

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/332/2018
DATE: 18TH FEBRUARY, 2021

BETWEEN:

PEACE NNEKA IBITOGBE.....PETITIONER/APPLICANT

AND

FEYISAYO IDOWU IBITOGBE.....RESPONDENT

APPEARANCE

C. A Uche Esq for the Respondent.
M. K. Agbontien Esq for the Petitioner.

JUDGMENT

The Petitioner Peace Nneka Ibitogbe has filed a Petition for dissolution of her marriage to her husband Feyisayo Idowu Ibitogbe. The said Petition for dissolution of marriage is dated 29th August 2018 and filed same day.

Facts grounding the Petition are as contained in the Notice of Petition, while the grounds for the Petition are as follows:-

- (a) That the marriage has broken down irretrievably.

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

The petition which was settled by Samuel Adebayo Ajayi, Esq of kolawole Olowookere & Co by and on behalf of the Petitioner is supported by an affidavit verifying the petition. The said verifying Affidavit of 5 paragraphs is deposed to by the Petitioner herself.

The Respondent upon being served with the Notice of Petition, filed a Cross-Petition dated 9/3/2020 as well as a Notice of Preliminary Objection dated 8/7/2020 but filed on 17/7/2020.

However, during the course of these proceedings and in particular owing to developments relating to arrangement in respect to welfare of the children of the marriage, learned Respondent/Cross-Petitioner's Counsel A.M. Idris Esq applied for withdrawal of both the Cross-Petition and Notice of Preliminary Objection filed by the Respondent/Cross-Petitioner. The Court considered the application which was met with no objection from Mr. I.G. Oguguwa Esq learned Petitioner's counsel, and same was granted as prayed and the said Cross-Petition and Notice of Preliminary Objection were accordingly struck out on the 12/10/2020.

At trial, the Petitioner Testified as PW1.

During her testimony before the Court, she informed the Court that she is a business owner and fashion designer. And that her marriage with the Respondent was contracted in Kaduna in the year 2010. The marriage certificate in respect of the marriage between the Petitioner and the Respondent was tendered and admitted in evidence and marked exhibit A.

The Petitioner then informed the Court that she wanted her marriage to the Respondent to be dissolved.

She testified that during their Eight years marriage, the Respondent betrayed her trust when she gave him money to secure a shop for her but he didn't until his sister intervened in the matter and the Respondent later got the shop.

According to the Petitioner in 2011, when she was pregnant with their first son, she saw something in the Respondent's phone which led to a misunderstanding between them and the Respondent threw her out of the house. That he usually had outbursts and that time even threw her things out of the compound in the full glare of people and told her to leave.

According to the Petitioner she stayed with her sister for two months until she got a call that the Respondent had an accident. That Pastors intervened and because of pressure she went back.

That also in 2013, when she was pregnant with their second son, the Respondent negligently left their son in school for the whole day which led to a very big quarrel and again the Respondent threw her out while pregnant along with their first son.

The Petitioner informed the Court that the Respondent always threatened her with Divorce and threw her out anytime they had a quarrel.

That she always goes back to the house to manage the marriage when the Respondent travels, so he won't throw them out again.

According to the Petitioner, when she observed the Respondent's strange behaviour of always traveling to Kaduna, she decided to follow him. She said she drove behind him and eventually found out the hotel he was staying with, and a lady which happened to be the same girl she saw in his car while she followed him on the Abuja Kaduna Expressway on the faithful day when she had the encounter with the Respondent at the hotel.

According to the Petitioner although she caught her husband the Respondent in the Hotel room with another woman, she didn't cause a scene, but later on she informed his elder brother in Kaduna. She informed the Court also that before she left, she took pictures of the Respondent and the scene before she left.

The Petitioner testified further that from 2015 the married couple from then onwards started to grow apart, and the Respondent even moved out his personal

effects and told the Petitioner he was moving to a guest house that he got in Kaduna. And she and the Children were left behind in Abuja.

According to the Petitioner when the Respondent didn't visit them for Christmas, she decided to take the children and visit him in Kaduna because she said she knew he might not come back. PW1 testified that she was shocked to discover divorce papers in the Respondent's drawer with her name on it as a Petitioner which she had no idea about. That she also saw some immigration questions for the U. S, indicating that he was trying to move there or was trying to get married.

