

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 27TH DAY OF JANUARY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: PET/100/2019

BETWEEN:

ACHONWA OKECHUKWU ALPHONSUS ----- PETITIONER

AND

ACHONWA NNEKA LINDA ----- RESPONDENT

JUDGMENT

By a Notice of Petition, the Petitioner who is a senior citizen petitions this Court for a decree of dissolution of marriage on the grounds that the marriage has broken down irretrievably. The Petitioner is a retired Deputy Director Audit and he got married to the Respondent on the 6/9/2016 at the Bwari Area Council Marriage Registry, and later at the Mountain of Fire and Miracle Ministries Church, North Central Region, Headquarters, Kubwa on the 26/11/2016.

The Notice of Petition was served on the Respondent personally but she elected not to file any process nor cause an appearance to be entered on her behalf.

The Petitioner testified on the 10/11/2020. His testimony is that his marriage with the Respondent has not been consummated as the Respondent made it impossible to happen. She was always very moody and resorted to staying all alone by herself in the room. All advances made by him towards consummation of the marriage proved aborted as the Respondent always rebuffed same. She hardly talks or discuss any issue with the Petitioner. He decided to find out the reason for her behaviour and he found that she used to be a patient at the Yaba Psychiatric Hospital in Lagos. He even took her to Lagos to find a cure for her condition but to no avail. He was always living in fear of the unknown due to the disposition and attitude showed by the Respondent. Cohabitation ceased in 2017 when the Respondent moved to Lagos.

As stated earlier, the Respondent did not challenge the evidence of the Petitioner having chosen to absent herself from the proceedings despite repeated service of hearing notices. The Respondent was eventually foreclosed from cross examination and defence.

At the close of the Petitioners evidence, **Emeka Adele Esq** who appeared for the Petitioner informed the Court that he was waiving his right to address the Court, and urged the Court to proceed to enter judgment for the Petitioner.

From the provision of Section 15(1) of the Matrimonial Cause Act, the only ground upon which a petitioner for the dissolution of a marriage should base his claim, is that the marriage has broken down irretrievably. That is the sole ground required and provided for a party who petitions for dissolution of a marriage under the Matrimonial Causes Act to state. See Ibrahim vs. Ibrahim (2007) 1 NWLR (part 1015) 383. However, the Act in Section 15(2) went ahead to provide factual situations which when proved by the

petitioner to its satisfaction, the Court before which the petition was presented, shall hold that the marriage had broken down irretrievably.

From the clear language of the Act, a petitioner needs or is required to prove any one of the factual situations set out in the provisions for the marriage to be held to have broken down irretrievably. See Damulak vs. Damulak (2004) NWLR (part 874) page 151. It should however be noted the situations set out in the Section are not in themselves grounds for seeking the dissolution of a marriage but rather, factual situations which if proved to the satisfaction of a Court would result in the findings that a marriage has broken down irretrievably; the ground for the dissolution of the marriage. See Adeparusi vs., Adeparusi (2014) LPELR – 41111 (CA).

It is noted that the Petitioner cited lack of consummation under Section 15(2)(a) of the Matrimonial Causes Act. The Section 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:–

(a) That the Respondent has willfully and persistently refused to consummate the marriage;”

To consummate a marriage means to bring to completion, especially to make a marriage complete by sexual intercourse. It means to achieve, to fulfill or to perfect. See **Blacks Law Dictionary Eighth Edition page 335.**

Intimacy through sexual intercourse between a husband and wife constitutes mainly the consummation of the marriage between them, and non consummation of marriage is a ground for divorce. See **Akinbuwa vs. Akinbuwa (1) SMC page 1 at 10.**

It should be noted that what amounts to willful refusal must depend on the facts of the case. Section 21 of the Matrimonial Causes Act is very clear and precise on the duty of the Court in dealing with an allegation of willful and persistent refusal to consummate a marriage. The section provides:

“The court shall not find that a respondent has willfully and persistently refused to consummate the marriage unless the court is satisfied that, as at the commencement of the hearing of the petition, the marriage had not been consummated.”

Once there has been a single act of intercourse between the parties after marriage, there can no longer be any petition based on willful refusal to consummate. See Kuti vs. Kuti (1983) suit No. 1/153/82 High Court of Oyo State.

In coming to a decision that there has been such a willful and persistent refusal, the Court is entitled to consider the entire history of the marriage. It must be shown that the refusal was a conscious and free act of the Respondent. Equally before there can be a refusal there must be a number of requests, direct or implied, and an opportunity to comply with such request must exist. It is trite that the Court is empowered to act on the unchallenged credible evidence of a witness. See Olufunke vs. Adeagbo (1988) 2 NWLR (part 75) page 238, Mohammed vs. Ali (1989) 2 NWLR (part 103) page 349.

The Petitioner testified that he made several advances towards the Respondent for the marriage to be consummated but all were rebuffed by the Respondent. He said the Respondent was always moody and resorted to staying alone in the room. The above testimony of the Petitioner having not been challenged and controverted is capable of belief.

In this instance, I find the evidence led by the Petitioner to be credible and that being the case I am bound to act on it since it is unchallenged and uncontroverted. See Obiozor vs. Nnamua (2014) LPELR - 23041 (CA)

I hold that the Petitioner has established the fact of lack of consummation under Section 15(2)(a) of the Matrimonial Causes Act and I am satisfied that the marriage has broken down irretrievably. Consequently, I Order that a Decree Nisi shall issue dissolving the marriage between the Petitioner and the Respondent contracted at the Bwari area Council Marriage Registry on the 6/9/2016. As there are no children of marriage, it shall become absolute upon the expiration of three months.

Signed

Honourable Judge

Appearances:

Emeka Adele Esq – for the Petitioner

Respondent absent and not represented.