IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 4TH DAY OF FEBRUARY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: PET/223/2018

BETWEEN:

MR. SHU'AIBU YAYOCK ---- PETITIONER

AND

MRS. EVELYN NKECHI YAYOCK ---- RESPONDENT

JUDGMENT

Mr. Shu'aibu Yayock petitions this Court for decree of dissolution of his marriage to the Respondent on the grounds that the marriage has broken down irretrievably pursuant to Section 15(2)(c) of the Matrimonial Causes Act which provides:

"A 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 that:

"(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."

The Petitioner an Estate Manager got married to the Respondent on the 29/7/2006 at the Abuja Municipal Area Council (AMAC) Marriage Registry. The marriage is blessed with two children, Shu'aibu Yayock Jnr born on 21/7/2012 and Jada Yayock born on 6/7/2014.

The Petitioner testified on the 19/3/2019 and tendered the marriage certificate as Exhibit A. The Petitioner was duly cross examined by learned counsel to the Respondent and the case adjourned for defence. On the 1/12/2020 when the case came up for defence, learned counsel to the Respondent **D.J. Munir Esq** informed the

Court that the Respondent did not file an Answer to the Petition and she accepts the Petition in good faith. Learned counsel also informed the Court that the Respondent was not defending the Petition as parties have agreed and signed terms of settlement as it relates to the children of the marriage. He urged the Court to adopt the terms of settlement as part of its judgment in this petition.

Abubakar I. Kolawole Esq who appeared for the Petitioner consented to the terms of settlement and adopted same before the Court. He also urged the Court to adopt same as part of its judgment.

"Unreasonable behaviour" is the term used to describe the fact that a person has behaved in such a way that their partner/spouse cannot reasonably be expected to live with them. It is important to understand there is no definitive list of unreasonable behaviours used in divorce petitions. It could be one or two serious incidents, to many more petty

issues. The behaviour means more than a state of affairs or state of mind. It imports action or conduct by one spouse which affects the other. The conduct or act must be such that a reasonable man cannot endure. On what is reasonable, the Court must consider in totality the matrimonial history. See Ash vs. Ash (1972) 2 WLR page 347.

There are two limbs to the provision of section 15(2) (c) of the MCA. The petitioner must prove firstly that the respondent has behaved in a particular manner. Secondly, the court has to consider whether, in the light of the respondent's conduct, it will be reasonable to expect the petitioner to continue to live with the respondent. In other words, this provision embodies both the objective and subjective elements of evaluation.

The evidence of the Petitioner in relation to this ground relied upon under Section 15(2)(c) is that the Respondent

consistently bickered about finances from the inception of the marriage despite knowing that his finances could not meet up with her demands. He stated that he lost his paid employment in 2007, however he got a political appointment as Senior Special Assistant to the Niger State Governor in 2009. The appointment was terminated after two years. The Respondent spent 6 months in the USA with the Petitioners mother and by the time they returned in December, 2012 things became very tight financially for the Petitioner. By 2013 he was without a job and the Respondent made life unbearable for him by raining insults and abuses on him at the slightest opportunity. PW1 further stated that the Respondent kept up with the abusive attitude and when the house became unbearable to the Petitioner he left in 2013 with his mother to Kaduna.

In 2013, the Respondent informed him that she was filing for divorce and that her lawyer will get in touch with him. The Respondent went and got a second IVF without

the Consent of the Petitioner and she gave birth to the second child without his knowledge. It was his friend who informed him of the naming ceremony. Upon his enquiry, the Respondent told him that she got pregnant through IVF and that because they are still married, the child belonged to him. In 2015, after much persuasion from friends and family, he reluctantly gave the Respondent a second chance and returned to the matrimonial home.

After his return, the Respondent started picking money out of his pocket without his knowledge. He narrated an incident that took place on Friday, 21/8/2015 when he was invited to the Police station where he was informed that the Respondent had made a report at the Station that she did not know what he was doing in Abuja and that he was planning to kill the Respondent. He stated that the conduct of the Respondent will eventually have negative effects on his mental health.

Under cross examination, the Petitioner confirmed that parties have lived apart for more than 4 years.

