

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: 8
SUIT NO: FCT/HC/PET/220/2020

BETWEEN:

MR. SMART MAVIS AKPATI --- PETITIONER

AND

MRS. VIVIEN OBIANUJU AKPATI --- RESPONDENT

JUDGMENT

The Petitioner Mr. Smart Mavis Akpati is a public servant and petitions the Court for a decree of dissolution of his marriage to the Respondent Mrs. Vivien Obianuju Akpati pursuant to Section 15(1) and (2)(c) of the Matrimonial Causes Act. The facts presented by the Petitioner is that he got married to the Respondent on the 20/9/2013 at the Onitsha North Local Government Marriage Registry, Onitsha Anambra State. The marriage is blessed with two children Divine Obianuju Smart Akpati (5 years) and Michelle Chimuanya Smart Akpati (2 years).

Soon after the marriage, parties cohabited at Block 177, Flat 4, Lagos Street Kubwa, Abuja. Cohabitation ceased at the beginning of 2020. The Petitioner said on several occasions the Respondent without any provocation threatened the Petitioner's life. Because of this incessant threat, the Petitioner left their matrimonial home to a safe place. His evidence is that he suffered economic, emotional, psychological and mental trauma as a result of the Respondent's behaviour, and this led to his loss of love and affection for the Respondent. He offered to be jointly responsible for the upkeep and maintenance of the children. He tendered the marriage certificate as Exhibit A and prayed the Court for an order granting joint custody of the children of the marriage to the parties.

The Respondent, upon receipt of the Notice of Petition, wrote a letter to the Court acknowledging service of the Court processes and requesting to be exempted from the proceedings. The Petitioner was

therefore not cross examined. Parties also filed terms of settlement in respect of the children and other issues.

P.C. Igwenazor Esq counsel to the Petitioner waived his right to address the Court and urged the Court to proceed to judgment.

As earlier noted, the Petitioner has relied on Section 15(1) and (2)(c) of the Act. It provides in Section 15(1) as follows:

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

In Section 15(2)(c) it provides:–

“The Court hearing a petition for a decree of dissolution of 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;

In cases of unreasonable behavior, the Court may have to consider in its entirety and totality the matrimonial history of the parties, for certain acts though trifling by themselves alone may in association with other acts or by sheer force of cumulation, assume the shape of unreasonable behavior. See Ibeawuchi vs. Ibeawuchi (1966 - 1979) Vol. 5 Oputa LR page 41, Livingstone vs. Livingstone (1974) 2 All ER page 766 at 771.

Now to constitute ‘the Court hearing a petition etc.’ the Court has to be satisfied during the hearing. By Section 82(1) of the Matrimonial Causes Act, *“a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court”*. See Bakare vs. Bakare (2016) LPELR - 4034 CA. It is my view that the

proof required by Section 82(1) is proof orally by witnesses at the trial in open Court.

When evaluating unreasonable behaviour a court considers three main aspects:

- The spouse's conduct,
- Its effect on the other party,
- The history of the marriage.

In other words, the court considers whether the effect of the spouse's conduct was such that, based on the parties' history and personalities, the Petitioner should not reasonably be expected to live together with the Respondent. It is important to point out that the court does not apply an objective standard of what the reasonable person would be expected to do, but what would be reasonable for the two parties based on all the circumstances.

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?

Worthy of note is the evidence of the Petitioner that the Respondent was threatening his life and the incessant threats forced him out of the matrimonial home. The continued threat to life is a behaviour that no reasonable person should be allowed to continue to bear. The Respondent has not denied this allegation despite given the opportunity to so do. The Respondent wrote a letter of no contest to the Court. She wrote in paragraphs 2 and 3 of the letter as follows:

“In compliance with the Rules of the Court as contained in the Notice of Petition, I wish to state that I do not wish to file an Answer in response to the Petition nor wish to appear in the proceedings nor further receive any copy of any document filed in connection with the proceedings.

I humbly ask the Court to exempt me from the entire proceeding henceforth and grant the reliefs sought in the Petition.”

It takes two to marry and to discharge the marital obligations. It is apparent in this case that as far as both parties are concerned, this marriage has come to an end. It will be useless pretending otherwise.

There has been cessation of matrimonial consortium, the effect being that the marriage has been deprived of all its substance, leaving only the empty shell – a marriage only in name. The intention of the law is not to maintain the sanctity of a marriage which no longer exists, but is destroying the empty legal shell of an

irretrievably broken marriage with the maximum fairness and the minimum bitterness, distress and humiliation. See Matrimonial Cases in Nigeria - Law and Practice at page 74.

From the evidence before the Court, it is obvious that the parties are not interested in living together as husband and wife, moreso as the Petitioner has established to the satisfaction of the Court the irretrievable breakdown of the marriage pursuant to Section 15(2)(c) of the Matrimonial Causes Act. The marriage certainly is at it's wits end and there is no need to act ignorant of same. In situations such as this, the Court can in its discretion grant a decree of dissolution.

In the circumstance, I hold that the marriage between the Petitioner and Respondent has broken down irretrievably. I order a decree nisi to issue.

As it relates to the children of the marriage and other issues between the parties, Petitioner and Respondent have agreed on terms and counsel for the

Petitioner filed a document embodying the agreement reached. I will hereby make the terms of that agreement willfully and mutually agreed to by the parties and endorsed by their counsel as orders of this Court. The terms are hereunder reproduced as follows:

"MEMORANDUM OF SETTLEMENT

Following series of discussions and negotiations between the Petitioner and the Respondent in the above matter before the Honourable Justice M.A. Nasir, of Court 9 of the High Court of the Federal Capital Territory, Jabi, Abuja, it is hereby agreed as follows:

CHILDREN OF THE MARRIAGE

The children of the marriage namely:

1. Divine Obianuju Smart Akpati 27/07/2014 5

years

2. Michelle Chimuanya Smart Akpat 18/06/2017 2

years

Shall be in the custody of the Respondent and she shall continue to inculcate in them good morals and excellent God fearing lifestyles and the Respondent will not relent in playing her motherly role.

The Petitioner shall:

a. Have unrestricted access to the children provided that he shall be responsible for their upkeep until the children are able to be on their own and in this respect he shall remit the sum of N100,000.00 (One Hundred Thousand Naira) only within the first seven day of each month to the Respondent. This sum is exclusive of the children's medical need which he shall be responsible for if and when such need arises as long as this paragraph is in effect.

b. Finance the education of the children, that is to say; he shall be responsible for the training (and everything connected thereto) of the children whether academically or vocationally or a combination of both.

c. Shall provide a habitable and suitable place of abode for the children and the Respondent shall reside in this house until all the children are settled and are able to take care of themselves.

d. The Petitioner shall procure and maintain a reasonable car for the movement of the children. In this regard the Petitioner shall fuel the car weekly and routinely ensure that the car is checked and repaired and kept in a motorable condition.

2. MAINTENANCE AND SETTLEMENT OF PROPERTY

The Respondent being in gainful employment shall be responsible for her upkeep. This is to say that she shall not be entitled to any form of maintenance support financially or otherwise from the Petitioner.

3. JOINT PROPERTIES

The Petitioner and the Respondent agree to hold all their joint properties during the subsistence of the marriage in trust for the children and consequently any proceed there from shall be paid into a savings

account specifically opened for this purpose. None of the parties shall have access to this account unless as may be permitted by a competent Court in Nigeria...”

Having ordered that a decree nisi shall issue, I order that it shall become absolute upon the expiration of three months from today.

Hon. Justice M.A. Nasir

Appearances:

P.C. Igwenazor Esq – for the Petitioner

Respondent absent and not represented