

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 32
CASE NUMBER: SUIT NO. FCT/HC/PET/306/19
DATE: 25/FEBRUARY, 2021

BETWEEN:

MICHAEL NKEMBUCHI EZURUONYEPETITIONER

AND

NKECHINYERE IRENE EZURUONYE.....RESPONDENT

APPEARANCE

Mary Ogiri Esq holding brief of Adedayo Adedeji Esq for the Respondent.

Confidence .O. Igboanugo Esq for the Petitioner.

JUDGMENT

The Petitioner Michael Nkembuchi Ezuruonye, by an amended Petition dated 30th day of October, 2020 filed same day, Petitions this Honourable Court for a decree of dissolution of marriage against the Respondent Nkechinyere Irene Ezurounye.

The ground for the Petition is that the marriage has broken down irretrievably because the parties have lived apart for a period of more than two (2) years immediately preceding the presentation of this Petition.

The facts relied on by the Petitioner as constituting the ground specified above are as follows:-

- a) On or about 31st of May, 2017, the Respondent left
NO. 31A, Road B7, Carlton Gate Estate, Chevron Drive, Lekki, Lagos for Canada.
- b) The relationship between the Petitioner and the Respondent thereafter became so estranged due to the disagreement the parties had before the Respondent returned to Canada on 31st May, 2017.
- c) The Respondent has since returned to Nigeria and moved to Abuja where she now resides with the Children of the marriage.
- d) The Petitioner and the Respondent have since 31st of May, 2017, lived apart, with the Petitioner living in Lagos while the Respondent now resides in Abuja.

The petitioner also filed an amended written Deposition in support of the Petition. The said amended written deposition is dated 30th of October, 2020, filed same day.

Meanwhile, on her part, the Respondent Nkechinyere Irene Ezurounye filed an amended Answer and Cross-Petition dated 25th of November 2020 along with a verifying Affidavit of 5 paragraphs deposed to by the Respondent herself as well as a written statement on Oath also dated 26/11/2020.

In the said Amended answer and Cross-Petition, the Respondent admits paragraph 12 of the Petition. And in further answer, the Respondent states that she is not opposed to a Decree of dissolution of the marriage being granted.

The facts in support of the Answer/Cross-Petition are as follows:-

- i. The Petitioner and Respondent have lived apart for a continuous period of at least (2) two years immediately preceding the presentation of this petition and the respondent does not object to a decree being granted.
- ii. The petitioner and respondent have not lived under the same roof or related as husband and wife from the 31st of may 2017.
- iii. The respondent/cross petitioner does not desire or intend to resume cohabitation with the petitioner/cross respondent.

At trial, the Petitioner testified in Court on the 1/12/2020 and adopted his written deposition on Oath dated 30/10/2020. Their marriage Certificate was also tendered admitted in Evidence and marked Exhibit A.

The Petitioner was also duly Cross-Examined by Adedayo Adedeji Esq Learned Respondent's Counsel.

Meanwhile, the Respondent also testified in Court on the same date i.e 1/12/2020 where she adopted her Witness statement on Oath dated 26/11/2020. The Respondent was also duly Cross-Examined by N. M. Nwosu Esq Learned Petitioner's Counsel.

Final written addresses were adopted by both sides on 1/2/2021.

However, prior to that on the same date, parties filed terms of settlement regarding Custody and maintenance of children of the marriage. The said terms of settlement is dated 11/1/2021 but filed on 21/1/2021. It was duly adopted by both parties and same was entered as part of Judgment of the Court based on consent of the parties.

