

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: PET/146/2020

BETWEEN:

MRS. PATRICIA ONYEACHO ----- PETITIONER

AND

MR. DENIS OKECHUKWU ONYEACHO ----- RESPONDENT

JUDGMENT

The Petitioner Mrs. Patricia Onyeacho filed this petition on the 17th January, 2020 seeking the dissolution of her marriage with the Respondent, Mr. Denis Okechukwu Onyeacho celebrated at the Marriage Registry, Lagos State on the 15th April, 1995. From the notice of Petition, the Petitioner relied on the following grounds in presenting the instant petition:

- a. That since the marriage the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.
- b. 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 Petitioner and the Respondent 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.

The Respondent was duly served with the notice of petition together with hearing notice but he elected not to file any answer in response to the petition.

In proof of her petition, the Petitioner testified on the 11th November, 2020 as PW1. PW1 adopted her Witness Statement on Oath made on the 17th January, 2020. She testified that immediately after the marriage parties cohabited at Lagos before they moved to Abuja sometimes

in 1997. She stated that when she joined the Respondent in Abuja she noticed the Respondent's adulterous ways and severally confronted him on the ways he behaved to her without respect. The Petitioner further stated that the Respondent being a staff of the Ministry of Foreign Affairs was posted to Japan on Foreign Mission.

The Witness testified that while in Japan, she noticed that the Respondent had lost it and his adulterous acts had increased in frequency. That as a result of the Respondent's embarrassing conduct, couple with late night outings and drunkenness, the Petitioner left him at Japan and returned to Nigeria in 2017. Since then parties have not lived together as husband and wife.

The marriage according to the Petitioner is blessed with three children as follows:

- i. Ayo Onyeacho (miss) 25 years
- ii. Praise Onyeacho (miss) 21 years

iii. Victor Onyeacho 16 years.

Through PW1, a certified copy of the marriage Certificate was tendered and admitted as exhibit A.

At the conclusion of the Petitioner's testimony, the Respondent who appeared in person duly informed the Court that he was not defending the petition and does not require the services of any legal practitioner. Consequently, the right to cross-examine the witness and defend the petition were fore-closed and the witness was discharged.

Further, counsel to the Petitioner waived his right to address the Court and the petition was adjourned for judgment.

The law has long been settled that irretrievable break down is the sole ground of divorce in Nigeria. However, the Court cannot make a finding of irretrievable break down of marriage in the absence of proof of any of the facts specified under Sections 15(2)(a)–(h) and 16(1) of the

Matrimonial Causes Act. It follows therefore that in the absence of proof of any of the facts listed, the Court cannot suo motu grant a decree on the ground that the marriage has broken down irretrievably. See: Harriman vs. Harriman (1989)5 NWLR (Part 119)6.

The standard of proof in any of the facts in Section 15(2)(a)–(h) and 16(1) is to establish the fact to the reasonable satisfaction of the Court. See: Section 82 of the Matrimonial Causes Act.

As stated earlier, the Petitioner relied on three facts in presenting the instant petition.

Firstly, the Petitioner has alleged that the Respondent has committed adultery. It should be noted that adultery per se will not be a ground for dissolution of marriage, the Petitioner must find it intolerable to live with the Respondent. See: Section 15(2)(b) MCA. Thus, both the commission of adultery and the intolerability must be

proved. Adultery is essentially an act which can rarely be proved by direct evidence. See: Ugbotor vs. Ugbotor (2006) LPELR – 7612 CA, Alabi vs. Alabi (2008) All FWLR (Part 418) page 245 at 248.

In this instance, it is observed that no person was named in the petition as a co-adulterer. In Matrimonial Proceedings, adultery must be proved beyond doubt as is required for the proof of any criminal offence in a criminal trial. See: Ginesi vs. Ginesi (1948) page 179.

