

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 2ND DAY OF FEBRUARY, 2021
BEFORE: HON. JUSTICE M.A NASIR
COURT NO: 9
SUIT NO: FCT/HC/PET/43/2016

BETWEEN:

MR. KUNLE LAKANU --- PETITIONER

AND

MRS. EMMA WINIFRED LAKANU --- RESPONDENT

JUDGMENT

The Petitioner who is a contractor by occupation petitions this Court for the following reliefs:

“1. A decree of dissolution of marriage between the Petitioner and the Respondent on ground that the marriage has broken down irretrievably and that the Respondent deserted the Petitioner for a continuous period of more than 3 years immediately preceding the commencement of this petition.

2. *An order of this Court mandating the Petitioner and the Respondent to bear equal responsibilities for the upkeep and maintenance of the children.*
3. *An order of this Court maintaining the status quo of the custody of the children, with their paternal grandparent at the family house No. 2A, Akin Lakanu Close, Off Adeniyi Road, Ikeja Lagos; where they have been living since they were born; and granting the Petitioner and the Respondent an access to the children of the marriage at all times.”*

The Petitioner in his testimony stated that he got married to the Respondent on the 22/2/2001 at the Agege Local Government Marriage Registry, Lagos State. The marriage is blessed with 4 children. Parties cohabited at the Petitioner's family house until 2007 when cohabitation ceased between them. The circumstances in which cohabitation ceased between them is that sometime in 2007 things became very tight for the Petitioner financially and he could not meet up with the

family needs. He therefore left Lagos for Abuja in search of greener pastures. He made sure that he kept constant communication with the Respondent and the children. According to him, the Respondent became increasingly frustrated with all his efforts.

By April 2007, the Petitioner secured accommodation for himself and invited the Respondent to come and know the place before bringing the children. The Respondent stayed for just one night and left the following day stating that she could not bring the children to live in such poor environment. In May 2007, he travelled to Lagos only to discover that the Respondent had packed her belongings and left the matrimonial home leaving the children behind with his aged parents. All efforts to get the Respondent to return to the matrimonial home proved abortive. She outrightly told him that she was no longer interested in the marriage.

The Petitioner was cross examined by R.A.Oluwa Esq who appeared for the Respondent on that date.

The Respondent filed a motion to put in her Answer to the Petition out of time, but the motion was never moved before the Court.

After several adjournments, the Respondent was foreclosed from defence and D.A. Momoh Esq of counsel to the Petitioner urged the Court to proceed to judgment waiving his right to address the Court.

The Matrimonial Causes Act has made provisions guiding dissolution of marriage contracted under the Marriage Act. It provides in Section 15(1) as follows:

“A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented by either party to the marriage upon the ground that the marriage has broken down irretrievably”.

In Section 15(2) it provides:–

“The 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 of one or more of the following facts -

- a) that the respondent has willfully and persistently refused to consummate the marriage;*
- b) that since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;*
- 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;*
- d) that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;*
- e) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;*

- 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;*
- g) that the other party to the marriage has, for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under this Act;*
- h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.”*

In Section 15(3), the Act provides that:–

“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.”

From the foregoing provisions of the Matrimonial Causes Act, it is deducible that either party to a marriage contracted under the Marriage Act may present a petition

to the Court for dissolution of the marriage on the general ground that the marriage has broken down irretrievably. The Court seized of the petition shall hold the marriage has broken down irretrievably if the Petitioner is able by the evidence adduced satisfy the Court with regard to one of the facts set out under Section 15(2)(a – h) of the Act. Where he/she is unable to satisfy the Court as to the existence of at least one of the facts, the Court will dismiss the petition notwithstanding the desire of either or both parties to opt out of the marriage. See Ekerebe vs. Ekerebe (1999) 3 NWLR (part 569) page 514.

With regards to the standard of proof required of the Petitioner, the Matrimonial Causes Act in Section 82(1) and (2) requires evidence in reasonable satisfaction of the Court. The Section provides:

“82(1) For the purpose of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.”

The Petitioner in this instance premised the petition on the fact of living apart pursuant to Section 15(2)(f) of the Matrimonial Causes Act. There is evidence that parties have lived apart since May 2007, when the Petitioner travelled to Lagos only to discover that the Respondent had packed her belongings and gone. The Court in the case of *Pheasant v. Pheasant [1971] 1 All ER 587* held that separation or living apart *“is undoubtedly the best evidence of breakdown and the passing of time, the most reliable indication that it is irretrievable”*. Once living apart has been established, divorce becomes the only option even for the Court, as there is no discretion in the matter. The fault of the party is not to be

considered at this stage. See *Agunwa vs. Agunwa & anor (1972) 2 ECSR page 20 at 22.* In my considered view the evidence herein adequately satisfied the provisions of Section 15(2)(f) of the Matrimonial Causes Act.

I hold that the marriage between the Petitioner and the Respondent has broken down irretrievably pursuant to Section 15(2)(f) and I direct that a decree nisi shall issue for its dissolution which shall become absolute after the expiration of three months.

The Petitioner has prayed for an order mandating both parties to bear equal responsibilities for the upkeep and maintenance of the children. It is noted that three of the children namely Oluwaseun Lakanu, Modupeoluwa Lakanu, and Oluwalayomi Lakanu are adults while the last child is still a minor. The law is that every child has a right to survival and maintenance by his parents according to his or her means. It behoves on the parties to take full responsibility for their upkeep and maintenance notwithstanding the fact that the

relationship between the parties have become estranged. I have no hesitation therefore in granting this relief. In the circumstance, it is hereby ordered that both parties shall bear equal responsibilities for the upkeep and maintenance of their children.

The Petitioner has also prayed for an order that the status quo of the custody of the children be maintained i.e. for custody to remain with the parents of the Petitioner and access granted to the Petitioner and the Respondent. I notice that during cross examination the Petitioner testified that the status quo as it relates to the children is not rigid. The children choose where to stay and when to stay. There is no dispute between the parties as to who has custody.

The evidence is that the children have been living with the Petitioner's parents. The three of them who are now adults can decide on where to stay. The order for custody shall only apply to the last child i.e. Oluwasegun Lakanu who is still a minor. I hold therefore that custody

of Oluwasegun Lakanu shall remain with his paternal grandparents residing at No. 2A, Akin Lakanu Close, off Adeniyi Road, Ikeja Lagos.

Signed
Honourable Judge

Appearances:

D.A. Momoh Esq – for the Petitioner

R.A. Oluwa Esq – for the Respondent.