That she also saw a divorce certificate which looked real.

According to the Petitioner, she cried upon seeing those documents. She later confronted the Respondent after she came back to Abuja dropped off the Children and went back to the Respondent in Kaduna. The Petitioner informed the Court that the Respondent told her he got a lawyer in the U. S that was going to arrange a wife for him to be able to get papers and he was also going to arrange for the Petitioner to marry too.

According to the Petitioner, immediately he said that she shouted "God forbid", and she told the Respondent she wasn't going to do it, and the Respondent then continued with the usual verbal abuses.

The Petitioner informed the Court that on the same night the Respondent went out with his friend to the club, came back home drunk and wanted to have sex with her and she refused.

The Petitioner testified that the Respondent then dragged her from the bed to the floor down to the parlour and insisted that since he had paid her bride prize that he must have her. That this incident happened at about 3:00 am, that she was screaming, shouting and crying and that the Respondent used his fist to be hitting her laps. That he treated her terribly, poured something on her which she discovered was mouth wash and even told her she was lucky he wanted to sleep with her because there were so many girls he could have slept with and that she should be happy he came back to her. That again he poured oil on her and said that she had evil spirit in her and that it must leave while pouring the oil on her.

According to the Petitioner, when the Respondent went back to the room, she found the keys to the front door, tried to leave, and the Respondent came out and started chasing her. She informed the Court that she managed to escape from the compound and ran to the house of the Respondent's brother who lived within the vicinity, and she later returned to Abuja.

According to the Petitioner, while she was looking after their son who had Hernia surgery and the Respondent was staying with their first son, she discovered that he had sold some items from the house. That the Respondent even sold their generator while their son was recuperating and the Petitioner had to take their son to her sister's house. That she also lost her car and had to take a bike with her sons.

That while the Petitioner was in her sister's house, the Respondent sent her pictures of how he had thrown her things out and even told her to come and pick them up as he was done with the marriage.

That upon her return to the House, the Respondent got angry that she wasn't going to move and he used a golf stick to try and hit her, but for the intervention of someone who was there who worked for the Respondent, he held him and the Petitioner said she ran into the kitchen.

She testified that everything that happened in Kaduna repeated itself but that this time her screams attracted the whole neighborhood and people came to the gate.

That the Respondent threw her out of the house in the presence of people while she was bleeding and she said she then started living in her shop with her children.

And that every single evening before he travelled, the Respondent would go there and create a scene.

That on one of the occasions, he removed the shop's sign post and started breaking the windows and things and according to the petitioner, she knew that if he gets into the shop, she will be dead. That all that happened in the presence of

her workers who watched the front door and the Petitioner ran away through the back.

During Cross-Examination she admitted that she didn't have anything to support her testimony about going to the hotel, booking a room, going to the hospital and about bleeding and the U. S Documents. She also stated that she was a hundred and ten percent faithful in the marriage and also denied being caught with another man in a hotel. Although the Petitioner admitted that she knew that before the Respondent travelled he had procured a family VISA for her and the children, but she testified that she didn't follow him because he was going to marry a woman and she was going to marry a man it was not to relocate.

She also testified that she lacked things in the marriage as she didn't see the Respondent for up to six months at a time and that she also informed his brother.

She however maintained that she wanted her marriage to be dissolved even if the Respondent were to procure a VISA for her and the children to join him in the U. S.

At the close of the Petitioner's case, the learned Respondent's Counsel informed the court that since they had only one witness who was out of the country, and other issues that already been resolved, with exception to dissolution of the marriage, that they wished to rest their case on the Petitioner's.

Both parties waived their right to file their respective final written addresses and Judgment was reserved.

Now, under and by virtue of Section 15 (2) of the Matrimonial Causes Act, Cap 220LFN, 1990, The Court is empowered to grant an order of dissolution of any marriage where it is satisfied that the marriage has broken down irretrievably.

But, before the Court can come to that conclusion, it must be satisfied that the alleged grounds for dissolution of marriage fall within Section 15 (2) of the Matrimonial Causes Act. See the case of **DAMULAK V DAMULAK (2004) 8 NWLR (PT. 874) 154.**

From the evidence of the petitioner, it is clear that she alleges intolerable behaviour cruelty and even adultery on the part of the Respondent.