The law has since been settled that where evidence is unchallenged only a minimal proof is required of the person upon whom the burden of proof lies. See **Garba & 2 Ors. vs. Zaira (2005)17 NWLR (Part 953) at 55.**

The Respondent having been given ample opportunity to rebut or challenge the assertion of the Petitioner failed to utilize same and is therefore deemed to have accepted the testimony as correct. This Court is thus entitled to act on such unchallenged evidence.

In the case of **Ajidahun vs. Ajidahun (1) SMC page 37, Suleiman Galadima JCA** had this to say:

> *"The positive evidence given by the Respondent in support of her divorce petition was not challenged or contradicted by the appellant who was given opportunity to do so. The learned trial judge was*

right to act on the unchallenged evidence before him."

The conduct of the Respondent to wit; having a child through IVF without the consent of the Petitioner and despite his accommodating her behaviour by returning to the matrimonial home, the Respondent did not bulge. Her action culminated in the report she made to the Police that the Petitioner was going to kill her. I believe the Petitioner when he stated that this will negatively affect his mental health. I am satisfied that the behaviour of the Respondent is so grave and weighty that the Petitioner is not reasonably expected to continue to live with. I hold that the marriage between the parties has broken down irretrievably under Section 15(2)(c) of the Matrimonial Causes Act.

Besides this, there is evidence to the effect that parties have lived apart since 2015 to 2018 when this petition was filed, which is a period of 3 years immediately preceding

the presentation of this petition. This is a ground for dissolution pursuant to Section 15(2)(f) of the Matrimonial Causes Act.

Accordingly, once it is clear that the parties have lived apart for the statutory 3 years the fault of the party who created the situation that necessitated the living apart, is irrelevant. Obviously, the object of Section 15(2)(f) of the Matrimonial Causes Act, is to put an end to a state of affairs where a marriage has been deprived of all its substance, leaving only the empty shell – a marriage only in name. In such cases, social considerations make it contrary to public policy to insist on maintaining a marriage which has infact completely broken down and there is no likelihood that cohabitation would ever be resumed. See Oyenuga vs. Oyenuga (1977) 3 CCHCJ page 395, Ibeawuchi vs. Ibeawuchi (1973) 3 ECSLR page 56.

On the issue of the children of the marriage, parties have freely and mutually consented to Terms of Settlement and duly adopted same before this Court by their respective counsel. The terms shall therefore receive the blessing of the Court and same will be adopted as part of the judgment of the Court. In the circumstance, it is further ordered as follows:

"1. The parties shall maintain their separate homes as has existed in the last 3 years.

2. *The children of the marriage, Yayock Jnr. Born on 21/7/2012 (6 years old) and Jada Yayock born on 6/7/2014 (4 years old) are to remain in the custody of their mother, Evelyn Nkechi Yayock until they are of age.*

3. *That while the kids are in the custody of their mother, the responsibility for their schooling including payment*

of school fees and buying of school items shall rest with their father, the Petitioner. (Shuaibu Yayock)

4. *That the feeding of the kids and their upkeep shall be the responsibility of their mother.*
5. *That both parents shall have access to the kids at all times with particular arrangement that they shall reside with their mother while school is in session and shall spend their holidays with their father.*
6. *In addition to the above, the Petitioner shall be allowed to visit the kids in their mum's place at reasonable hours of the day.*
7. *That where the kids are of age, they shall have right to choose where to stay per time either with their mum or their dad.*
8. *That due to irreconcilable differences which the intervention of family members, friends and pastors*

could not resolve, the parties will not continue with the marriage.

9. *That these terms be made the judgment of the Court before which the petition is pending."*

On the final note the requirement of Section 15(2)(c) and (f) having been fulfilled, I hold that the marriage has broken down irretrievably and I grant a decree nisi dissolving the marriage. The decree nisi shall become absolute upon the expiration of three months.

Signed
Honourable Judge

Appearances:

Friday O. Abu Esq with him James Ogenyi Esq – for the Petitioner

D.J. Muniru Esq – for the Respondent with him Ojo Ikimi Esq