IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS MONDAY, THE 15TH DAY OF FEBRUARY, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

PETITION NO: PET/315/2019

BETWEEN:

MR JULIUS EMETU .... PETITIONER

AND

MRS. GRACE NWANE EMETU …………………….. RESPONDENT

JUDGMENT

By a Notice of Petition dated 2nd July, 2019, the Petitioner claims the following Relief against the Respondent:

1. **A Decree of this Honourable Court ordering the dissolution of the marriage on the ground that the marriage has broken down irretrievably, that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, especially on the grounds that the Respondent have abandoned the Petitioner since 2010.**

From the Record, the originating petition together with hearing notice was served on Respondent by substituted means on 19th November, 2020 vide proof of service filed by the bailiff of court on the same date.

The matter came up on 21st January, 2021 for Report of Service and the matter was adjourned till today the 15th day of February, 2021 for hearing. Hearing notice was again served on Respondent on 10th February, 2021 vide proof of service filed by bailiff of court on the same date. There was no response of any kind by the Respondent. The matter then proceeded to trial. The Petitioner opened his case and testified as PW1 and the only witness. He deposed to a witness deposition dated 3rd July, 2019 which he adopted at the Hearing. He similarly further gave oral evidence to the effect that he got married to the Respondent on 19th December, 1996 at Ebem, Ohafia, Ohafia Local Government Area, Abia State. The marriage blessing certificate issued by Presbyterian Church of Nigeria and the marriage certificate issued under the Marriage Act were admitted as **Exhibits P1** and **P2**.

PW1 stated that after the marriage, parties moved to the United States where they cohabited until sometime in 2009 when Respondent got a job at Diamond Bank in Nigeria and relocated back home despite the objections of Petitioner. The marriage is blessed with three (3) kids who are now in college.

PW1 stated further that since the wife/respondent relocated to Nigeria, all his efforts to get her to come back to the U.S. has failed and that indeed all attempts to reconcile both parties did not bear any fruit. That it is now getting to ten (10) years since parties started leaving apart and he does not even know her whereabouts or where she now lives in Nigeria. The petitioner accordingly wants the marriage dissolved since parties have continuously lived apart for a very extended period.

With the evidence of PW1, the right of Respondent to cross-examine him was foreclosed and petitioner was discharged. The right to defend was similarly foreclosed since no defence was filed or issues joined by Respondent on the petition.

Learned counsel to the petitioner sought leave of court to address orally which the court granted. His address which forms part of the Record of court is basically to the effect that parties have live apart for a period of nearly ten (10) years preceeding the presentation of the petition which under the provision of Section 15 (f) of the Matrimonial Cause Act is sufficient to ground a successful petition for dissolution of marriage.

Having carefully considered the petition, the unchallenged evidence led and the address of counsel, the narrow issue is whether the petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of this petition. It is on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

ISSUE 1

Whether the petitioner has on a preponderance of evidence established/satisfied the legal requirements for the grant of the petition.

I had at the beginning of this judgment stated the claims of the petitioner. Similarly I had also stated that the Respondent despite the service of the originating court process and hearing notices did not file anything or adduce evidence in challenge of the evidence adduced by petitioner. In law, it is now an accepted principle of general application that in such circumstances, the Respondent is assumed to have accepted the evidence adduced by Petitioner and the trial court is entitled or is at liberty to act on the Petitioner's unchallenged evidence. See **Tanarewa (Nig.) Ltd. V. Arzai (2005) 5 NWLR (Pt 919) 593 at 636 C-F; Omoregbe v. Lawani (1980) 3-7 SC 108; Agagu v. Dawodu (1990) NWLR (Pt.160) 169 at 170.**

Notwithstanding the above general principle**,** the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case of **Nnamdi Azikiwe University v. Nwafor (1999) 1 NWLR (Pt.585) 116 at 140-141** where the Court of Appeal per Salami J.C.A. expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence... the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party

upon which the burden lies. **The Supreme Court in Duru v. Nwosu (1989) 4 NWLR (Pt.113) 24** stated thus:

"…a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a prima-facie case, in which case the trial judge does not have to consider the case of the defendant at all."

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff or petitioner in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the presence and/or absence of the defendant or respondent. See **Agu v. Nnadi (1999) 2 NWLR (Pt 589) 131 at 142.**

This burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings. Indeed **Section 82 (1) and (2) of the Matrimonial Causes Act** (The Act) provide thus:

1) **For the purposes 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.**

Now in the extant case, the petitioner from his petition seeks for the dissolution of the marriage with respondent on the ground that the marriage has broken down irretrievably and essentially predicated the ground for the petition on that fact that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

It was also further averred as a ground that the Respondent left the matrimonial home in the U.S. in 2010 and relocated back to Nigeria and that since she left, cohabitation ceased between parties. It is doubtless therefore that the petition was brought within the purview of **Section 15 (1) (c), (e) and (f) of the Act.** It is

correct that **Section 15(1) of the Act** provides for the irretrievable breakdown of a marriage as the only ground upon which a party may apply for a dissolution of a marriage. The facts that may however lead to this breakdown are clearly categorised under **Section 15(2) (a) to (h) of the Act.** In law any one of these facts if proved by credible evidence is sufficient to ground or found a petition for divorce.

Now, from the uncontroverted evidence of the petitioner before the court, I find the following essential facts as established to wit:

1. **That parties got married on 21st December, 1996 vide Exhibits P1 and P2.**

2. **That parties cohabited in Ohio, United States of America from 1996 - 2010.**

3. **That the Respondent left the matrimonial home in 2010 and parties have since then lived apart.**

4. **That since 2010, a period of nearly 10 years now, cohabitation has ceased between the parties.**

5. **That even before Respondent left the matrimonial home, her conduct was provocative and intolerable.**

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the Respondent who was given all the opportunity of doing so. The law has always been that where evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it. See **Agagu v. Dawodu (supra) 169 at 170, Odunsi v. Bamgbala (1995) 1 NWLR (Pt.374) 641 at 664 D-E, Insurance Brokers of Nig. V. A.T.M Co. Ltd. (1996) 8 NWLR (Pt.466) 316 at 327 G-H.**

This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts. Consequently where a defendant chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G Oyo State**

v. Fair Lakes Hotels Ltd. (No 2) (1989)5 NWLR (Pt .121) 255, A.B.U. v Molokwu (2003)9 NWLR (Pt.825) 265.

Indeed the failure of the Respondent to respond to this petition confirms in all material particulars the fact that the marriage has broken down irretrievably and that they have lived apart now for over ten (10) years.

By a confluence of these facts, it is clear that this marriage exists only in name. As stated earlier, any of the facts under Section **15 (2) a-h of the Matrimonial Causes Act**, if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for more nearly ten (10) years show clearly that this marriage has broken down irretrievably and parties have no desire to continue with the relationship; this fact alone without more can ground a decree of dissolution of marriage. If parties to a consensual marriage relationship cannot live any longer in peace and with mutual respect for each other, then it is better they part in peace. This clearly appears to be the earnest desire of parties if viewed from the extended period parties have continuously lived apart. The unchallenged petition in the circumstances has considerable merit.

In the final analysis and in summation, having carefully evaluated the petition, the unchallenged evidence of the Petitioner, I accordingly hereby make the following order:

An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on 21st December, 1996.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Kalat Dale Bagaiya, Esq., for the Petitioner.**