The terms of settlement entered as part of Judgment in this Petition Provides:-

- “1. WHEREAS the Petitioner/Cross Respondent filed his Amended Petition on the 30th day of October, 2020 seeking for dissolution of the marriage between himself and the Respondent on the ground that the marriage had broken down irretrievably, because the Petitioner and the Respondent have continuously lived apart for a period of two (2) years preceding the presentation of the Petition.**
- 2. WHEREAS the Respondent filed her Answer and Amended Cross-Petition on the 26th of November, 2020 wherein she also expressed her desire for the Court to dissolve the marriage for having broken down irretrievably and also sought for the custody of the Children.**
- 3. WHEREAS the Petitioner and the Respondent have testified before the Honourable Court and closed their cases on 1st December, 2020 and the matter has been adjourned to 28th January, 2021 for adoption of written addresses by the parties.**
- 4. The Petitioner and the Respondent have amicably agreed to the following terms of settlement in respect of the custody and maintenance of the children of the marriage”**

 - 1) The children to the marriage shall be in custody of the Respondent and taken care of by both parties until each is 18 years of age.
 - 2) The Petitioner shall pay a monthly allowance of **₦35,000.00** for the upkeep of each child.

- 3) The Petitioner shall continue to be responsible for the academic expenses of the Children.
- 4) The Petitioner shall contribute to the general welfare of the children of the marriage.
- 5) The Petitioner is to be granted visitation rights subject to notice to the Respondent anytime the Petitioner desires to visit, till each of the children attain the age of 18 years.
- 6) The Petitioner shall be at liberty to have the children spend part of their holidays with the Petitioner at the convenience of the Petitioner subject to mutual agreement of the parties.

Meanwhile, with regard to the Petition for Decree for dissolution of marriage, a sole issue for determination was formulated in the Respondent's final written address by Adedayo Adedeji Esq as follows:-

“Whether the marriage between the Petitioner and the Respondent has broken down irretrievably on the ground that the Petitioner and the Respondent have lived apart for a continuous period of two (2) years immediately preceding the presentation of the Cross-Petition presented before this Honourable Court?”

In his submissions on the issue, Learned Counsel submitted that the Respondent/Cross-Petitioner has undoubtedly established that the marriage between both parties has broken down irretrievably as such the Respondent/Cross-Petitioner is entitled to the Reliefs sought.

Reference was made to the Evidence led in this Petition in relation to one of the grounds for dissolution of marriage as prescribed by Section 15 (1) (2) (e) of the Matrimonial Causes Act. In addition to Section 15 (1) (2) (e) of the MC Act, reliance was also placed on the case of

IBRAHIM V IBRAHIM (2007) 1 NWLR (PT. 1015)389 (CA) per Ariwoola J. C. A.

It is submitted moreso that when parties in a marriage have been living apart there is a presumption that the marriage has broken down irretrievably. Reliance was placed on the case of pheasant v pheasant (1971) all ER page 587.

That in the instant case, both parties have been living apart since the 31st of May, 2017. That it is also not in dispute that both parties from their Evidence before this Honourable Court are both willing to dissolve the marriage same having broken down irretrievably.

On whether this Honourable Court can dissolve the marriage based on the Cross-Petition, Learned Counsel referred the Court to the Court of Appeal decision in **EFFIONG V EDET (2016) LPELR-4207 (CA)**

The Court is urged to consider the arrangements that have been made for the welfare of every children of the marriage which is highly paramount to the consideration of the Court. Reliance was placed on the case of **ODOGWU V UDOGWU (1992) LPELR-2229 (SC)**

Finally, learned Counsel urged the Court to dissolve the marriage.

Meanwhile, in the Petitioner's final written address, two issues for determination were formulated by confidence O. Igboanugo Esq, Learned Petitioner's Counsel, which are as follows:-

- "1. Whether the Petitioner has proved a marriage under the Act which has broken down irretrievably?***
- 2. If the answer to issue No. 1 is in the affirmative, whether Petitioner is entitled to all the reliefs".***

In his submission on issue one, Learned Counsel stated that for an order of dissolution of marriage to be granted by the Court, the Petitioner has the burden of establishing that a marriage under the Matrimonial Causes Act was contracted between the Petitioner and the Respondent in the first place and that the marriage has broken down irretrievably, in addition to proof of one of the grounds enumerated under Section 15 (2) (a-h) of the MC Act Cap. M7 LFN, 2004.

Reliance was also placed on the case of **AGBOOLA V B. A PLC & 2 ORS (2011) 11 NWLR (PT. 1258) 375 @ 402, paras D-F, per MUKHTAR, J. S. C.**

Reference was made to Exhibit A.