Also, there is presumption of innocence in favour of the opposite party. In the instant case, there is no direct evidence that the Respondent committed adultery with any known person. The Petitioner has failed to prove intolerable adultery as required under Section 15(2)(b) of the Matrimonial Causes Act, and thus, I cannot grant dissolution on this ground.

Secondly, the Petitioner relied on unreasonable behavior pursuant to Section 15(2)(c) of the Matrimonial Causes Act.

Unreasonable behavior is the term used to describe the fact that a person has behaved in such a way that their Partner/Spouse cannot reasonably be expected to live with them. It is important to understand the fact that there is no definitive list of unreasonable behaviors used in divorce petitions. The behavior means more than a state of affairs or state of mind. The conduct or act must be such that a reasonable man cannot endure. On what is reasonable the Court must consider the totality of matrimonial history. See: [Ash vs. Ash \(1972\)2 WLR page 347.](#)

There are two limbs to the Provision of Section 15(2)(c) of the Matrimonial Causes Act. The Petitioner must firstly prove that the Respondent has behaved in a particular manner. Secondly, the Court has to consider whether, in the light of the Respondent's conduct, it will be reasonable to

expect the Petitioner to continue to live with the Respondent.

In this instance, the Petitioner failed to provide any evidence of unreasonable behavior of the Respondent which makes it intolerable for the Petitioner to continue to live with.

The law is trite that pleading, however strong and convincing the averment may be without evidence in proof thereof goes to no issue. It follows therefore that pleadings do not constitute evidence and where such pleading is not supported by evidence, it is deemed to have been abandoned. See: Rajco Int'l. Ltd. vs. Le Cavalier Motels & Restaurants Ltd. & Ors. (2016) LPELR - 40082 (CA).

Thus, the Petitioner herein having not led any evidence to prove the allegation of unreasonable behavior by the Respondent is deemed to have abandoned the allegation

and I decline to issue a decree of dissolution based on this ground.

Finally, the Petitioner relied on the fact that parties lived apart for a period of at least two years preceding the presentation of the petition and the Respondent does not object to a decree being granted. The evidence of the Petitioner in support of this fact is that she got married to the Respondent on the 15th April, 1995. She left the matrimonial home on the 7th July, 2017, when she could no longer stand the Respondent's alleged behaviors. From that date, parties have been living apart until the filing of this petition on the 17th January, 2020. Arithmetically, the period is more than two years preceding the filing of the instant petition.

The Court has also noted the fact that the Respondent is not opposing the grant of a decree of dissolution when he informed the Court that he is not defending the petition.

The Court held in Pleasant vs. Pleasant (1971)¹ All ER 587, that separation or living apart *“is undoubtedly the best evidence of break down and the passing of time, the most reliable indication that it is irretrievable.”*

Once, it is clear that parties have lived apart for a period of at least two years and the Respondent does not object to a decree being granted, then the Court is bound to grant a dissolution as there is no discretion in the matter. The Provision of Section 15(2)(e) and (f) is a non-fault Provision. The Court is not supposed to inquire as to the reason for the living apart. See: Omotunde vs. Omotunde (2001)⁹ NWLR (Part 718).

The intention of the law here is not to maintain the marriage which is no longer in existence, but in destroying the empty legal shell of an irretrievably broken down marriage, with the maximum fairness and the minimum bitterness, distress and the humiliation. This is to give an already dead marriage a decent burial without necessarily

apportioning fault. See: Santos vs. Santos (1972)2 WLR page 289.

I am satisfied that the marriage has broken down irretrievably the parties having lived apart for a period of at least two years preceding the presentation of the petition and the Respondent does not object to a decree being granted. The provisions of Section 15(2)(e) of the Matrimonial Causes Act has been satisfied.

I grant a decree nisi for dissolution of the marriage, which shall become absolute after the expiration of three months.

Hon. Justice M.A. Nasir

Appearances:

Odion Okokpujie Esq with him Oyo Eteng Esq – for the
Petitioner

Respondent absent and not represented.