

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 9TH DAY OF MARCH, 2021
BEFORE: HON. JUSTICE M.A NASIR
COURT NO: 9
SUIT NO: FCT/HC/PET/251/2020

BETWEEN:

CHUKWUOCHA EJIKE --- PETITIONER
AND
ADAEZE GLORY EJIKE --- RESPONDENT

JUDGMENT

The Petitioner instituted this action on the 23/3/2020 praying this Court for the following reliefs:

- Decree of dissolution of marriage contracted on the 30/3/2018 at the Port Harcourt Registry having broken down irretrievably.
- An order of perpetual injunction restraining the Respondent from referring herself as the wife of the Petitioner upon the dissolution of the marriage.

The Respondent filed an Answer and Cross Petition on the 18/5/2020 praying for the following reliefs:

- An order compelling the Petitioner to pay the Respondent the sum of N50 Million being general damages for the psychological trauma, loss of self esteem, family embarrassment and stigmatization as a result of the actions of the Petitioner.
- An order compelling the Petitioner to pay N100,000.00 (Hundred Thousand Naira) monthly as maintenance for the Respondent until she remarries.

With issues properly joined, the case was slated for hearing on the 3/12/2020. On that date, **Henry O. Chichi Esq** of counsel to the Petitioner informed the Court that since the Respondent had the same interest as the Petitioner, they were withdrawing the Notice of Petition. The Petition was thus struck out and the Court proceeded with the Cross Petition. The Cross Petitioner Adaeze Glory Ejike an Entrepreneur testified as PW1 and adopted her witness statement on oath on 3/12/2020. She got

married to the Cross Respondent on 30/3/2018 at Redeem Christian Church of God, Province II, Port Harcourt, Rivers State. Upon the application of the Cross Petitioner's counsel the Petition was adjourned to enable the Cross Petitioner put her house in order, on the 26/1/2021, the Cross Petitioner proceeded with her evidence.

Her evidence eventhough scanty and lacking in specifics is that after the marriage, the Cross Respondent engaged in adulterous acts, and all efforts to get him to stop proved abortive. She stated that she was forced out of the matrimonial home by the family members of the Cross Respondent because they never approved of their union which was conducted on a Saturday. That the Cross Respondent's family are members of Seventh Day Adventist (Sabbath) Church. She tried to reconcile with the Cross Respondent but to no avail. Parties have lived apart since 31/10/2018 when the Respondent and his family drove her out of the matrimonial home.

Under cross examination, the witness stated that the Cross Respondent asked her to leave the matrimonial home. That he did not stop her from attending church, as he was not a member of Seventh Day Adventist Church, but his family attended the church. She equally said she had evidence that the Cross Respondent lived an adulterous life, which she said she sent to her lawyer.

At the close of her evidence, the Cross Respondent informed the Court through his counsel that they did not file any defence to the Cross Petition. Both learned counsel waived their right to address the Court. It was at that point that learned counsel for the Cross Petitioner O.O. Otemu Esq moved a motion to amend the Cross Petition to be in line with the evidence. Mr. Chichi did not oppose the application.

By the provisions of Section 15(1) of the Matrimonial Causes Act, a petition under the Act by a party to a marriage, for a decree of dissolution of the marriage may be presented to the Court by a party to the marriage

upon the ground that the marriage has broken down irretrievably. As seen in 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. See Ibrahim vs. Ibrahim (2007) 1 NWLR (part 1015) 383. However, the Act in Section 15(2) provided 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 that 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).

The Cross Petitioner has alleged that the Cross Respondent has committed adultery. Adultery per se will not be a ground for dissolution of marriage, the Petitioner must find it intolerable to live with the Respondent. Both the commission of adultery and the intolerability must be proved. Adultery is essentially an act which can rarely be proved by direct evidence. It is a matter of inference and circumstance. See Ugbotor vs. Ugbotor (2006) LPELR - 7612 (CA), Alabi vs. Alabi (2008) All FWLR (part 418) page 245 at 248. Adultery may also

be established by confessions and admissions between a man and a woman.

