IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 17TH DAY OF FEBRUARY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: PET/033/2017

BETWEEN:

CHINWENDU SHULAMITE MBAZOR ---- PETITIONER

AND

IFEANYI CHRIS MBAZOR ---- RESPONDENT

JUDGMENT

The Petitioner, Chemical Technologist filed this Petition on the 28/11/2017 praying for dissolution of her marriage to the Respondent celebrated at the Marriage Registry, Abakaliki, Ebonyi State on the 25/5/2011 on the grounds that the marriage has broken down irretrievably. The marriage is blessed with one child Chisom Christabel Mbazor born 24/1/2012. The Petitioner has prayed the Court for custody of the child. The fact relied upon by the

Petitioner is living apart for more than 3 years immediately preceding the presentation of the Petition.

The Respondent was served with the Notice of Petition by substituted means to wit: by sending same through his email address and by pasting same on the Notice board of this Court, pursuant to an order of Court made on the 24/1/2018. Despite being served with the originating processes and several hearing notices, the Respondent elected not to file any process before the Court, or appear before the Court throughout the proceedings.

The Petitioner testified on the 27/3/2019. She tendered the certificate of marriage which was admitted and marked as Exhibit A. Her evidence in support of the fact of living apart is that after the marriage, parties cohabited at Police Barracks, Abakaliki, Ebonyi State as the Respondent was a Police Officer. The Petitioner accused the Respondent of infidelity and violence towards her. She reported all the various incidences to her mother in-law

who told her that any decision she wanted to take she should go ahead having tolerated the Respondent for this long. In 2012, the Petitioner said she left the matrimonial home with the only child of the marriage who was then 11 months old. Parties have lived apart since then, and there had been no contest with the Respondent.

The evidence of the Petitioner was not challenged by the Respondent who despite the service of hearing notice did not present any defence nor appear in Court. His right to cross examine PW1 and defend the petition was thus foreclosed.

Now, in order to prove or succeed in the divorce petition, the Petitioner predicated her complaint against the Respondent on living apart for more than 3 years immediately preceding the presentation of this petition. This complaint is situated and cognizable under Section 15(2)(f) of the Matrimonial Causes Act, 1970. The Section provides:

"15(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:

(f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition."

A decree of the dissolution of marriage would only be granted if the Petitioner has proved that the marriage had broken down irretrievably and that the Petitioner has successfully proved one of the facts as provided under Section 15(2) (a – h) of the Matrimonial causes Act. See Olabiwonnu vs. Olabiwonnu (2014) LPELR – 24065 (CA)

The Petitioner has testified that parties lived apart since 2012 and this Petition was filed in 2017 which is a

period of 5 years. It is no wonder the Petitioner has relied on Section 15(2)(f) of the Matrimonial Causes Act.

In Section 15(3) of the Matrimonial Causes Act, it is stated as follows:

> *"For the purpose of subsection (2)(e) and (f) of this section the parties to a marriage shall be treated as living apart unless they are living with each other in the same household."*

Living apart begins to count from the date that one party recognizes and begins to treat the marriage and cohabitation as ended. See Santos v. Santos [1972] Fam. 247, Sullivan v. Sullivan (1958) NZLR 912.

The law behind the Section 15(2)(f) of the Act as far as the living apart is concerned is not interested in right or wrong or guilt or innocence of the parties. Once the parties have lived apart, the Court is bound to grant a decree. See Omotunde vs. Omotunde (2000) LPELR – 10194 (CA).

It is immaterial who has between the parties caused them to live apart as Section 15(2)(f) of the Matrimonial Causes Act does not permit the Court to go into a fault-finding expedition. See Uzochukwu vs. Uzochukwu (2014) LPELR – 24139 (CA), Ibeawuchi vs. Ibeawuchi (1974) UILR (103) 67 and Orugoh vs. Orugoh (1974) 4 UILR (1) 120.

This Court therefore has no other discretion on the matter than to dissolve the marriage pursuant to the provision of Section 15(2)(f) of the Matrimonial Causes Act. Once there is evidence that the parties have lived apart for a continuous period of three years, there is a strong and irrefutable presumption that the marriage has broken down irretrievably. What better evidence can be shown of the complete death of a marriage along with all its responsibility, love and affection than the passing of time, without physical cohabitation? moreso when there is no evidence to the contrary from the Respondent. I hold therefore that the Petition succeeds pursuant to Section

15(2)(f) of the Matrimonial Causes Act. **I therefore order that a decree Nisi for the dissolution of this marriage should issue. It shall become absolute after three months from today.**

The Petitioner has prayed for custody of the only child of the marriage. The Respondent is not contesting custody. The child in question is a minor and female. She is certainly better off with her mother. The law behind issues of custody is the best interest of the child being the paramount consideration. See **Alabi vs. Alabi (2007) 9 NWLR (part 1039) page 305, Odogwu vs. Odogwu (2006) 5 NWLR (part 972).**

Eventhough the Respondent did not file any process before the Court, and bearing in mind the law that access of a child to both parents is a fundamental right of the child, this Court will grant access to the Respondent. In the circumstance, custody of the only child shall remain with

the Petitioner and the Respondent shall have access to the child.

Signed
Honourable Judge

Appearances:

John Brown Adegunsoye Esq with him, Silifa Jimoh Aroke Esq – for the Petitioner

Respondent absent and not represented.