respondent elected not to file any response to the petition. On the 30/9/2019, the Respondent filed a letter of no contest urging the Court to grant the reliefs of the Petitioner. The said letter was addressed to the Court and it reads:

“RE: MRS. OLUWAKEMI DEBORAH FAKUNLE VS. MR. AKINYEMI KOLAWOLE FAKUNLE (SUIT NO. PET/161/2019)

I have carefully perused the above cited petition served on me by the bailiff of this Court and I wish to state that I am the Respondent in this suit.

I have carefully read the contest of the petition and I am not CHALLENGING same. I fully understand that the reliefs being sought by the Petitioner are for a dissolution of the marriage between myself and her.

Accordingly, I want this Court to grant the relief she is seeking by dissolving this marriage as I am equally no longer interested in continuing with it.

Thank You.

Yours faithfully

Signed by the Respondent”

The Petitioner testified and concluded her testimony on the 16/6/2020. Her evidence is that she got married to the Respondent on the 12/11/2011 at the Marriage Registry, Ile Ife, Osun State. That parties have not lived together since the marriage as the Respondent lives in Minna, Niger State while the Petitioner lives in Abuja. She visits the Respondent during weekends and that the marriage has not been consummated from inception. She stated that the Respondent gets irritated at the sight of her, and there have been constant quarrels which got worse in 2015 when the Respondent locked the Petitioner out of the matrimonial home in Minna. The Petitioner further said the Respondent

has severally told her that he was no longer interested in the marriage and she should not bother visiting him again. There is no child of the marriage. The marriage certificate was tendered as Exhibit A. Considering the letter of no contest filed by the Respondent, the Court foreclosed his right to cross examine the Petitioner and his defence.

At the close of the Petitioners evidence, **M.A. Awuru Esq** of counsel to the Petitioner waived his right to address the Court and urged the Court to proceed to enter judgment for the Petitioner.

On what a Petitioner alleging that marriage has broken down irretrievably need to show, by virtue of Section 15(2) of the Matrimonial Causes Act, 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 stated under Section 15(2)(a – h). Failure to prove one of the ingredients contained in Section 15(2) of the Matrimonial Causes Act, the petition will not succeed even

where divorce is desired by both parties. See Akinbuwa vs. Akinbuwa (2002) 1 SMC 1 at 10.

The Petitioner hinged her petition on Section 15(2)(a) which states:

“(2)A Court hearing a petition for dissolution of a marriage shall order the marriage to have broken down irretrievably if but only if the Petitioner satisfies the Court of one of the following facts;

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

A party’s refusal to consummate his/her marriage is a ground for dissolution of the marriage and is stated under Section 15(2)(a) of the Matrimonial Causes Act above. A party is said to have willfully and persistently refused to consummate a marriage when he or she deliberately refuses to have sexual intercourse with the other party despite a number of requests.

By non – consummation of the marriage is meant a situation where since after the marriage or union, there has been no sexual intercourse at all. See Oguntoyinbo vs. Oguntoyinbo (2017) LPELR – 42174 (CA).

It should be borne in mind that mere neglect to comply with a request is not necessarily the same as willful refusal. What amounts to willful refusal must depend on the facts of the case. In such cases where a husband through coyness, frigidity or intervousness refuses to allow intercourse for a considerable period after the marriage, the wife would not be entitled to say that her husband had been guilty of willful refusal within the meaning of the law until at least she had successfully brought to bear such tact, persuasion and encouragement as an ordinary wife would use in the circumstance. See Horton vs. Horton (1947) 2 All ER page 871, Baxter vs. Baxter (1947) 3 All ER page 187, Akinbuwa vs. Akinbuwa (cited supra).

The phrase ‘willful and persistent’ is very important and the Petitioner has the onus to prove it. In Hardy vs. Hardy

(1964) 6 FLR page 109 at 110 - 111, the Court interpreted the phrase as thus:

“Persistent in this context, is a word which implies continuity and seems to me to be somewhat analogous to the word ‘repeatedly’, ‘willful’ means in the context the doing of something as a matter of conscious will.”

Section 21 of the Matrimonial Causes Act is very clear and precise on the duty of the Court in dealing with an allegation of willful and persistent refusal to consummate a marriage. What the section enjoins the Petitioner to do is to show to the satisfaction of the Court that as at the commencement of hearing, consummation has not taken place between the parties.

The Petitioner in her evidence stressed the point that there has been no consummation after the marriage and despite repeated visits to the Respondent in Minna to make the marriage work proved not fruitful. In coming to a decision that there has been such a willful and persistent

refusal, the Court is entitled to consider the entire history of the marriage.

In this instance, I find the evidence led by the Petitioner to be credible and that being the case, the Court is bound to act on it since it is unchallenged and uncontroverted.

I hold that the Petitioner has established the fact of lack of consummation under Section 15(2)(a) and I am satisfied that the marriage has broken down irretrievably.

There is also evidence of living apart for more than 3 years. The Petitioner has testified that since the marriage there has been no cohabitation as she resides in Abuja while the Respondent resides in Minna, Niger State. That living apart started since 2012. The Petitioners testimony was unchallenged. In situations like this where cohabitation has completely collapsed, the position of the law is that it is immaterial who has between the parties caused them to live apart as it seems to me that Section 15(2)(f) of the Matrimonial Causes Act does not permit the Court to go into a fault finding expedition. See Uzochukwu vs. Uzochukwu

(2014) LPELR – 24139 (CA), Omotunde vs. Omotunde (2001)
9 NWLR (part 718) 252. Once there is evidence that the parties have lived apart for a continuous period of three years, is a strong and irrefutable presumption in favour of the Petitioner that the marriage has broken down irretrievably. See Tagbo vs. Tagbo (1966 – 1079) Vol. 5 Oputa LR page 138.

I therefore order that a decree nisi for the dissolution of this marriage should issue. It shall become absolute upon the expiration of 3 months.

Hon. Justice M.A. Nasir

Appearances:

M.A. Awuru Esq – for the Petitioner

Respondent absent and not represented.