

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO-ABUJA**

**ON 15<sup>TH</sup> DAY OF DECEMBER, 2020**

**BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI**

**PRESIDING JUDGE**

**SUIT NO: PET/18/18**

**BETWEEN:**

**MR. NDUKWE EGWURONU ..... PETITIONER/APPLICANT**

**AND**

**MRS. IJEOMA NDUKWE EGWURONU ..... RESPONDENT**

**PETITIONER IN COURT. RESPONDENT ABSENT.**

**NNAMDI AKUNETO ESQ FOR THE PETITIONER**

**K.O ELEBESUNU FOR ESQ THE RESPONDENT.**

**JUDGMENT**

By a notice of petition filed on 13<sup>th</sup> November 2018, the Petitioner seeks the dissolution of his marriage to the Respondent on the ground that the marriage has broken down irretrievably. The facts relied on are that:

- (a) Since the marriage the Respondent has behaved in such a way that the Petitioner finds intolerable to live with her as there is no more love between the Petitioner and the Respondent.

- (b) The Respondent constructively deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of this petition.
- (c) The Petitioner and the Respondent have lived apart since 27<sup>th</sup> October 2016 for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to a decree being granted.

The Petitioner testified as his sole witness upon affirmation. His evidence is that he and the Respondent were married on the 11<sup>th</sup> November 2005 at Owerri Municipal Area Council evidenced in a marriage certificate Exhibit P1. The marriage was blessed with three children namely Udunma Ndukwe-Egwuronu, female born on August 13<sup>th</sup> 2006. Ochuru Ndukwe – Egwuronu male, born on July 16<sup>th</sup>, 2008; and Chisom Ndukwe – Egwuronu male, born in February, 27, 2012.

That he cohabited with the Respondent at Plot A41 Nzube Estate, Lokogoma District ,Abuja FCT until the Respondent became somebody he could not recognize.

That he encountered difficulties with his business and the Respondent had to fend for the family.

That she became frustrated and began to rain abuses on him, telling everybody including the children how useless he was. She persuaded him to leave the house many times insisting that she needed a break. This led to her not coming back to the house many times and when she slept in the house, she would be making calls in the middle of the night. When he asked her why, she would say she was an international business woman. He endured this until

she filed for divorce in 2016, evidenced in court processes Exhibits P2 & P3. The matter was however struck out for want of diligent prosecution on 6<sup>th</sup> February, 2018. He did not condone her behaviour. However he vacated their matrimonial home on 27<sup>th</sup> October 2016 at the Respondent's insistence, after she had filed for divorce.

His efforts to salvage the marriage failed as the Respondent insisted on calling it quits. He said the Respondent has custody of the three children but he visits them. He prayed the court to dissolve the marriage because they can no longer live together and have been apart for more than 4 years now. He conceded custody of the three children of the marriage to her but prayed for unlimited access to them, and to take them on holidays especially Christmas. He also desires to be part of their welfare by bringing in money, and bringing them clothes wherein he is able to and for the Respondent not to throw them away.

In cross examination, he admitted that the Respondent has responsibly taken care of their children since they both have lived apart and he was in no doubt the Respondent was capable of doing so going forward including their clothing, feeding and school fees, .

He promised to be contributing reasonably to their general welfare according to his income.

Mr. Elebesunu for the Respondent did not file an answer to the petition or contest the petition. In fact he rested his case on that of the Petitioner.

Mr. Akuneto for the Petitioner waived his right to address the court. He urged the court to enter judgment in the Petitioner's favour. Mr. Elebesunu aligned himself with the Petitioner's counsel.

The onus is on the Petitioner to prove to the court that his marriage to the Respondent has broken down irretrievably in order to succeed in his petition,

In **ONABOLU V ONABOLU 2 SMC 135 AT 156-166 PARAGRAPHS G-E** the Court of Appeal per P. O Ige JCA held that:-

“The Petitioner must plead and prove that the marriage has broken down irretrievably in her petition. In addition a Petitioner who alleges that the marriage has broken down irretrievably must be able to bring himself within one or more of the facts enumerated in S.15 (2) (a) – (h) of the Matrimonial Causes Act Cap 220 LFN 1990 before such a Petitioner can succeed in the petition. See **EMOJEVWE EKREBE V BAGHWARHE EKREBE AND ANOR (1999) 3 NWLR PART 596 514 AT 523 G** where the Court of Appeal held:-

“As far as the law is concerned, for any divorce petition to succeed, the Petitioner must plead and prove one of the grounds contained in S. 15(2) (a) – (h) of the Matrimonial Cause Act 1975. If the petitioner therefore for any reason fails to plead and prove any of the grounds stated in the law, the petition must be dismissed even if the dissolution of the marriage is desired by both parties”.

S 15 of the Matrimonial Causes Act provides inter alia:

1. “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.

(2) 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;

(a)...

(b)...

(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,

(d) that the respondent has deserted the petitioner for a continuous period of at least one year preceding the presentation of the petition.

(e) that the parties to the marriage have lived apart for a continuous period of two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted

(f)...

(g)...

(h)...

3. For the purpose of subsection 1 (e) and (f) of the section, the parties to a marriage shall be treated as living apart unless they are living with each other in the same household”.

I have only highlighted the facts in S. 15 (2) (c) (d) & (e) being the facts upon which the Petitioner brought this petition.

From the unchallenged evidence of the Petitioner before me, one thing is certain, that the parties have lived apart since 27<sup>th</sup> October 2016 to date. Considering that this petition was filed on 13<sup>th</sup> November 2018, it means the parties have lived apart for also 2 years and 16 days immediately before this petition was filed.

It is also clear from the unchallenged evidence of the Petitioner that the Respondent does not object to a decree being granted. Indeed the Respondent’s counsel Mr. Elebesumu made this abundantly clear to this court. The Petitioner also did not condone the living apart of the parties.

By S. 82(1) (2) of the Matrimonial Causes Act, the standard of proof required in Matrimonial Causes is proof to the satisfaction of the court i.e. on a preponderance of evidence.

I am satisfied that the Petitioner and the Respondent have lived apart for a period of 2 years 16days immediately before this petition was filed and that efforts to salvage the marriage have failed. I am also satisfied that the Respondent does not object to the dissolution of the said marriage. See S. 15 2 (e) MCA Cap M7 LFN 2004.

Accordingly, I find that the marriage of the Petitioner to the Respondent has broken down irretrievably.

I therefore issue a decree nisi dissolving the marriage between the Petitioner and the Respondent contracted at Owerri Municipal Area Council on 11<sup>th</sup> November 2005. This decree nisi shall be in force for 3 months, after which it shall be deemed absolute except the court orders otherwise.

Then, there is the issue of custody of the children. The court always considers the interest of the children as paramount. See S. 71 (1) MCA.

In this instance the Petitioner has conceded custody to the Respondent. There is nothing before the court to suggest that granting custody to the Respondent will be detrimental to the children.

Therefore I award custody of the 3 children of the marriage: Uduoma Ndukwe-Egwuronu, female born August 13, 2006; Ochuru Ndukwe – Egwuronu male born July 16, 2008 and Chisom Ndukwe-Egwuronu male born February 27<sup>th</sup> 2012 to the Respondent until they attain 21 years of age.

The Petitioner shall have access to the children during reasonable hours of the day as may be agreed by the parties. The children shall spend their school vacations with the Petitioner who shall be responsible for their round trip expenses to visit him on such vacations.

The Petitioner shall contribute to the welfare, maintenance and education of the three children of the marriage and the Respondent shall accept his contributions as they come.

**Hon. Judge**