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

THIS WEDNESDAY, THE 27TH DAY OF JANUARY, 2021.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

PETITION NO: PET/040/2019

BETWEEN:

MR SAMUEL AYOKUNLE OLORUNFEMI ……PETITIONER

AND

MRS ROSEMARY OLUWAKEMISOLA OLORUNFEMI ...RESPONDENT

JUDGMENT

By a Notice of Petition dated 5th November, 2019 and filed same date in the Court's Registry, the Petitioner claims the following Reliefs against the Respondent as follows:

1. **A Decree of judicial dissolution of marriage the celebration of which the Petitioner and the Respondent went through at the Marriage Registry and Evangelical Church of Yahweh both at Lokoja, Kogi State on the 1st and 2nd March, 2013 respectively and for which marriage certificate was issued to them on that date under the coordination of the Registrar and the Church Minister. The dissolution is sought on the ground of abandonment for a very long period of time and desertion of matrimonial home which occasioned exceptional hardship and depravity as specified above and for emphasis that:**

   a. **The said marriage has broken down irretrievably.**

b. That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

c. The Respondent has willingly deserted and abandoned her matrimonial home.

The Respondent was duly served with the originating court process and hearing notice. When the matter came up in court on 9th December, 2021, the Respondent appeared and informed court that she does not have a lawyer and that she was still interested in the marriage even if the petitioner had indicated that he has no interest whatsoever in the relationship.

The court in the interest of justice adjourned the matter to 27th January, 2021 to enable Respondent:

1. Get a lawyer if she wanted to contest the petition and

2. Situate whether parties can work on their differences and the marriage.

When the matter came up today 27th January, 2021, Respondent again did not appear with a lawyer but she indicated that efforts at settlement of their differences has failed and that she was not opposed to the marriage been dissolved.

The petitioner in proof of the petition as required by the Matrimonial Causes Rules testified as PW1 and the only witness. The substance and summary of his evidence is that he got married to the Respondent under the Marriage Act on 1st and 2nd March 2013 at the state Secretariat Marriage Registry Lokoja, Kogi State and that the celebration of the marriage took place at the Evangelical Church of Yahweh also at Lokoja, Kogi State. The marriage certificate issued to parties dated 2nd March, 2013 was admitted in evidence as Exhibit P1.

PW3 stated that since the marriage with Respondent, he has never enjoyed the marriage and that a lot of things happened in the marriage which destroyed the peace of their home and all efforts to make the marriage work failed which culminated in the Respondent leaving the matrimonial house on 8th May, 2014 and that since then, they have lived apart. He stated that they had issues relating to the failure of Respondent to conceive and when they saw a Doctor, they were

informed that the Respondent was alright and that he had issues with his sperm count. That on hearing that, the Respondent left the matrimonial home and has not come back.

The Petitioner then urged the court to grant the petition since the marriage has completely broken down irretrievably and parties have lived apart for nearly seven (7) years now and most importantly, that the Respondent has since moved on with her life.

The Respondent indicated that she was not going to cross-examine Petitioner and urged the court as stated earlier to grant the divorce. The Petitioner then closed his case. The Respondent then reiterated her position that she had nothing to urge in defence and that the petition be granted.

Learned counsel to the petitioner then addressed the court urging the court to grant the petition since it is undefended and the marriage on the evidence has broken down with no desire on either side to continue with the relationship. The address forms part of the record of court and I shall where necessary in the course of this Judgment refer to it.

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 processes and hearing notices did not file anything or adduce evidence in challenge of the evidence adduced by petitioner. Indeed on the Record, the Respondent clearly indicated that she was not opposing the grant of the petition. 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 his case on a balance of probability by providing credible evidence to sustain his 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 May 2014 and that all efforts at reconciliation has failed and that Respondent has essentially since moved on with her life without Petitioner. 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 2nd March, 2013 vide Exhibit P1.**

2. **That the Respondent left the matrimonial home on 8rh May, 2014 as a result of issues relating to her failure to conceive which led them to see a Doctor where they were informed that she was alright and that the petitioner has problems with his sperm count.**

3. **That since 2014, a period of over seven (7) years now, cohabitation has effectively ceased between parties.**

4. **That the Respondent has completely abandoned her responsibilities to him as a husband and that there is no love in the relationship.**

5. **That she has behaved in an intolerable manner by her actions in leaving the matrimonial home over matters relating to her failure to get pregnant.**

6. **That Respondent has since moved on with her life completely independent of the Petitioner.**

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 seven (7) 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 up to seven (7) 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 harmony, then it is better they part in peace and with mutual respect for each other. Indeed since from the Record, it is the mutual consensus of both parties that the marriage be dissolved despite the ample time given to them to see if the marriage can be salvaged, then it is better for the court to defer to their wishes and grant the petition. The unchallenged petition in the circumstances has considerable merit.

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

1. **An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on the 2nd March, 2013.**

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Hon. Justice A.I. Kutigi

Appearances:

1. **E.A. Babatunde, Esq., for the Petitioner.**

2. **Respondent appeared in person.**