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

THIS MONDAY, THE 14TH DAY OF JULY, 2021.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

SUIT NO: FCT/HC/PET/031/2021

BETWEEN:

MRS. OLUWADAMILOLA O. OSHOFFA.....PETITIONER

AND

1. **MR. OLUWALE BENJAMIN OSHOFFA…….RESPONDENTS**
2. **MRS. BUKKY OSHOFFA**

JUDGMENT

By a Notice of Petition dated 25th January, 2021, and filed same day, the Petitioner claims the following Reliefs against the Respondents as follows:

(a) A Decree of Dissolution of Marriage with the 1st Respondent on the ground that the marriage has broken down irretrievably.

(b) That the Petitioner and the 1st Respondent had lived apart for a continuous period of about six years since 2014.

(c) That since the marriage, the 1st Respondent has committed adultery with the 2nd Respondent and the relationship had produced two children (male and female).

From the records of the Court, the originating process of this petition was duly served on the 1st Respondent on the 13th day of July, 2021 and the 2nd Respondent on the same 13th day of July 2021. The first day the matter came up on the 04th day of March, 2021, the Petitioner was in court and was also represented by her Counsel. The Respondents had not been served then. When the matter came up on the 12th day of July, 2021 for hearing. The Petitioner was present in court and was represented by her counsel and the Respondents were not in court but were represented by their Counsel in court. The Petitioner's Counsel informed the Court that they have prepared Terms of Settlement. The Court asked the Petitioner to file a witness deposition on oath and adjourned the matter for trial. On the 14th day of July when the matter came up for trial the Petitioner was present in court and was also represented by her counsel. The Respondents were absent in court and but were represented by a counsel in court. The Learned Counsel to the Petitioner informed the court that they have filed a written statement on oath and tendered same in evidence and the court admitted it as "**Exhibit PW1A**"and that the Petitioner is in court to testify as PW1.

The Petitioner was affirmed as PW1. The Petitioner then opened his case and testified as PW1 and the sole witness. He deposed to a witness deposition of eighteen (18) paragraphs dated 13th January 2021 which he adopted during trial. The substance and summary of her evidence is that she got married to the 1st Respondent at the Federal Marriage Registry Ikoyi, Lagos on 5th day of August, 2009 with Marriage Certificate Number 02525/2009. The said marriage certificate between the Petitioner and the 1st Respondentat the Federal Marriage Registry Ikoyi, Lagos on the 5th day of August, 2009 was admitted as **Exhibit PW1B.**

She subsequently, upon relocation to the United State of America with the 1st Respondent, got married to the 1st Respondent in the Country of Denton, Texas,

United States of America on the 18th day of November, 2010 with married licence number 113499. Which was equally admitted in evidence as **Exhibit PW1C.**

That the marriage with the 1st Respondent was blessed with two male children- IremideOshoffa (male) who was born on the 12th day of June, 2009, and Benjamin OlamideOshoffa (male) whose date of birth was 28th day of October, 2011.
That since the marriage, the 1st Respondent has committed adultery with the 2nd Respondent and the relationship had produced two children (male and female). That she had lived apart from the 1st Respondent for a continuous period of over six (6) years. She further testified that the 1st Respondent had behaved in such a way that she cannot be reasonably expected to live with the 1st Respondent. That her marriage with the 1st Respondent has broken down irretrievably. She prayed the court to dissolve the marriage based on the above facts. The Petitioner further averred that the 1st Respondent upon receipt of her notice of petition filed on the 25th day of January, 2021, initiated an amicable settlement of this petition. That she entered into terms of settlement dated 7th day of July, 2021 and filed on the 12th day of July, 2021 with the 1st Respondent. The said terms of settlement was tendered and admitted in evidence as **Exhibit PW1D**. That the terms of settlement referred as follows; that the Petitioner and the 1st Respondent have agreed to go their separate ways and urged the court to dissolve their marriage because their marriage has broken down irretrievably. That both the Petitioner and the 1st Respondent have been living apart since 2014 and there is no room for reconciliation. That the 1st Respondent had conceded the custody of their two children – Iremide Oshoffa and Olamide Oshoffa to the Petitioner and the Petitioner agreed that the children will stay with the 1st Respondent during the holidays and vacations. That the 1st Respondent shall pay the sum of #600,000 (six hundred thousand naira) per annum in support of the School Fees of Iremide

Oshoffa the first Child, that the 1st Respondent has further agreed to pay the sum of #300,000 (three hundred thousand naira) in support of the school fees of Benjamin Olamide Oshoffa which totally amounts to the sum of #900,000(Nine Hundred Thousand Naira) annually payable in three tranches at the beginning of each term. The Petitioner further stated that she and the 1st Respondent agreed that the 1st Respondent shall pay the sum of #600,000(six hundred thousand naira) broken down into Fifty Thousand Naira (#50,000) monthly payable by 1st week of each month for the Children's maintenance. That the 1st Respondent has agreed to pay the sum of #200,000 (Two Hundred Thousand Naira) as general compensation to the Petitioner with regards to the 2nd Respondent. That in the spirit of settlement, she the Petitioner abandons all Claims except one which is the Dissolution of the Marriage as per the marriage conducted in Nigeria before the Federal Marriage Registry Ikeja Lagos and the subsequent one done in the County of Denton under the Texas Law. That she the Petitioner and the 1st Respondent also agreed that the marriage predicted on solemnization of wedlock on the 5th day of August, 2009 with certificate number: 02525/2009 at Federal Marriage Registry Ikeja, Lagos and marriage licence 113499 issued by the County of Delton, Texas, United States of America celebrated on the 18th day of November, 2010 be dissolved and a decree nisi granted.

