

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 30TH DAY OF MARCH, 2021
BEFORE: HON. JUSTICE M.A. NASIR
COURT NO: 5
SUIT NO: PET/068/2019

BETWEEN:

MR. CHIBIKE NNAEMEKA OJIAKO --- PETITIONER

AND

MRS. CHIDINMA BLESSED ENEMUO --- RESPONDENT

JUDGMENT

Before this Court is a Petition for dissolution of marriage filed by the Petitioner Mr. Chibike Nnaemeka Ojiako. The Petitioner prayed this Court for an order for dissolution of his marriage to the Respondent Mrs. Chidinma Blessed Enemuo on the ground that the marriage has broken down irretrievably pursuant to Section 15(2)(a) of the Matrimonial Causes Act (Lack of consummation). The Respondent was served with the Notice of Petition on the

12/12/2019 but she elected not to file any process in response.

The Petitioner opened his case on the 19/10/2020 and testified as PW1 by adopting his witness statement on oath. The Petition was however adjourned upon the application of the Petitioner's counsel to enable the Petitioner produce the certificate of marriage. On the 19/1/2021, the Respondent was in Court and she told this Court that she was not objecting to the grant of dissolution of the marriage and thus not defending the petition. The certificate of marriage was then tendered by PW1 and marked as Exhibit A. Thus the Petitioner was not cross examined and was discharged accordingly. Learned counsel to the Petitioner **Onyeka Mbakwe Esq** waived his right to address the Court and urged the Court to proceed to enter judgment for the Petitioner in the absence of any defence or objection from the Respondent.

On what a Petitioner alleging that marriage has broken down irretrievably need to show, the provisions of Section 15(2) of the Matrimonial Causes Act, provides that a 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 stated under Section 15(2)(a - h). Failure to prove one of the ingredients contained in Section 15(2) of the Matrimonial Causes Act, the petition will not succeed even where divorce is desired by both parties. See Akinbuwa vs. Akinbuwa (2002) 1 SMC 1 at 10.

The Petitioner has relied on Section 15(2)(a) which states:

“(2)A Court hearing a petition for dissolution of a marriage shall hold the marriage to have broken down irretrievably if but only if the Petitioner satisfies the Court of one of the following facts;

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

Consummation of marriage is the first act of normal and complete sexual intercourse between the parties to a 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**. The law is that 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 (supra)**.

Where this duty is not performed owing to the refusal of one of the parties to succumb to the other party's request to so consummate, section 15(2)(a) provides that the marriage will be held to have broken down irretrievably.

For this subsection to apply, the refusal to consummate must be “willful” and “persistent”. The respondent’s refusal is said to be willful if it is a “settled and definite decision” on his part, consciously arrived at “without just excuse” as was held in the case of Horton v. Horton [1947] 2 All ER 871 at 874. In the case of Hardy vs. Hardy (1964) 6 FLR page 109 at 110, the Court while interpreting Section 28(c) of the Australian Matrimonial Causes Act which is in pari materia with Section 15(2)(a) of the Matrimonial Causes Act in this country held as follows:

“Persistent” in this context is a word which implies continuity and serious to me to be somewhat analogous to the word “repeatedly”, “willful” means in the context the doing of something as a matter of conscious will. The end result of the combination of the two words seems to me that in order to make out a case under Section 28(c) (Section

15(2)(a) of the Nigerian Matrimonial Causes Act) it will be necessary to show that there was a refusal to consummate and that despite a number of requests, the respondents continued to refuse to engage in sexual intercourse with the other spouse.”

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. See Oguntoyinbo vs. Oguntoyinbo (2017) LPELR - 42174 (CA).

It should be borne in mind that mere neglect to comply with a request is not necessarily the same as willful refusal. What amounts to willful refusal must depend on the facts of the case. In such cases where a husband through coyness, frigidity or intervousness refuses to allow intercourse for a considerable period after the marriage, the wife would not be entitled to say that her husband had been guilty of

willful refusal within the meaning of the law until at least she had successfully brought to bear such tact, persuasion and encouragement as an ordinary wife would use in the circumstance. See Horton vs. Horton (supra), Baxter vs. Baxter (1947) 3 All ER page 187, Akinbuwa vs. Akinbuwa (cited supra).

The evidence of the Petitioner is that he got married to the Respondent on the 31/5/2018 at the Federal Marriage Registry, Area 10, Garki, Abuja under the Marriage Act. Parties cohabited at House 22, Drive 1, Sector F, Lugbe, Abuja. During that period of cohabitation, the Petitioner stated that the marriage was never consummated. Anytime he (the Petitioner) made attempts to initiate sexual intimacy with the Respondent, she will rebuff his advances. He said to even obtain a kiss from the Respondent was a tug of war. In an attempt to have consensual intimacy, the Petitioner has often times tried to discuss the issue with the

Respondent. However, the Respondent will always come up with one excuse or the other including giving the Petitioner conditions for sexual intimacy. Some of which are; that he must first secure an employment for her, he must get a 2 bedroom flat because she was not comfortable in the 1 bedroom flat they were occupying.

On the 23/3/2019 the Respondent packed her belongings and left the matrimonial home to an unknown destination.

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. What the section enjoins the Petitioner to do is to show to the satisfaction of the Court that as at the commencement of hearing, consummation has not taken place between the parties.

The Petitioner in his evidence stressed the point that there has been no consummation after the marriage despite repeated attempts by him. 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.

The Petitioner herein has done all that is needed of any reasonable man. I find his evidence to be credible and that being the case I am bound to act on it. This is *moreso*, as the evidence of the Petitioner is unchallenged and uncontroverted. See Obiozor vs. Nnamua (2014) LPELR – 23041 (CA) 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.

Thus, I am satisfied that the Petitioner has successfully proved the irretrievable break down of the marriage pursuant to Section 15(2)(a) of the Matrimonial Causes Act. I hereby grant a Decree Nisi dissolving the marriage between the Petitioner and the Respondent celebrated at the Federal Marriage Registry, Area 10, Garki, Abuja on the 31/5/2018. The decree nisi shall become absolute upon the expiration of three months.

Hon. Justice M.A. Nasir

Appearances:

Onyeka Mbakwe Esq – for the Petitioner

Respondent in Court.