IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS THURSDAY, THE 12TH DAY OF NOVEMBER, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: PET/13/2020

BETWEEN

HELEN ABOSEDE OLATOKE .....PETITIONER

AND

AYOTUNDE PHILIP OLATOKE …….RESPONDENT

JUDGMENT

By a Notice of Petition dated 16th September, 2020, the petitioner claims the following Reliefs against Respondent as follows:

a. **A Decree of Dissolution of marriage with Respondent on the ground that the marriage have broken down irretrievably because the parties have lived apart for a continuous period of two and half years immediately preceding the presentation of this petition. And most importantly the Respondent does not object to a divorce decree being granted.**

b. **Any other order or further orders as the court may deem fit to make in the circumstances of the petition.**

From the records of court, the originating process was duly served on the Respondent. When the matter came up on 4th November, 2020, the attention of the court was drawn to a terms of settlement prepared by parties which the court was

urged to adopt as consent judgment in the case. The court informed the petitioner that by the nature of the case filed, evidence has to be led in proof of the petition.

The matter was then adjourned to 12th November, 2020. Both the Petitioner and the Respondent were in court. The Respondent indicated that he was not contesting the petition.

The Petitioner then opened her case and testified as PW1 and the only witness. She deposed to a witness deposition of thirteen (13) paragraphs dated 21st September, 2020 which she adopted at trial. The substance and summary of her evidence is that she got married to the Respondent at the Living Faith Church in Ilorin in May 2012. She also stated that herself and the Respondent have lived apart since March 2018 and have mutually agreed to bring the marriage to an end. The marriage certificate between the parties was admitted as **Exhibit P1.**

PW1 further informed the court that both parties are not contesting the dissolution of the marriage and had even prepared a document allowing the parties to peacefully dissolve the marriage. The document titled Peaceful Resolution to Dissolve the marriage having being executed by both the petitioner and respondent was admitted in evidence as **Exhibit P2.**

Counsel to the Respondent did not cross-examine petitioner and with her evidence, the petitioner closed her case.

On the part of the Respondent and as stated earlier, he did not file any answer or process in challenging the petition. The Respondent however sought the leave of court to say some few words which the court granted. The Respondent stated that himself and the petitioner have tried reconciling but that it has not worked; so he prayed the court to grant their wish so that they can move on with their lives.

At the close of the trial, Counsel to both parties briefly addressed the court and they both urged the court to dissolve the marriage contracted in May, 2012 since the parties have been staying apart for over two years now and both have clearly evinced their intention for the marriage to be dissolved.

Having carefully considered the petition, the unchallenged evidence led and the address of counsel, the narrow issue is whether the petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of this petition. It is on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

ISSUE 1

Whether the petitioner has on a preponderance of evidence established/satisfied the legal requirements for the grant of the petition.

I had at the beginning of this judgment stated the claims of the petitioner. Similarly I had also stated that the Respondent despite the service of the originating court process did not file anything or adduce evidence in challenge of the evidence adduced by petitioner. In law, it is now an accepted principle of general application that in such circumstances, the Respondent is assumed to have accepted the evidence adduced by Petitioner and the trial court is entitled or is at liberty to act on the Petitioner's unchallenged evidence. See **Tanarewa (Nig.) Ltd. V. Arzai (2005) 5 NWLR (Pt 919) 593 at 636 C-F; Omoregbe v. Lawani (1980) 3-7 SC 108; Agagu v. Dawodu (1990) NWLR (Pt.160) 169 at 170.**

Notwithstanding the above general principle**,** the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case of **Nnamdi Azikiwe University v. Nwafor (1999) 1 NWLR (Pt.585) 116 at 140-141** where the Court of Appeal per Salami J.C.A. expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence... the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party

upon which the burden lies. **The Supreme Court in Duru v. Nwosu (1989) 4 NWLR (Pt.113) 24** stated thus:

"**…a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a prima-facie case, in which case the trial judge does not have to consider the case of the defendant at all."**

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff or petitioner in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the presence and/or absence of the defendant or respondent. See **Agu v. Nnadi (1999) 2 NWLR (Pt 589) 131 at 142.**

This burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings. Indeed **Section 82 (1) and (2) of the Matrimonial Causes Act** (The Act) provide thus:

1) **For the purposes of this Act, a matter of fact shall be taken to be proved, if it is established to the reasonable satisfaction of the court.**

2) **Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.**

Now in the extant case, the petitioner from her petition seeks for the dissolution of the marriage with respondent on the ground that the marriage has broken down irretrievably and essentially predicated the ground for the petition on that fact that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

It was also further averred as a ground that due to this state of affairs, the Petitioner left the matrimonial home in March 2018 due to constant disagreements with no iota of love and trust in the marriage. It is doubtless therefore that the petition was brought within the purview of **Section 15 (1) (c), (e) and (f) of the Act.** It is

correct that **Section 15(1) of the Act** provides for the irretrievable breakdown of a marriage as the only ground upon which a party may apply for a dissolution of a marriage. The facts that may however lead to this breakdown are clearly categorised under **Section 15(2) (a) to (h) of the Act.** In law any one of these facts if proved by credible evidence is sufficient to ground or found a petition for divorce.

Now, from the uncontroverted evidence of the petitioner and the respondent before the court, I find the following essential facts as established to wit:

1. **That parties got married on the 19th May, 2012 vide Exhibit P1.**

2. **That the Petitioner left the matrimonial home in March 2018.**

3. **That since 2018, a period of over two years now, cohabitation has ceased between the parties.**

4. **That even before Petitioner left the matrimonial home, parties were in constant disagreements with complete absence of love and trust in the marriage.**

5. **That both parties have agreed on their own that the marriage be dissolved as expressed in the jointly prepared document admitted as Exhibit P2.**

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the Respondent who was given all the opportunity of doing so. The law has always been that where evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seize of the proceedings to act on the unchallenged evidence before it. See **Agagu v. Dawodu (supra) 169 at 170, Odunsi v. Bamgbala (1995) 1 NWLR (Pt.374) 641 at 664 D-E, Insurance Brokers of Nig. V. A.T.M Co. Ltd. (1996) 8 NWLR (Pt.466) 316 at 327 G-H.**

This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts. Consequently where a defendant chooses not to adduce evidence, the suit will be

determined on the minimal evidence produced by the plaintiff. See **A.G Oyo State v. Fair Lakes Hotels Ltd. (No 2) (1989)5 NWLR (Pt .121) 255, A.B.U. v Molokwu (2003)9 NWLR (Pt.825) 265.**

Indeed the failure of the Respondent to respond to this petition confirms in all material particulars the fact that the marriage has broken down irretrievably and that they have lived apart now for over two (2) years.

By a confluence of these facts, it is clear that this marriage exists only in name. As stated earlier, any of the facts under Section **15 (2) a-h of the Matrimonial Causes Act**, if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for more than two years show clearly that this marriage has broken irretrievably and parties have no desire to continue with the relationship; this fact alone without more can ground a decree of dissolution of marriage. If parties to a consensual marriage relationship cannot live any longer in peace and with mutual respect for each other, then it is better they part in peace. This clearly is the earnest desire of parties as encapsulated in **Exhibit P2**. The unchallenged petition in the circumstances has considerable merit.

In the final analysis and in summation, having carefully evaluated the petition, the unchallenged evidence of the parties and Exhibit P2 executed by the parties, I accordingly make the following order:

An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on the 19th May, 2012.

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Hon. Justice A.I. Kutigi

Appearances:

1. **C.E. Ezugu, Esq., for the Petitioner.**

2. **C.D. Nwogu, Esq., for the Respondent.**