IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA

THIS MONDAY, THE 15TH DAY OF JULY, 2021.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

SUIT NO: FCT/HC/PET/083/2021

BETWEEN:

MRS HOPE UCHENNA EKERENDU.....PETITIONER

AND

MR. VICTOR TOM EKERENDU…….....RESPONDENT

JUDGMENT

By a Notice of Petition dated 16TH February, 2021, and filed on the same day, the petitioner claims the following Reliefs against the Respondent as follows:

(a) A Decree of Nullity of Marriage with the Respondent on the ground that the marriage is void *ab initio,* to wit: failure of the Respondent to disclose his mental health issue(s) to the Petitioner.

(b) A Decree of Dissolution of the marriage on the ground that the marriage has broken down irretrievably in that Petitioner now lives separately from the Respondent for a period of two years to the presentation of this petition.

From the records of the Court, the originating process of this petition was duly served on the Respondent personally on the 25thday of June 2021. On the 29thday of June 2021, the Respondent entered appearance through his counsel. On the 5th

day of July 2021 the Respondent filed answer to the petition and served the Petitioner through her counsel on the 6thday of July 2021.

On the 1st day of July when the matter came up for hearing, the counsel to the Petitioner reported that service has been effected, that the evidence is that the Respondent's counsel is in court hence asked the court for a date for hearing. That both parties want to go their separate ways, if the court is inclined or disposed to the counsel filing terms of settlement. The court then ordered the parties to file witness statements on oath and terms of settlement.

When the matter came up for hearing on the 6th day of July, 2021, the Petitioner and her Counsel were in court. But the Respondent was absent and was represented by his counsel. The Petitioner opened her case and testified as PW1 and the only witness. She deposed to a witness deposition of thirty three (33) paragraphes, dated 16thday of February, 2021 which she adopted at trial. The substance and summary of her evidence is that she got married to the Respondent at the Abuja Municipal Area Counsel (AMAC) on the 18thday of November, 2011. She stated that the marriage was void *ab initio*, to wit: failure of the Respondent to disclose his mental health issue(s) to the Petitioner. She further stated that the Respondent has behaved in away that she cannot reasonably be expected to live with him. She continued that the marriage has broken down irretrievably and that they have mutually agreed to bring the marriage to an end. A copy of the marriage certificate was tendered and admitted as **Exhibit HU 1,** and prayed the court to dissolve their marriage.

Counsel to the Respondent did not cross-examine the Petitioner and with her evidence the Petitioner closed her case.

The Respondent filed an answer to the petition but did not depose to any witness statement on oath. In his answer he admits paragraphs 1,2,3,4,5,6,13,14,30 and 31 of the Petitioners averments and denied paragraphs

7,8,9,10,11,12,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29 and 32 as false averments, misleading and concocted lies to deceive the court and puts the Petitioner to the strictest proof of same at trial. The Respondent in summary stated that he is no longer interested in the marriage with the Petitioner as there is no more affection and love as the marriage has broken down irretrievably and prayed the court to grant the petition of the Petitioner.

The Petitioner's counsel waived her right of address and adopted the terms of settlement and prayed the court to grant their reliefs.

The Respondent counsel also waived his right of address equally adopted same terms of settlement and urged the court to grant the petition.

Having carefully considered the petition, the unchallenged evidence led on oath and the terms of settlement filed, the narrow issue is whether the Petitioner has on a preponderance of evidence established or satisfied the legal requirements for the grant of this petition. It is on the basics of this issue that I would now proceed to consider the evidence led in this case.

ISSUE 1

Whether the Petitioner has on a preponderance of evidence established/ satisfied the legal requirements for the grant of the petition.

I had at the beginning of this judgment stated the claims of the Petitioner. Similarly I had also stated that the Respondent despite being represented by a counsel in court did not either call any witness, cross-examine the Respondent or put up any defence except just filing an answer to the petition. In law, it is an acceptable principle of general application that in such circumstances, the Respondent is assumed to have accepted the evidence adduced by the Petitioner and the trial court is entitled or is at liberty to act on the Petitioner's unchallenged evidence. See

TANAREWA (NIG) LTD V. ARZAI (2005) 5 NWLR (pt.919) 593 at 636 C-F; see also **OMOREGBE V. LAWANI (1980) 3-7 SC 108;** also see **AGAGU V. DAWODU (1990) NWLR (pt. 160) 169 at 170.**

