

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 26TH DAY OF JANUARY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: PET/266/2019

BETWEEN:

ANI NNEZE CHIDIMMA ----- PETITIONER

AND

OKONKWO UGOCHUKWU EDWIN ----- RESPONDENT

JUDGMENT

The Petitioner filed an application exparte on the 27/3/2019 seeking for leave to institute a Petition for dissolution of her marriage to the Respondent. The reason for the application was because the marriage was less than two years as at the time Petitioner filed the application. The Court granted the application on the 7/5/2019. The Petitioner filed the Notice of Petition on the 23/5/2019 and service was effected on the Respondent. The Respondent in turn filed an Answer to the Petition on the 4/12/2020 after

seeking leave to so file. The case proceeded to hearing and the Petitioner testified for herself on the 7/12/2020.

The Petitioner, a Legislative Assistant with the National Assembly testified that she got married to the Respondent on the 28/12/2018 at the Holy Trinity Catholic Church Parish, Independence Layout, Enugu State. After the Marriage on that same day, she retired to the Respondents family house in Irnokwe, Enugu Ukwu in Njikoka Local Government Area of Anambra State for the night expecting to consummate the marriage. She made herself willingly available as a wife to the Respondent, but the Respondent refused her conjugal rights saying he was tired and sick. This continued and he kept telling the Respondent to exercise some patience and give him some time. She was perplexed and tried to understand with the Respondent until 4/1/2019. On the 5/1/2019 parties returned to Abuja where they cohabited at Flat 4, Block A7, Zone 2, Tennis Street, Games Village Abuja. Upon returning to the

matrimonial home and hoping the situation will change, the Petitioner made her intentions clear to the Respondent that she wanted to get pregnant and settle down to give birth and raise the children.

Despite the fact that parties slept on the same bed, there was no conjugal relationship between them. All her advances were met with disappointment and she noticed the Respondent did not have erection. On the 10/1/2019 she confronted the Respondent and sought to know the reason for his lack of interest in sex and why he kept turning down all her advances. She demanded that the Respondent makes himself available for medical examination and treatment, but the Respondent refused insisting that he was sexually fine. She stated that the Respondent then insisted that she (Petitioner) followed him to the hospital for IVF if she wanted to get pregnant. The Respondent also informed the Petitioner that his family instructed him to demand for a child from the Petitioner

through IVF, but the Respondent refused. The Petitioner further stated that the Respondent informed her that he is gay and thus not sexually aroused by her as a woman as even his family members are aware of this. The Respondent even told the Petitioner to go ahead and get a female sexual partner that can satisfy her sexual urge. After much drama and arguments due to the refusal of the Petitioner to yield to the demands of the Respondent to undergo IVF and for the Petitioner to engage in Lesbianism, the Respondent told the Petitioner to leave his house. The Petitioner said she left the matrimonial home on the 12/1/2019 and returned to her family home on the 15/1/2019. Thereafter, the Respondent and his family visited the Petitioners family and after much deliberation, the bride price was returned. The Petitioner added that if she stays in the marriage, she will suffer psychological trauma. She prayed this Court to dissolve the marriage.

The Marriage certificate was tendered and marked as Exhibit A, programme of event as Exhibit A1 and Photographs marked as Exhibit A2 rejected.

The Petitioner was not cross examined by Kanayo Okafor Esq, learned counsel to the Respondent who said he had no cross examination for the witness. The Respondent then proceeded to give his testimony as DW1. He denied the allegation of lack of consummation. He also denied being gay. He further stated that he has had several enjoyable moments with the Petitioner, but he had to stop when he suspected the Petitioner of infecting him with sexually transmitted disease, gonorrhoea. He admitted that cohabitation ceased on the 12/1/2019. He also stated that he was not against the grant of dissolution of the marriage.

The Respondent was not also cross examined by the learned counsel for the Petitioner **A.A. Ibrahim SAN**. The learned senior counsel urged the Court to proceed to judgment and dissolve the marriage. This position was

echoed by learned counsel to the Respondent Kanayo Okafor Esq.