It is noted that no person was named in the Cross Petition as being a co - adulterer. In matrimonial proceedings adultery must be proved with some degree of strictness as is required for the proof of a criminal offence in a criminal case. See Ginesi vs. Ginesi (1948) page 179, and there is a presumption of innocence in favour of the opposite party. In this case, there is no direct evidence that the Respondent committed adultery with any person. The Cross Petitioner has failed to prove intolerable adultery as provided for under Section 15(2)(b) of the Matrimonial Causes Act, and I cannot grant her any relief on that ground. The Cross Petition fails on this ground.

The Cross Petitioner has also relied on desertion for one year immediately preceding the presentation of the Petition. By Section 15(2)(d) of the MCA, a court is entitled to hold that a marriage has broken down

irretrievably if a petitioner satisfies the court that the respondent *“has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.”*

Desertion is the separation of one spouse from the other with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. See Oghenevbede vs. Oghenevbede [1973] UILR 104. The Court in the case of Nulley vs. Nulley (1970) 1 All ER page 450, stated that in order to establish the offence of desertion, the Petitioner or Cross Petitioner must prove the physical separation, the intention to remain permanently separated and the absence of the spouses consent and justification. See also Sowande vs. Sowande (1960) LLR page 58.

In desertion cases, it is not necessary to prove the emotional state of the abandoning spouse, but only the intent to breaking off matrimonial ties with no *animus*

revertendi, the intention to return. See Adebisi v. Adebisi [1979] HCLR 154.

If desertion is to succeed as a ground under Section 15(2)(d), there must be convincing evidence of the withdrawal by one party to the marriage, a withdrawal from the matrimonial bond, its duties and its obligations. It is necessary to determine who the deserter is, as it is not always the party who physically moves out of the matrimonial home who is adjudged a deserter, but the party whose action makes the physical withdrawal imperative.

Generally, the law recognises two types of desertion namely; (a) simple desertion and (b) constructive desertion. In simple desertion, it is the guilty spouse who has abandoned the Matrimonial home whilst in constructive desertion, it is the spouse who remains at home who is in desertion, for he has by his conduct expelled the other spouse. See Nanna vs. Nanna (2006) 3 NWLR (part 966) page 46.

Desertion is also a matter of fact and law. It is an undisputed fact that the Cross Petitioner was driven out of the matrimonial home on the 31/10/2018 and parties have lived apart since then. It is settled law that if desertion is to succeed as a ground under Section 15(2)(d), the following elements must be established.

- a. Physical separation,
- b. Intention to remain permanently separated
- c. Absence of spouse consent; and
- d. Absence of any justification.

See Nulley vs. Nulley (1970) 1 All ER page 450.

In the instant petition, it is clear that parties are physically separated and it is obvious that they intend to remain permanently separated as none of the parties object to a decree of dissolution being granted. From the evidence before the Court, the Cross Petitioner was asked to move out of the matrimonial home on the 31/10/2018 because she had a misunderstanding with the Cross Respondent. That the family of the Cross Respondent saw

the misunderstanding as an opportunity to drive the Cross Petitioner out of the matrimonial home. This according to the Cross Petitioner was with the approval and support of the Cross Respondent. And even when the Cross Petitioner returned to the matrimonial home to see if she can make peace, the Cross Respondent refused to accept her back.

The question herein is was the act of separation justifiable? Clearly it was the conduct of the Cross Respondent and his family that gave rise to the present state of affairs. The Cross Respondent's conduct justified why the Cross Petitioner moved out of the matrimonial home.

In the circumstance, I am satisfied that the Cross Respondent had evaded his matrimonial duties, and had brought cohabitation between the parties permanently to an end. His action in this regard amounts to constructive desertion for which I find him guilty. The Cross Petition thus succeeds on the ground of desertion.

Having proved one of the facts grounding the petition which is desertion, it is needless to prove any other fact i.e. unreasonable behaviour. Judgment is thus entered for the Cross Petitioner dissolving her marriage with the Cross Respondent contracted on the 30/3/2018 at Redeem Christian Church of God, Province II, at Port Harcourt, Rivers State.

Since there are no children of the marriage, this Decree Nisi shall become absolute after the expiration of three months.

Hon. Justice M.A. Nasir

Appearances:

Henry O. Chichi Esq – for the Petitioner

O.O. Otemu Esq – for the Respondent