

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

HOLDEN AT: COURT 9 JABI – ABUJA
DATE: 17TH OF NOVEMBER, 2020
BEFORE: HON. JUSTICE M.A. NASIR
SUIT NO: PET/319/2017

BETWEEN

MR. LETON PHILIP NEEKA ----- PETITIONER

AND

MRS. LETON NELLIE AKPOVONA ----- RESPONDENT

JUDGMENT

The Petitioner Mr. Leton Philip, a businessman, Instituted this Petition on the 17/7/2017 for the dissolution of his marriage to Mrs. Leton Nellie Akpovona who is a banker and the Respondent in this suit. The marriage the Petitioner is seeking to dissolve was conducted on the 28/7/2005 at the Sapele Local government Council Marriage Registry, Delta State. The reason relied upon by the Petitioner is that the Respondent has behaved in such a way that he could not reasonably be expected to live with her, pursuant to Section 15(2)(c) of the Matrimonial Causes Act.

The Respondent upon being served with the Notice of Petition filed an Answer to the Petition on the 26/9/2017. The Petitioner was served with the Answer to the Petition and he in turn filed a Reply to the Answer on the 9/11/2017. With issues properly joined, the case proceeded to hearing.

The Petitioner testified for himself as PW1 on the 27/2/2018. His evidence is that he grew up as a child not having the kind of love he wanted as his parents were separated, and therefore he wanted to build a home with the Respondent. However, after he got married to the Respondent he discovered that he did not have a wife but a career lady, whose sole interest was her banking job. He always talked to her and advised her to emulate from her other sister as she was the last of her siblings. He provided her with three house helps in the house in order not to stress her out. He eventually became the husband and wife, the house was very dirty. The Respondent wakes up early in the morning and goes to work, when she comes back her

food is ready. Upon eating, she goes straight to bed. He said they constantly had fights which sometimes turned to physical scuffles. He even reported to her bank manager. He became tired of the marriage. He went on to testify that the Respondent's personal hygiene was a problem, her personal effects are heaped and soaked in water until it starts to smell.. He even involved her parents to talk to her. He said though they did not have a child, it was never an issue as no pressure was put on the Respondent. He prayed the Court to dissolve the marriage since parties are no more living as man and wife and he did not want the situation to get to the point of fatality. Two marriage certificates, one from the Marriage Registry in Sapele, Delta State and the other from St. Lukes Anglican Church Sapele, Delta State were tendered through PW1 and marked as Exhibits A and A1 respectively.

Under cross examination, the Petitioner said he never collected a loan from the Respondent eventhough there was a time he had challenges paying the house rent and the

Respondent spoke to her brother in-law who helped with the sum of \$10,000.

On her part the Respondent testified as DWI on the 21/11/2019. She denied the allegations made by the Petitioner and stated that she never compromised her marriage. She did all the cooking after the marriage, and assisted the Petitioner in running the house by paying the house helps. She also assisted the cook and house helps to maintain the house. That the Petitioner's bad business decisions crumbled his businesses and occasionally he vents his anger on the Respondent by beating or shouting on her or acting irrationally, which action she condoned. She stated that she advanced some monies to the Petitioner as loans which are still outstanding. She also accused the Petitioner of infidelity and mentioned the name of one Mrs. Mona Etiebet. She narrated events that took place in January and November 2006 when the Petitioner beat her up. She insisted that because she loved the marriage, she always bent backward to accommodate the inadequacies, violence

and cruel acts of the Petitioner. She even reported the Petitioner to the Pastor of their church concerning the infidelity of the Petitioner. Regarding the dissolution of the marriage, the Respondent said she is leaving the Petitioner to his conscience.

Under cross examination, she stated that at a point she was admitted in the hospital not because she was ill, but because she needed bed rest as she was then 4 months pregnant. While at the hospital she went with her phone, and the Respondent brought her laptop for her to surf the internet. She said she eventually lost the pregnancy. She said she was not aware that the Respondent was irritated by how she was handling the matrimonial home.

At the close of evidence, **Lawrence John Esq** filed the Respondent's final written address dated 9/12/2019. He adopted same on the 24/9/2020 and formulated a sole issue for determination. The issue is:

“Whether the Petitioner has proved that the Respondent is responsible for the breaking down of the marriage between the Petitioner and the Respondent.”

On his part, Mike Kebonkwu Esq filed the Petitioner’s written address on the 27/2/2020 and duly adopted same before the Court. Counsel raised the following issues for determination.