In relation to cruelty, the Petitioner has informed the Court that during the course of her marriage to the Respondent, the Respondent had constantly abused her verbally and on two occasions even physically. That the Respondent in addition to the physical assault has on numerous occasions threatened to divorce her and had even thrown her things out in the full glare of people.

The Petitioner testified that during the last confrontation with the Respondent, she even feared for her life when the Respondent came to her shop and started vandalizing the shop and she had to escape through the back door. It is therefore these and other reasons that the Petitioner seeks for dissolution of her marriage.

Now although cruelty is not a ground stated in Section 15 (2) of the Matrimonial Causes Act, it is one of the old grounds for divorce.

In the case of ADARAMAJA VS ADAMARAJA (1962) 1 SCNLR, 376, THE Court held:-

“Cruelty in relation to Matrimonial Proceedings, is a conduct which is grave and weighty as to make cohabitation of the parties to the marriage virtually impossible coupled with injury or a reasonable apprehension of injury, whether physical or mental. The accumulation of minor acts of ill-treatment causing or likely to cause the supporting spouse to break down under strain therefore constitutes, cruelty.”

See also the case of **WILLIAMS VS WILLIAMS (1984) 2 NWLR (PT. 54) 66.**

Likewise on intolerable behaviour as a ground for dissolution of marriage under Section 15 (2) (C) of Matrimonial Causes Act, the Court has held in the case of BIBILARI VS BIBILARI (2011) LPELR-4443 (CA) as follows:-

“.....One ground is that the Respondent must have behaved in a way that the Petitioner cannot reasonably be expected to live with her. What is the nature of the behaviour envisaged, the Act did not define the phrase “behaved in such a way”. However, the behaviour has to be negative, it must be such that a reasonable man cannot endure it. The conduct must

be grave and weighty in nature as to make further cohabitation virtually impossible”

Also, in the case of **OGUNTOYINBO VS OGUNTOYINBO (2017) LPELR-42174 (CA)** the Court held as follows:-

“.....A Court can hold that a marriage has broken down irretrievably on the ground that one spouse has been proved to be guilty of cruelty to the other.....”

On the meaning of the word cruelty, Black’s Law Dictionary 9th Edition, defines it at page 434, to mean thus:-

“The intentional and malicious infliction of mental or physicals suffering on a living creature. Esp: a human; abusive treatment; outrage; ABUSE INHUMAN TREATMENT; INDIGNITY”.

However, on the allegation of Adultery raised in the Petitioner’s evidence, it is trite that such must be specifically pleaded and clearly proved.

Please see the case of **OKERE VS OKERE (2017) LPELR-42160 (CA)**, where the Court held thus:-

“Again adultery as a Matrimonial wrong must be specifically pleaded and proved.....”

However, in the instant case, I have observed that the said allegation was not pleaded in the notice of Petition, and for this reason, it falls short of the requirements of proving same under the law. Therefore, it is hereby discountenanced.

But having carefully considered the evidence presented by the Petitioner, and the absence of any evidence to the contrary, since the Respondent has rested his case on that of the Petitioner, it is my humble view that the acts of the Respondent towards his wife which include throwing her out of the Matrimonial home on occasions, the verbal and physical abuse, stripping her of her Dignity in the full glare of people all amount to cruelty which is no doubt intolerable behaviour.

And as such, it is my considered opinion that the Petitioner cannot reasonably be expected under these circumstances to live with the Respondent. I so hold.

In view of this, I find that the Petitioner has satisfied the Court that the marriage in this case has broken down irretrievably and has satisfied the Court of the fact necessitating bringing this Petition under Section 15 (2) (c) of the Matrimonial Causes Act.

And since the parties have already filed Arrangement for the welfare of their Children duly executed dated 12th day of October 2020, and filed same day, the Court hereby declares as follows:-

That the Court hereby grants an order Nisi dissolving the marriage between the Petitioner peace Nneka Ibitogbe and the Respondent Feyisayo Idowu Ibitogbe celebrated at the Light House Church, Kaduna on the 31st of July 2010. The decree Nisi shall be made absolute if nothing intervenes within a period of three months from the date thereof.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

18/02/2021.