In his submissions Counsel referred to paragraph 18 (a-d) of the Petitioner's witness statement on Oath dated 30th October, 2020 where it is deposed that cohabitation between the Petitioner and Respondent ended on 31st of May, 2017 and that the parties have lived apart continuously for a period of at least two years immediately preceding the presentation of this Petition with no intention to resume cohabitation, which fact was and admitted by the Respondent.

Reference was also made to paragraph 7 (1) of the Respondent's Amended Answer and Cross-Petition dated 26th November, 2020.

Reliance was also placed on Section 15 (2) of the MC Act (Supra).

Learned Counsel submitted further that the two parties have no intention to resume cohabitation and urged the Court to consider the domestic history of the parties.

Reliance was placed on the case of **AGUNWA V AGUNWA (1972) 2 ECSR 20 at 22; EKEREBE V EKEREBE (1999) 3 NWLR; NANNA V NANNA (2006) 3 NWLR (PT. 966) 1 ; EZIAKU V EZIAKU (2018) LPELR-46373 (CA).**

It is the submission of the Learned Counsel that the Respondent did concede to a decree of dissolution of the marriage being granted as per paragraphs 14 & 19 (1) of her answer and Cross-Petition, which indicate that the marriage has broken down completely.

And the fact that both parties have lived apart for at least two years.

Reliance was placed on the cases of **SOWANDE VS SOWANDE (1969) 1 ALL NLR 486; ANDOMY V AYI & ORS (2004) ALL FWLR (PT. 227) 444 at 482; ELNDU V EKWOABA (1995)3 NWLR (PT. 386) 704 @ 747; OLALE VS EKWELENDU (1989) 7 SCNJ (PT. 2) @ 102. As well as Section 15 (2) (e) of the MC. Act supra in urging the Court to resolve issue one in favour of the Petitioner.**

On issue two reliance was placed again on Section 15 (2) (a-h); **HARRIMAN V HARRIMAN (1989) 5 NWLR (PT. 119) PG 5 @ 15.**

On whether this Court can dissolve the marriage based on Respondent's Cross-Petition, Learned Counsel argued that the case of **EFFANGA BASSEY EFFION V BASSEY EFFION EDET (2016) LPELR-42047 (CA)** cited by Respondent is not applicable in the instant Petition since the Respondent herein has not sought for dismissal or striking out of the Petitioner's Petition.

In support Counsel cited **ERO & ANOR V TINUBU (2012) LPELR-7869 (CA).**

Learned Counsel urged the Court to consider that this marriage has broken down irretrievably and consequently the Petitioner is entitled to the reliefs sought.

Counsel referred the Court to paragraph 15 of Petitioner's Amended Petition and paragraphs 1-15 of the Respondent's Amended Answer and Cross-Petition.

Learned Counsel also urged the Court to consider as paramount the children of the marriage which both parents should have unhindered access.

Counsel relied on the dictum of Onnoghen, JCA (as he then was) in **AJIBOYE V AJIBOYE (2005) 2 SMC 1 at 21-22.**

Finally, learned Counsel urged the Court to hold that by Section 15 (2) (e) of the MC Act, this marriage has broken down irretrievably and to grant all the reliefs sought by the Petitioner.

Now, in a bid to determine this Petition, I shall raise a single issue for determination to wit:

“Whether the marriage between the Petitioner and the Respondent has broken down irretrievably for this Honourable Court to grant a decree of dissolution of the marriage?”

Under and by virtue of Section 15 of the Matrimonial Causes Act Cap M7. LFN, 2004, the Court shall hold a marriage to have broken down irretrievably, if and only if the Petitioner satisfies the Court based on any of the grounds enumerated under Section 15 (2) (a-h) thereof.

From the Evidence led on both sides as well as respective submissions of Counsel, it is agreed that the parties in this Petition seek for dissolution of their marriage on the ground that parties have lived apart

for a continuous period at least two years immediately preceding presentation on this Petition. This is clearly admitted by both Petitioner in his petition, as well as Respondent in her answer and Cross-Petition.

Nevertheless, the Court must be satisfied that the alleged ground for seeking the decree for dissolution of marriage falls within the grounds contemplated in Section 15 (2) (a-h) of the M C Act (Supra).

