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

THIS TUESDAY, THE 16TH DAY OF FEBRUARY, 2021.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: GWD/PET/18/2020

BETWEEN

MR OKECHUKWU JOEL EMEJURU .....PETITIONER

AND

MRS. ADAORA CYNTHIA EMEJURU …….RESPONDENT

JUDGMENT

By a Notice of Petition dated 14th December, 2020, the petitioner claims the following Relief against Respondent as follows:

a. **A Decree of Dissolution of the marriage on the ground that since the marriage, the Respondent has been an irresponsible woman and always rains insults on the Petitioner in the midst of strangers and family members. And the Petitioner cannot reasonably be expected to live with the Respondent who is always abusive and violent to the Petitioner at the hit of little quarrels.**

From the records of court, the originating process was duly served on the Respondent. When the matter came up on 16th February, 2021, learned counsel to the Respondent Lucky Ijebor informed the court that he has the instructions of the

Respondent not to contest the petition and that the court should grant the prayer of the petitioner and dissolve the marriage.

Since the Respondent was present in court, I decided to hear from her. She indicated that she was no more interested in the marriage and equally wanted the marriage to be dissolved.

The Petitioner then opened his case and testified as PW1 and the only witness. He deposed to a witness deposition of twelve (12) paragraphs filed on 14th December, 2020 which he adopted at trial. The substance and summary of his evidence is that he got married to the Respondent at the Gwagwalada Marriage Registry, FCT – Abuja on 10th January, 2017. The marriage certificate between the parties was admitted as **Exhibit P1.**

PW1 stated that after the marriage, the Respondent became difficult and hostile and barely a year into the marriage, she left the matrimonial home on 10th January, 2018 and all efforts from family members and friends to resolve whatever differences that exists and for her to return home failed. He stated that both parties are clearly not interested in the marriage and want it dissolved.

Counsel to the Respondent did not cross-examine petitioner and with his evidence, the petitioner closed his case.

On the part of the Respondent and as stated earlier, she did not file any answer or process in challenging the petition. She had however already indicated that she was not opposing the petition and wanted the marriage dissolved.

At the close of the trial, Counsel to both parties briefly addressed the court and they both urged the court to dissolve the marriage contracted in January 2017 since the parties have been staying apart for over two years now and both have clearly evinced their intention for the marriage to be dissolved.

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 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 the 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 due to this state of affairs, the Respondent left the matrimonial home in January 2018 due to constant disagreements with no iota of love and trust in the marriage. 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 the 10th January, 2017 vide Exhibit P1.**

2. **That the Respondent left the matrimonial home in January 2018, barely a year into the marriage.**

3. **That since 2018, a period of over two years now, cohabitation has ceased between the parties.**

4. **That even before Respondent left the matrimonial home, parties were in constant disagreements with complete absence of love and trust in the marriage.**

5. **That both parties have agreed that the marriage be dissolved.**

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 two (2) 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 than two years show clearly that this marriage has broken 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 is the earnest desire of parties as expressed in uncertain terms by the parties themselves in court. 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 and the Response of Respondent and her counsel, I accordingly make the following order:

An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on 10th January, 2017.

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Hon. Justice A.I. Kutigi

Appearances:

1. **C.E. Ezugwu, Esq., for the Petitioner.**

2. **Lucky Ijebor, Esq., for the Respondent.**