- “1. Whether from the evidence adduced the marriage between the parties could be held to have broken down irretrievably.*
- 2. Whether the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with her.*
- 3. Whether the Respondent had been cruel to the Petitioner that he could not be reasonably be expected to live with her.*

4. Whether the Petitioner has met the required standard of proof in his petition.”

Success or otherwise of a petition for decree of dissolution of marriage depends largely on how diligently and adequately the burden of proving one or more of the facts contained in Section 15(2)(a - h) is successfully discharged to the satisfaction of the Court. Failure in this regard will entail a dismissal of the petition. See Anioke vs. Anioke (2011) LPELR – 3774 (CA). This is bearing in mind the fact that marriage is a sacred institution, which should not be whimsically put to an end, regardless of the fact that a divorce is desired by both parties.

Section 15 of the Matrimonial Causes Act sets out in detail the grounds for dissolution of a marriage. It provides thus:

“15(1). A petition under this Act by a party to a marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably.

Section 15(2)(a – h) breaks down the details of what is required to be proved by the Petitioner in convincing the Court of his/her entitlement to decree of dissolution of marriage. The Petitioner in this instance has relied on Section 15(2)(c) of the Matrimonial Causes Act. The Section provides thus:

“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–

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;”

Given the wordings of this Section 15(2)(c), it is clear that the Petitioner who relied on this ground must establish by cogent evidence that it would be unreasonable to require her to live with the Respondent. In that wise, the test of

whether those behaviours are intolerable to expect the Petitioner to continue to live with the Respondent is objective and not wholly subjective. Therefore, there is every possibility that what the Petitioner terms "intolerable" may not pass this objective test.

In cases of unreasonable behavior, the Court may have to consider in its entirety the matrimonial history of the parties, for certain acts though trifling by themselves alone, may in association with other acts or by the sheer force of cumulation assume the shape of unreasonable behavior. See Ibeawuchi vs. Ibeawuchi (1966 - 79) 5 Oputa LR 41.

Perusing the evidence of the Petitioner, he seems to take exception to the attitude of the Respondent regarding the combination of her responsibility as a wife and work. He has testified that the Respondent prefers her career to her family responsibilities. His evidence is that after he got married to the Respondent he discovered that he did not have a wife but a career lady, whose sole interest was her banking job. He provided her with 3 house helps in order

not to stress her. He became both the husband and wife. The Respondent wakes up early in the morning and goes to work, when she comes back her food is ready, she eats and goes straight to bed. That he has not had conjugal relationship with the Respondent in the last one and a half years. He testified that to continue to live with the Respondent would cause exceptional hardship to him.

The Respondent when asked during cross examination to describe her typical day, stated that she wakes up in the morning, takes a shower, make's tea for her husband and goes to work. She cooks during weekends and keep in packs. The cooks bring out the pack and heat it up to give to the Petitioner if he is at home. In the evening depending on when she closes, she goes straight to the Kitchen.

From the evidence and description of the Respondent of her typical day, quality family time in the matrimonial home that breeds emotional attachment and love is evidently lacking. The demeanor of the Respondent in the open Court speaks volumes of her type of person. She appears to be a

person that is so passionate about her work and have less interest in her matrimonial responsibility and duties to her husband. I agree with the Petitioner when he stated that they did not live as man and wife in the matrimonial home and that he got himself a career lady as wife in the Respondent. How can a married woman be comfortable that her husband is being fed from packs stocked in a freezer and served by cooks employed in the home. The Petitioner testified that he cannot continue to tolerate this from the Respondent.

There is an old saying that goes: *"Families that play together, stay together."* Quality family time with ones family is paramount in building stronger relationships. Family bonding time builds confidence and create wonderful memories that last a lifetime. Spending time together helps to form lasting connections between family members. Infact spending just a little bit of time talking together in a relaxed atmosphere helps to relieve stress. The Respondent clearly seem to be ignorant of what quality family time can bring. It

can mend fences and make a family work. The conduct of the Respondent has removed the matrimonial home from a family home to a dwelling of house mates. Learned counsel to the Respondent submitted that the Respondent was not opposed to the Petition being granted.

I am satisfied in this instance that the burden on the Petitioner has been successfully discharged. This Court is satisfied that the marriage has broken down irretrievably pursuant to Section 15(2)(c). The petition succeeds and a decree Nisi is granted dissolving the marriage between the Petitioner and the Respondent. As there are no children of the marriage, it shall become absolute upon the expiration of three months from today.

Hon. Justice M.A. Nasir

Appearances:

Mike Kebonkwu Esq with O.I. Oladapo Esq – for the Petitioner

Lawrence John Esq – for the Respondent