On this premise, I refer to the case of **BIBILARI V BIBILARI (2011) LPELR-4443, the Supreme Court, per Galinje J. S. C, held at pp 33-34, paragraph C-A, as follows:-**

“In a Petition for dissolution of marriage, the Petitioner must plead and prove that the marriage has broken down irretrievably. In doing this, the Petitioner must be able bring himself within one or more of the facts enumerated in Section 15 (2) (a-h) of the Matrimonial Causes Act Cap 220 LFN, 1990 before he can succeed in the Petition.....”

Likewise, even in cases where both desire the divorce such as in this case, there must be proof of one of the grounds stated in Section 15 (2) (a-h) of the MC Act (Supra).

On this premise, I refer to the case of **IKE V IKE & ANOR (2018) LPELR-44782 (CA) per EKPE, J. C. A** at pages 10-16, paragraphs C-A, as follows:-

“For a Petition for the Dissolution of marriage to succeed, the Petitioner has to prove at least one of the ingredients contained in Section 15 (2) of the Matrimonial Causes Act, even if the divorce is desired by both parties”.

See also the case of **AKINBUWA VS AKINBUWA (2017) LPELR-42160.**

The Petitioner has deposed in paragraph 3 of his Amended written deposition that then a bachelor, he was lawfully married to the Respondent then a spinster at the Federal marriage Registry Ikoyi, Lagos on the 11th day of May, 2010 and later celebrated the marriage at Folawiyo Bankole Memorial Methodist Church, ikate, Surulere, Lagos on 13th day of November, 2020 according to Christian rites.

In paragraph 6 thereof, he deposed that both he and the Respondent are domiciled in Nigeria, in Lagos and Abuja Respectively.

From the depositions in paragraphs 17 and 18 (a) & (d), the Petitioner stated that the marriage between him and the Respondent has broken down irretrievably because they've lived apart for a period of more than 2 years immediately preceding the presentation of this Petition, and that on or about 31st May, 2017 the Respondent left No. 31 A, Road 87, Carlton gate Estate, Chevron Drive, Lekki, Lagos for Canada.

That he and the Respondent have since 31st May, 2017 lived apart.

The respondent in her Answer/Cross-Petition has also admitted to these facts. I refer to paragraphs 14 & 17 of her Answer and Cross-Petition as well as paragraphs 8 and 9 of Respondent's witness statement on Oath.

Now, Section 15 (1) (2) (e) of the Matrimonial Causes Act (Supra) provides thus:-

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

“(2) The Court hearing a Petition for decree of dissolution of a 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:-

“(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.”

In paragraphs 8 and 10 of her witness statement on Oath the Respondent deposed among other things that they've lived apart for at least 2 years and she does not intend to resume cohabitation with the Petitioner/Cross-Respondent.

In paragraph 18 therefore, she deposed that the interest of justice will be best served if the marriage can be dissolved.

Now, although the amended Petition is dated and filed 30/10/2020, the initial Petition dated 24/6/2019 was filed on the 26th of June 2019.

The parties have lived apart since 31st of May 2017 and cohabitation ceased since then.

Therefore, it is my humble view that the Petitioner has satisfied the Court that the marriage between him and the Respondent has broken down irretrievably based on Section 15 (2) (e) of the Matrimonial Cause Act (Supra).

Both Petitioner and Respondent/Cross-Petitioner have satisfied the Court as to this fact.

Consequently therefore, since the issue of custody and maintenance of the children of the marriage has been resolved, I hereby hold that the

marriage between the Petitioner and the Respondent has broken down irretrievably.

I hereby make an order Nisi dissolving the marriage between the Petitioner Michael Nkembuchi Ezuruonye and the Respondent Nkechinyere Irene Ezuruonye contracted at the Federal marriage Registry Ikoyi, Lagos on the 11th day of May 2010 and later celebrated at Folawiyo Bankole Methodist Church, Ikate, Surulere Lagos on 13th day of November, 2010 according to Christian rites.

The decree shall become absolute if nothing intervenes within the period of three months from the date thereof.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

25/02/2021.