Instructively, a petition by a party to a marriage for a decree of dissolution of that marriage may be presented to the Court by either party thereto, upon the ground that the marriage has broken down irretrievably. The Court seized of the petition for a decree of dissolution of a marriage shall adjudge the marriage to have broken down irretrievably upon the petitioner satisfying the Court of one or more of the grounds contained in Section 15(2)(a – h) of the Matrimonial Causes Act. See Akinlolu vs. Akinlolu (2019) LPELR – 47416 (CA).

This Petition is premised on Section 15(2)(a) and (c) of the Matrimonial Causes Act which provides thus:

“(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) that the respondent has willfully and persistently refused to consummate the marriage;

and

(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”

Intimacy through sexual intercourse between a husband and wife constitute the consummation of the marriage between them, and non-consummation of marriage is a ground for divorce under Section 15 (2) (a) Matrimonial Causes Act. By non-consummation of the marriage is meant a situation where since after the marriage or union, there has been no sexual intercourse at

all. It however cannot apply to a situation where there has been consummation even once during the period of cohabitation after the marriage. See Kuti vs. Kuti (1983) suit No. 1/153/82 High Court of Oyo State.

The Court in coming to a decision that there has been such a willful and persistent refusal, is entitled to consider the entire history of the marriage. It must be shown that the refusal was a conscious free act of the Respondent. Before there can be a refusal, there must be a number of requests, direct or implied, and an opportunity to comply with such requests must exist. See the case of Horton vs. Horton (1947) 2 All ER 871.

The Petitioner has testified that there has been no consummation since the inception of the marriage. She narrated how all attempts to get the Respondent to consummate the marriage and all her advances were met with disappointment. From the matrimonial history of the parties, it is clear that the behaviour of the Respondent i.e.

his lack of consummation of the marriage makes it unreasonable for the Petitioner to continue to live with the Respondent.

It is noted that the Respondent denied this allegation by stating that he stopped having intercourse with the Petitioner when he discovered she had Sexually Transmitted Disease (STD). This fact in my view was not proved by credible evidence as no medical record is produced to confirm that the Petitioner was diagnosed with any STD which prompted the Respondent not to have intercourse with her.

Most importantly, the evidence of the Petitioner was not controverted by way of cross examination. The law is long settled that where credible evidence is led by the Petitioner and it is unchallenged and uncontroverted, the Court is bound to act on it. See Obiozor vs. Nnamua (2014) LPELR - 23041 (CA)

The evidence of the Petitioner herein is credible and worthy of belief. I accept same as the truth and find that the marriage between the Petitioner and the Respondent has broken down irretrievably due to lack of consummation pursuant to Section 15(2)(a) of the Matrimonial Causes Act. I hold that the Petition succeeds on this ground.

On unreasonable behaviour, given the wordings of this Section 15 (2)(c), it is clear that the Petitioner who relies on this ground must establish by cogent evidence that it would be unreasonable to require him 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. See Emmanuel vs. funke (2017) LPELR – 43251 (CA)

The Petitioner has testified that the Respondent informed her that if she wants to have children she must

follow him to the hospital to have IVF done to her, and that she can have a female partner to satisfy her sexual urge, and if she was not willing to do any of the above, she should leave his house. This necessitated the Petitioner leaving the matrimonial home.

The Respondent in his Answer did not deny the fact that he asked the Petitioner to leave the matrimonial home neither did he deny the fact that the bride price has been returned to him. I believe the Petitioner when she stated that to stay in the marriage will cause her psychological trauma. I hold that it is unreasonable to expect the Petitioner to continue to put up with the behaviour of the Respondent. The marriage in my view has broken down irretrievably as parties are already living their individual lives. The Respondent did not also oppose the grant of this petition. The fact under Section 15(2)(c) of the Matrimonial Causes Act also succeeds and a decree *Nisi* is hereby 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.

Signed
Honourable Judge

Appearances:

A.A. Ibrahim SAN with him C.A. Uche Esq – for the Petitioner

Kanayo Okafor Esq – for the Respondent