Counsel to the Respondent did not cross-examine the PW1 and with her evidence, the Petitioner closed her case.

The Respondent Counsel informed the court that the Respondent has no defence to this petition and by way of remark urged the court to dissolve the marriage in line with the terms of settlement already filed.

Both counsel thereafter waved their rights of address and urged the court to give judgment.

Having carefully considered the petition, the unchallenged evidence led and the address of both counsel, 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 basis of this that I would proceed to consider the evidence and submissions of both counsel.

ISSUE 1

Whether the Petitioner has on a preponderance of evidence established or 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 did not file or put up any defence to this petition, hence he is not opposed to the prayers of the Petitioner. The trial court is entitled or 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; Omoregbe V. Lawani (1980) 3-7 SC. 108; Agagu V. Dawodu (1990) NWLR (Pt.160) at 170.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles to the Petitioner the relief(s) he seeks. I find support for this in the case of **NnamdiAzikiwe 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 established 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…**

The logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof 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 on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory the he had not made out what is usually referred to as a prima-facie case, in which case the trail judge does not have to consider the case of the defendant at all.**

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff or petitioner in this case to establish his case on a balance of probability by providing credible evidence to sustain his claims irrespective of the admissions of the respondent. See **Agu V. Nnadi (1999) 2 NWLR (Pt. 589) 131 at 142.**

This burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings. Indeed **Section 82 (1) and (2) of the 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 extant case, the Petitioner from his petition seeks for the dissolution of the marriage with the Respondent on the ground that the marriage has broken down irretrievably and essentially predicated the grounds for the petition on the fact that the Petitioner and the 1st Respondent had lived apart for a continuous period of about six (6) years since 2014 and that since the marriage, the 1st Respondent has committed adultery with the 2nd Respondent and the relationship has produced two children (male and female).

It is doubtless therefore that the petition was brought within the purview of **Section 15 (1) of the Matrimonial Act.** It is correct that **Section 15(1) of the Act** provides for the irretrievable breakdown of a marriage as the only ground upon which a party may apply for a dissolution of a marriage. The facts that may however lead to this breakdown are clearly categorized under **Section 15 (2) (a) to (h) of the Act.** In law any one of these facts if proved by credible evidence is sufficient to ground or found a petition for divorce.

All the pieces of evidence led in this petition have not been challenged or controverted in any manner by the Respondent. The law has always been that where evidence given by a party to any proceeding is not challenged by the opposite party who has opportunity to do so, it is always open to the court seized of

the proceedings to act on the unchallenged evidence before it. See **Agagu V. Dawodu (supra) 169 at 170, Odunsi V Bamgbala (1995) 1 NWLR (Pt. 374) 641 at 664 D-E, Insurance Brokers of Nig. V.A.T.M Co. Ltd. (1996) 8 NWLR (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 the Respondent as the case may be, chooses not to adduce evidence or challenge the claimant's or the Petitioner's evidence, as in this case, the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G Oyo State v. Fair Lakes Hotels Ltd. (No 2) (1989) 5 NWLR (Pt. 121) 255, A.B.U v. Molokwu (2003) 9 NWLR (Pt. 825) 265.**

Indeed the failure of the Respondent to oppose this petition and all the facts averred in this petition by the Petitioner, confirms in all material particulars the facts that the marriage has broken down irretrievably by the fact that the Petitioner and the 1st Respondent had lived apart for a continuous period of about six years since 2014 and that since their marriage, the 1st Respondent has committed adultery with the 2nd Respondent and the relationship had produced two children (male and female).

By a convergence of these unchallenged facts, it is as clear as daylight that this marriage exists 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 is that the Petitioner and the 1st Respondent have lived apart for a continuous period of about six (6) years since 2014 and that since the marriage, the 1st Respondent has committed adultery with the 2nd Respondent and the relationship has produced two children (male and female) shows clearly that

this marriage has broken down irretrievably and parties have no desire to continue with the relationship; one of the above fact alone without the other or more grounds can ground a decree of dissolution of marriage. Therefore, the unchallenged petition in the circumstance has considerable merit. I so hold.

In the light of the foregoing, and after a careful look as well as evaluation of the petition and the unchallenged evidence of the PW1, I found that this marriage between the Petitioner and the 1st Respondent has broken down irretrievably, therefore, An Order of Decree Nisi is granted dissolving the marriage between the Petitioner and the 1st Respondent celebrated on the 5th day of August, 2009 at the Federal Marriage Registry Ikeja Lagos and also the marriage celebrated on 18th day of November, 2010 at the County of Delton Texas United States of America be dissolved respectively.

The Judgment is hereby entered as contained in Exhibit PW1D (the Terms of Settlement) signed, executed and filed by the Petitioner and the 1st Respondent.

I make no cost to ward.

Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. **Chief Albert AbiodunAdeogun, with Bright Bethel Ihugba Esq., for the Petitioner**
2. **M. NjuaraNjuma with Samuel .O. AkporindoEsq., for the Respondents.**