Notwithstanding the above general principle, the court is however under a duty to examine the established facts of the case and then see whether it entitles Petitioner to the relief she seeks. I find support for this in the case of **NNAMDI AZIKIWE UNIVERSITY V. NWAFOR (1999) 1 NWLR (pt.585) 116 at 140-141** where the Court of Appeal per Salami J.C.A expounded the point thus:

> **The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence …the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…**

A logical corollary that follows the above instructive dictum is the attitude of the court to the issue of burden of prove where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **DURU V. NWOSU (1989) 4 NWLR (pt.113) 24** stated thus:

> …**a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence or if the evidence on the material issues he needs to prove. If he has not so led evidence or the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the judge does not have to consider the case of the defendant.**

From the above, the point appears sufficiently made that the burden of prove lies on the plaintiff or petitioner in this case to establish her claim irrespective of the presence and /or absence of the defendant or respondent. See **AGU V. NNADI (1999) 2 NWLR (pt. 589) 133 at 142**

This burden or standard of proof required in Matrimonial Causes Act provides thus:

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.**

Now in the instant case, the Petitioner from her petition seeks for the Nullity of the marriage with the Respondent on the ground of the Respondent's failure to disclose his mental health issue(s) to the Petitioner and essentially predicated on the ground for the petition on the fact that the Respondent's health condition makes him violent and lucid; that it is a curse from their family and a Decree of Dissolution of the marriage on the ground that the marriage has broken down irretrievably in that the Petitioner now lives separately from the Respondent for a period of two years to the presentation of this petition.

It is doubtless therefore, that the petition was brought within the purview of **Section 15 (1) (c), (e) and (f) of the Matrimonial Causes Act 1970.** It is correct that **Section 15 (1) of the above Act** provides for the irretrievable breakdown of a marriage as a ground upon which a party may apply to a dissolution of a marriage. The fact that may lead to this breakdown are clearly categorized under **Section 15**

(2) a to h of the above Act. In law any one of these facts if proved by credible evidence is sufficient to ground or found a petition for divorce.

Now from the uncontroverted evidence of the Petitioner and the Respondent before the court, I find the following essential facts as established to wit:

1. That parties got married on the 18th day of November, 2011 vide Exhibit HU1.
2. That the parties have lived apart for a period more than two years to the presentation of this petition.
3. Conjugal rights ceased since 2018 between the parties and they have totally lost interest in the union.
4. That even before the Petitioner left the matrimonial home, parties were in constant disagreements with complete absence of love and trust in the marriage.
5. Both parties have agreed on their own that the marriage be dissolved as expressed in the jointly prepared document adopted by both parties.

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the Respondent who was given all the opportunity of doing so. The law has always been that where evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it. See **ODUNSI V. BAMGBALA (1985) 1 NWLR (pt. 374) 641 at 664 D-E; see also INSURANCE BROKKERS OF NIG. V.A.TM CO. LTD (1996) 8NWLR (pt.466) 316 at 327 G-H**

This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts. Consequently, where a defendant or respondent chooses not to adduce evidence,

the suit will be determined on the minimal evidence produced by the plaintiff or petitioner. See **A.G OYO STATE V. FAIR LAKES HOTELS LTD. (1989) 5 NWLR (pt.121) 255;** see also A**.B.U V. MOLOKWU (2003) 9 NWLR (pt. 825) 265.**

Indeed the failure of the Respondent to defend the petition confirms in all material particulars the fact that the marriage has broken down irretrievably and that they have lived apart now for more than two years.

By a confluence of these facts, it is clear that this marriage exist only in name. As stated earlier, any of the facts under **Section 15 (2) a-h of the Matrimonial Causes Act,** if proved by credible evidence is sufficient to ground a petition for divorce. The established fact of living apart for more than two years show clearly that this marriage has broken down irretrievable and parties have no desire to continue with the relationship; this fact alone without more can ground a decree of dissolution of marriage. If parties to a consensual marriage relationship cannot live any longer in peace and with mutual respect for each other, then it is better they part in peace. This clearly is the earnest desire of parties as encapsulated in the terms of settlement adopted. The unchallenged petition in the circumstances has considerable merit.

In the final analysis and in summation, having carefully evaluated the petition, the unchallenged evidence of the parties and the terms of settlement executed by the parties, I accordingly make the following order:

An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and the Respondent on the 18th November 2011.

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Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. Lydia Izan for the Petitioner.
2. Desmond Nule for the Respondent.