IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 23RD DAY OF JUNE, 2021
BEFORE: HON. JUSTICE M.A NASIR
COURT NO: 6
SUIT NO: FCT/HC/PET/166/2018

BETWEEN:

HALIMA OJONUGWA APAILA --- PETITIONER

AND

LAWAL HUSSEINI --- RESPONDENT

JUDGMENT

The Petitioner who is a business woman petitions this Court for the following reliefs:

"(a) decree of dissolution of marriage contracted between the Petitioner and the Respondent on the 11/2/2016 as per the Certified True Copy of the Marriage Certificate hereby attached on the grounds specified in paragraph 9(a) – (k) above and for emphasis that:

(i) the marriage has broken down irretrievably.

(ii) since the marriage the Respondent has behaved in such a way that the Petitioner

cannot reasonably be expected to live with the Respondent.

(b). The custody of the only infant child of the parties."

The Petitioner in her testimony as PW1 stated that she got married to the Respondent on the 11/2/2016 at the Federal Marriage Registry, Abuja. The marriage is blessed with a child. Parties cohabited at opposite Galadimawa Primary School. Cohabitation ceased sometime in December, 2017. She said soon after the marriage, they started having challenges, disagreements and quarrels. The Respondent refused to take up his matrimonial responsibilities and provide for the family. The persistent row between the parties brought about several reconciliatory meetings between the parties and their representatives, but the meetings did not yield any result. According to the Petitioner, the Respondent indicated that he is no opposed to the grant of dissolution. The witness further stated that since the marriage, her life and health have been at risk. In

conclusion, the Petitioner testified that since cohabitation ceased, parties have been living separately. She tendered the marriage certificate as Exhibit A.

The Respondent was served with the Notice of Petition on the 5/6/18 and consistently served with hearing notices, but he elected not to file any process in Answer to the Petition neither was any appearance entered on his behalf. The Petitioner was therefore not cross examined. A.S. Mohammed Esq of counsel to the Petitioner waived his right to address the Court and urged the Court to proceed to judgment.

From the provisions of the Matrimonial Causes Act, it is deducible that either party to a marriage contracted under the Marriage Act may present a petition to the Court for dissolution of the marriage on the general ground that the marriage has broken down irretrievably. The Court seized of the petition shall hold the marriage has broken down irretrievably if the Petitioner is able by the evidence adduced satisfy the Court with regard to one

of the facts set out under Section 15(2)(a – h) of the Act. Where he/she is unable to satisfy the Court as to the existence of at least one of the facts, the Court will dismiss the petition notwithstanding the desire of either or both parties to opt out of the marriage. See **Ekerebe vs. Ekerebe (1999) 3 NWLR (part 569) page 514, Ibrahim vs. Ibrahim (2007) All FWLR (part 346) 478 at 491, Ajai – Ajagbe vs. Ajai – Ajagbe (1978) 10 – 12 CCHJ 183..**

With regards to the standard of proof required of the Petitioner, the Matrimonial Causes Act in Section 82(1) and (2) requires evidence in reasonable satisfaction of the Court. The Section provides:

> *"82(1) For the purpose 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."

See Omotunde vs. Omotunde (2001) 9 NWLR (part 718) 525

The Petitioner in this instance premised the petition on the fact of unreasonable behaviour provided for under Section 15(2)(c) of the Matrimonial Causes Act. It states:

"(2) The court hearing a petition for a 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-

(c) that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent"

Given the wordings of this Section 15 (2)(c), it is clear that the Petitioner who relied on this ground must

establish by cogent evidence that it would be unreasonable to require him to live with the Respondent. In that wise, the test of whether those behaviours are intolerable to expect the Petitioner to continue to live with the Respondent is objective and not wholly subjective. Therefore, there is every possibility that what the Petitioner terms "intolerable" may not pass this objective test. See **Emmanuel vs. funke (2017) LPELR – 43251 (CA)**

The Petitioner has testified that the Respondent put her through mental cruelty such that her life and health was in danger and made continued cohabitation impossible. He also abdicated his matrimonial responsibilities towards her and the only child of the marriage. The Respondent left the Petitioner without support and she has been solely responsible for herself and the child. She told the Court that the Respondent has even indicated his interest in the divorce. The Respondent

did not controvert or challenge the evidence of the Petitioner.

The law is trite that where evidence by a party to any proceedings was not challenged or controverted by the opposite party who had the opportunity to do so, such evidence is deemed as admitted by the opposing party, and it is always open to the Court seized of the case to act on such unchallenged or uncontroverted evidence before it, so long as it is cogent or credible. See Kowade & anor vs. Mohammed & ors (2014) LPELR – 22575 (CA), Obineche & ors vs. Akusobi & ors (2010) 12 NWLR (part 1208) 383

Unreasonable behaviour doesn't always take the form of negative action or addiction. A marriage is supposed to be a partnership and if one party is failing to do their share or any of the work that is needed to maintain a home, this can clearly upset the other person in the marriage. Many married couples are together in name only. They may live under the same roof but one of

them may be distant emotionally for whatever reason. If a husband or wife feels they aren't getting the level of support they need, why should they have to stay in the marriage?

Section 16(1)(c)(ii) of the Matrimonial Causes Act has made provision for this kind of behaviour and made it one of the behaviours that are termed unreasonable worthy of a dissolution of marriage. It provides:

> *"16(1) Without prejudice to the generality of Section 15(2)(c) of this Act, the Court hearing a petition for a decree of dissolution of marriage shall hold that the Petitioner has satisfied the Court of the fact mentioned in the said Section 15(2)(c) of this Act if the Petitioner satisfies the Court that:- (c)(ii) the Respondent habitually left the petitioner without reasonable means of support;"*

In line with the unchallenged evidence of the Petitioner this Court has come to the conclusion that the

Petitioner has led evidence to the satisfaction of this Court that the Respondent behaved in such a manner that she cannot be reasonably expected to live with him. Such behaviour is unbecoming and persistent in our society today and it should be condemned. See Oguntoyibo vs. Oguntoyibo (2017) LPELR – 42174 (CA).

The evidence adduced in proof of this petition establishes the fact specified in Section 15(2)(c) of the Matrimonial Causes Act. It is without doubt that the relevant facts and grounds for consideration for dissolution of marriage have been made out for the Court to believe that the marriage has broken down irretrievably. In the circumstance, I hold that this petition succeeds and a decree Nisi is granted dissolving the marriage between the Petitioner and the Respondent. The decree nisi shall become absolute after the expiration of three months.

The Petitioner has prayed for custody of the only child of the marriage. By and large, the award of custody

of a broken marriage is based on considerations other than the guilt, blameworthiness or innocence of the parties concerned. Custody is never awarded as a reward for good conduct, nor is it ever denied as a punishment for the guilty party's matrimonial offences. See **Allen vs. Allen (1948) 2 All ER page 413 at 415.** It will therefore be in the best interest of the child to remain in the custody of his mother, the Petitioner.

The Petitioner shall have custody of the only child of the marriage.

Hon. Justice M.A. Nasir

Appearances:

A.S. Mohammed Esq – for the Petitioner

Respondent absent and not represented