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

THIS TUESDAY, THE 17TH DAY OF NOVEMBER, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: GWD/PET/4/2020

BETWEEN:

MRS. DORIS EBERE OCHAPA ……PETITIONER

AND

MR. PETER ORINYA OCHAPA .....RESPONDENT

JUDGMENT

By a Notice of Petition dated 10th March, 2020, the Petitioner claims the following Reliefs against Respondent as follows:

1. **A decree of dissolution of the marriage between the Petitioner and the Respondent, the marriage having broken down irretrievably by reason of emotional torture, abandonment and cruelty of the Respondent and both parties having lived apart for a continuous period of 4 years.**

2. **N300, 000 (Three Hundred Thousand) as cost of litigation in favour of the petitioner against the Respondent.**

3. **And such further orders as this Honourable court may deem fit to make in the circumstances of this case.**

The Respondent was duly served with the originating court process and hearing notice on 14th October, 2020. He did not appear in court or file any process in opposition. The law firm of Jeremiah Adamu & Co. only filed a memorandum of

appearance on his behalf dated 20th October, 2020. When the matter came up for trial on 17th November, 2020, counsel for the Respondent informed court that he has the instructions of Respondent not to oppose or contest the petition.

The matter thereafter proceeded to trial. The petitioner testified in person and the only witness. The substance and summary of her unchallenged evidence is that she got married to the Respondent at the Gwagwalada Marriage Registry, Abuja on February 14, 2008 in accordance with the Marriage Act and tendered a copy of the marriage certificate which was admitted as Exhibit P1. That after the wedding they cohabited at Respondent's house at No. 41 J-2 Road Dagiri Gwagwalada, Abuja-FCT.

The petitioner averred that barely seven years into the marriage, the Respondent moved out of the matrimonial home in November 2015 and all efforts at reconciliation has failed. She further stated that since he left the matrimonial home, he has completely abdicated his responsibilities to her as he has completely stopped taking care of petitioner by refusing to provide for her needs. Also that the marriage is devoid of love, care or attention and that the Respondent has stopped having intimacy with her.

The petitioner then urged the court to grant the petition since the marriage has broken down irretrievably and parties have lived apart for nearly four (4) years now and most importantly that the Respondent has since move on with his life. Counsel to the **Respondent** informed court that he was not cross-examining petitioner and with her evidence, the petitioner closed her case.

As stated earlier, the Respondent did not file any defence to the petition and counsel to the Respondent had already indicated that they were not opposing the petition. Parties then chose or elected to address the court orally since the petition was largely unchallenged. Learned counsel to the petitioner then addressed the court urging the court to grant the petition since it is undefended and the marriage on the evidence has broken down with no desire on either side to continue with the relationship. The address forms part of the record of court and I shall where necessary in the course of this Judgment refer to it.

On the other side of the aisle, counsel to the Respondent urged the court to disolve the marriage since parties are not interested in the marriage but that with respect to Relief (2) on cost of action, they are conceding to N50, 000.

Learned counsel to the petitioner then addressed the court urging the court to grant the petition since it is undefended and the marriage on the evidence has broken down with no desire on either side to continue with the relationship. The address forms part of the record of court and I shall where necessary in the course of this Judgment refer to it.

I only wish to briefly state here that the Respondent from the records has had more than ample time to defend this action if he wanted. He never availed himself of the opportunity. The principle appears settled that while the right to be heard is of wide application and great importance in any well conducted proceedings, it is however a right that must be confined within circumscribed limits and not allowed to run wild. See **LONDON BOROUGH OF HOUNSLOW v. TWICKENHAM GARDEN DEVELOPMENT LIMITED (1970) 3 All ER 326 at 347.** A party certainly does not have till eternity to prove or defend any action as the case may be.

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 processes and hearing notices 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 the 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 Respondent left the matrimonial home in November, 2015 and that all efforts at reconciliation has failed and that Respondent has essentially since moved on with his life without Petitioner. 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 petitioner before the court, I find the following essential facts as established, to wit:

1. **That parties got married on 14th February, 2008 vide Exhibit P1.**

2. **That the Respondent left the matrimonial home in November 2015.**

3. **That since 2015, a period of nearly five years now, cohabitation has effectively ceased between parties.**

4. **That the respondent has completely abandoned his responsibilities to her as husband as he has refused to take care of her or provide for her needs and that there is no love in the relationship.**

5. **That he has behaved in an intolerable manner by his actions in leaving the matrimonial home that she cannot any longer live with him in peace and harmony.**

6. **The respondent has since moved on with his life completely independent of the petitioner.**

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 nearly five (5) 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** (supra) if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for up to 5 years show clearly that this marriage has broken down 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 harmony, then it is better they part in peace and with mutual respect for each other. The unchallenged petition on dissolution of the marriage in the circumstances has considerable merit.

Now with respect to Relief (ii) for N300, 000 cost of action, absolutely no scintilla of evidence was adduced by the petitioner to ground or situate this relief. Cost of action is not granted as a matter of course or for sentimental reasons. In law, in fixing the amount of cost, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which she has been necessarily put in the proceedings as well as compensated for her time and effort in coming to court. The court may also take into account all the circumstances of the case.

In this case, this matter is coming up for hearing today and it was concluded with the minimum of delay. The petitioner as already alluded to has not shown in any manner the basis of the cost of action in the sum of N300, 000. Indeed no attempt was even made to show how much was incurred in the filing of this action. There is therefore clearly no basis to situate the huge amount claimed. The concession by Respondents to the sum of N50, 000 as cost of the action appear to me fair and reasonable and sufficient as cost of the extant action.

In the final analysis, and in summation, having carefully evaluated the petition and the unchallenged evidence, I accordingly make the following orders:

1. **An order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on 14th February, 2008.**

2. **I award cost of this action in the sum of N50, 000 payable by Respondent to the Petitioner.**

.....

Hon. Justice A.I. Kutigi

Appearances:

1. **James Idris, Esq., for the Petitioner.**

2. **Jeremiah Adamu, Esq., for the Respondent.**