IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 29TH DAY OF JUNE, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 6
SUIT NO: PET/120/2019

BETWEEN:

VIVIENNE UCHENNA SOLEYE ---- PETITIONER

AND

OLUSOLA OLUKAYODE SOLEYE ---- RESPONDENT

JUDGMENT

The Petitioner Vivienne Uchenna Soleye filed the instant petition on the 30th December, 2019 praying this Court for the dissolution of her marriage with the Respondent, Olusola Olukayode Soleye celebrated at the Abuja Municipal Area Council Marriage Registry on the 31st March, 2001. The fact of the petition is 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 that the Respondent does not object to a decree being granted.

The Respondent was duly served with the Notice of Petition on the 17th September, 2020 but he did not file any Answer in response to the petition.

On the 18th February, 2021, the Petitioner testified as PW1. She adopted her Witness Statement on Oath of 30th December, 2019. Her evidence in proving the petition is that immediately after the marriage parties lived together at their matrimonial home, until the 9th December, 2017 when parties separated and since then have continued to live apart. The Petitioner stated that no attempt was made by either of the parties to resume cohabitation with each other. PW1 concluded that both the Petitioner and the Respondent consider the marriage to be at an end and have no intention of continuing with the marriage. That the marriage is blessed with four children as follows:

1. Oluwatobi Tobechukwu Soleye born on 25th June, 2001.
2. Ayooluwa Ugochukwu Soleye born on 19th April, 2005.
3. Oluwatomiwa Ebubechukwu Soleye born on 19th September, 2008.
4. Olaoluwakiitan Kikachukwu Soleye born on 19th September, 2008.

Through PW1, the marriage certificate was tendered and same was admitted in evidence and marked as exhibit A.

At the close of the Petitioner's testimony, counsel for the Respondent A.E. Sani Esq. informed the Court that he was not cross-examining the Petitioner and the Respondent was not defending the Petition. Learned counsel referred to the terms of settlement executed by the parties and urged the Court to enter same as consent judgment in the case.

Both, learned Counsel waived their rights to address the Court and the petition was adjourned for judgment.

It is settled that in a Petition for divorce, it does not matter whether a Respondent filed an answer or not, or led evidence or not, it is still the duty of the Petitioner at the hearing to satisfy the Court by evidence of witnesses proving his case. Where the Petitioner fails to do that, the petition will be dismissed notwithstanding the fact that the Respondent failed to lead evidence. See: Ibeawuchi vs. Ibeawuchi (1966 – 1979)5 Oputa LR page 41 at 44.

In Matrimonial Causes, the standard of proof is provided under Section 82(1) of the Act which states that a matter of fact should be taken to be proved if it is established to the reasonable satisfaction of the Court. It is noteworthy, that the phrase 'reasonable' has not been defined in the Act. Nevertheless, it connotes adducing evidence in support of the averments before the Court and reasonably and satisfactorily too. See: Anioke vs. Anioke (2011) LPELR – 3774 (CA).

Generally, the Matrimonial Causes Act has made provisions guiding dissolution of marriage contracted under the marriage Act. Section 15(1) provides thus:

> *"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."*

The trial Court shall hold that the marriage has broken down irretrievably if the Petitioner is able by the evidence adduced to satisfy the Court with regard to one of the facts set out under Section 15(2)(a-h) of the Matrimonial Causes Act. Where the Petitioner 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.**

It is only where any of those facts has been pleaded and proved that the Court will pronounce that the marriage has broken down irretrievably. See: Damaluk vs. Damaluk (2004)8 NWLR (Part 874) page 151.

In this instance, the Petitioner has relied on Section 15(2)(e) which provides as follows:

> *"(2) 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:*
>
> *(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."*

The Petitioner had testified that parties have lived apart since the 9th December, 2017 and the petition was filed on the 30th December, 2019 which is a period exceeding two years immediately preceding the presentation of this petition. From the evidence adduced, the Respondent did not object to the grant of the decree of dissolution prayed by the Petitioner.

By Section 15(3) of the Matrimonial Causes Act,

> *"Parties to a marriage will be treated as living apart unless they are living with each other in the same house hold."*

The test of what amount to living apart is whether there is any kind of communal living between the parties. Where the answer is negative, then there is living apart as envisaged under the Act. See: **Fuller vs. Fuller (1973)1 WLR 730.** 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." See: Pheasant vs. Pheasant (1971)1 All ER 587.

When a party to a marriage relies on and proves that, as a matter of fact, he or she has lived apart from the other spouse for a period of at least two years and the Respondent does not object to a decree of dissolution being granted, the Court should not be invited under Section 15(2)(e) and (f) of the Act to inquire into why the parties have so lived apart and it is not necessary to prove any other matrimonial offence. The Court's rarely keep up a marriage which had obviously broken down completely. See: Sowande vs. Sowande (1969)1 All NLR 486 – 487.

The purpose of the law in this regard is to give a marriage which is already dead a decent burial without necessarily apportioning fault. See: Santos vs. Santos (1972)2 WLR page 289.

The evidence adduced by the Petitioner in this instance adequately satisfied the provision of Section 15(2)(e) of the Matrimonial Causes Act. Thus, the petition succeeds and I order a decree nisi to issue, which shall become absolute after the expiration of three months.

On the issue of custody and welfare of the children of the marriage, parties agreed and filed terms of settlement dated the 15th February, 2021 duly signed by their respective counsel. Both Counsel adopted the said terms and urged the Court to enter same as part of the judgment of the Court. By their terms parties agreed as follows:

"Terms of Settlement:

1. *The above named Petitioner to this action hereby urge the Court to accept the terms of settlement and enter them as judgment of the Court on this issue.*

2. That further orders be granted for the welfare of the Children of the marriage.

i. That the Petitioner shall have full legal custody of the children of the marriage.

ii. That the Petitioner shall be responsible for the welfare and upbringing of the children of the marriage.

iii. That the Respondent shall have full and unrestricted visitation rights to the children.

Wherefore the parties have agreed that the above Terms of Settlement shall be entered as the Judgment of the Court in this suit.

Dated 15th day of February, 2021

Signed and delivered for the within named Petitioner

Signed and delivered for the within named Respondent"

The above terms which have been willfully and mutually agreed upon, are adopted and made to form part of the judgment of this Court.

Signed
Honourable Judge

Appearances:

Victoria Degge Esq – for the Petitioner

A.E. Sani Esq – for the Respondent