IN THE HIGH COURT OF HE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT: COURT 9 JABI – ABUJA
DATE: 20TH OF OCTOBER, 2020
BEFORE: HON. JUSTICE M.A. NASIR
SUIT NO: PET/99/2019

BETWEEN

EFE FAITH AWHINAWHI ---- PETITIONER

AND

HELEN NANA AWHINAWHI ---- RESPONDENT

JUDGMENT

The Petitioner Efe Faith Awhinawhi filed this Petition on the 24/1/2019 praying this Court for the dissolution of his marriage to the Respondent Helen Nana Awhinawhi. The Petitioner got married to the Respondent at the Abuja Municipal Area Council (AMAC) Marriage Registry on the 31/8/2001. Immediately after the marriage, parties cohabited at No. 8a, Aba Close, Area 8, Garki, Abuja and later in 2004, the parties moved to Block 6 Flat 12, Kunde Close, off Limpopo Street, Maitama, Abuja where they

cohabited until 2006. The marriage is blessed with three children. They are:

1. Onanefe Karissa Awhinawhi, born on the 13/11/2002
2. Efetobore Melissa Awhinawhi born on the 18/12/2004
3. Oghenetega Samuel Awhinawhi born on the 28/6/2006.

Cohabitation between the parties ceased in 2006 when the Respondent travelled to Dublin, Ireland to give birth to the third child and never returned despite several entreaties from the Petitioner. Since then parties have lived apart.

The Notice of Petition was served on the Respondent vide DHL Courier Service by order of Court on the 16/4/2019, but she elected not to file any response. The Petitioner testified on the 6/10/2020 and was duly cross examined by J.N. Nwabufor Esq counsel to the Respondent. Mr. Nwabufor informed the Court that the Respondent was not leading any evidence and was satisfied with the financial arrangement stated by the Petitioner having offered to take full responsibility for the education and upkeep of the

children. He therefore urged the Court to proceed and enter judgment for the Petitioner.

B.O. Nafagha Esq of counsel to the Petitioner urged the Court to enter judgment for the Petitioner since there is no Answer to the Petition.

It is trite that it does not matter whether a Respondent filed an answer or not, or led evidence or not, it is still the duty of the Petitioner at the hearing to satisfy the Court by evidence of witnesses proving his case. Where the Petitioner fails to do that, the petition will be dismissed notwithstanding the fact that the Respondent failed to lead evidence. See **Ibeawuchi vs. Ibeawuchi (1966 – 1979) 5 Oputa LR page 41 at 44.**

In matrimonial causes, the standard of proof is settled by Section 82(1) of the Act which provides that a matter of fact should be taken to be proved if it is established to the reasonable satisfaction of the Court. It is noteworthy, that the phrase reasonable behaviour has not been defined in the

Act. Nevertheless, it connotes adducing evidence in support of the averments before the Court and reasonably and satisfactorily too. See **Anioke vs. Anioke (2011) LPELR – 3774 (CA).**

In **Omotunde vs. 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, and like all discretionary powers, there is no universal or standard requirement that must be satisfied.

The Matrimonial Causes Act has made provisions guiding dissolution of marriage contracted under the Marriage Act. It provides in Section 15(1) that:

> *"A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented by either party to the marriage upon the*

ground that the marriage has broken down irretrievably".

The Court seized of the petition shall hold the marriage has broken down irretrievably if the Petitioner is able by the evidence adduced satisfy the Court with regard to one of the facts set out under Section 15(2)(a – h) of the Act. Where he/she is unable to satisfy the Court as to the existence of at least one of the facts, the Court will dismiss the petition notwithstanding the desire of either or both parties to opt out of the marriage. See **Ekerebe vs. Ekerebe (1999) 3 NWLR (part 569) page 514.** The duty on the Petitioner 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 therein. See **Nwankwo vs. Nwankwo (2014) LPELR – 24396 (CA).** 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 **Damulak vs. Damulak (2004) 8 NWLR (part 874) page 151.**

The Petitioner herein relied on Section 15(2)(f) of the Act which provides:

> *"(2)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."*

On when parties to the marriage will be treated as living apart, Section 15(3) of the Act provides that for the purpose of subsection (2)(e) and (f) of this Section, the parties to a marriage shall be treated as living apart unless they are living with each other in the same household. A Petition for dissolution of marriage is not granted on the basis that the Respondent admitted to same. The Petitioner must lead

satisfactory evidence to prove his entitlement to the decree. See Eziaku vs. Eziaku (2018) LPELR – 46373 (CA).

The Petitioner has testified that parties cohabited after the marriage until 28/5/2006 when the Respondent travelled to Dublin Ireland and never returned. The parties had lived apart for a period of 12 years. There is evidence before this Court that the Respondent has lived up to his responsibility as a father. He has no objection to the children being with the Respondent. He has been paying school fees for the children as determined by their schools and upkeep allowance of 100 Euros per month for each of the children. The Petitioner's 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 (supra). 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**.

Having satisfied the provision of Section 15(2)(f) of the Matrimonial Causes Act, I hold that the marriage has broken down irretrievably the parties having lived apart since 2006. The Petition succeeds and I grant an order **dissolving the marriage between the Petitioner and the Respondent. A decree nisi shall issue to that effect which shall become absolute after the expiration of three months.**

Signed

Honourable Judge

Appearances:

B.O. Nafagha Esq – for the Petitioner

J.N. Nwabufor Esq with him K.O. Obamogie Esq –for the Respondent