IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 24TH DAY OF NOVEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: PET/198/2021

BETWEEN:

ADAOBI PLACIDIA ENEMOH (NEE OGWO) ---- PETITIONER

AND

CHUKWUDI EMMANUEL ENEMOH ---- RESPONDENT

JUDGMENT

The Petitioner is a Sales Executive/Marketer by occupation and resident in Lagos State while the Respondent is businessman resident in Gwarimpa Abuja. The parties got married on the 8/8/2018 at the Abuja Municipal Area Council (AMAC) Marriage. There is no child in the marriage. The Petitioner filed this petition praying the Court for dissolution of the marriage on the grounds that the marriage has broken down irretrievably, on the grounds that parties have lived apart for more than two years without objection.

Parties cohabited at NCS, 32nd Crescent, 3rd Avenue, Gwarimpa, Abuja. Due to irreconcilable difference, cohabitation ceased on 29/4/2019. Petitioner who testified as sole witness stated that quarrels became rampant in the marriage and it degenerated to the extent that parties could not hold family prayers together. Any attempts at family discussion will always end in arguments and quarrels. She stated that the atmosphere at home became increasingly tensed and frightening and communication was non – existent. That out of neglect, frustration, hopelessness and lack of love, the Petitioner said she packed her belongings and left the matrimonial home. She now lives in her own apartment in Lagos. Since then the Respondent has not contacted her, but requested for his dowry which has since been returned to him. The marriage certificate was admitted as Exhibit A.

The Respondent was served with the Notice of Petition and hearing notice. However on the 17/8/2021 the

Respondent wrote a letter of no contest. Upon the application of Petitioner's counsel, the Respondent's right to cross examination was foreclosed. As there was no defence on record, counsel for the Petitioner **Onyeka Mbakwe Esq** also waived his right of address and urged the Court to proceed to enter judgment for the Petitioner.

Section 15(1) of the Matrimonial Causes Act provides:

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

The law is therefore trite 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 Section 15(2)(a) – (h) and 16(1) of the Matrimonial Causes Act.

In Harriman vs. Harriman (1989)5 NWLR (Part 119) 6 the Court held that unless there is proof of any of the facts listed in Section 15(2)(a – h) of the Matrimonial Causes Act, the Court will not grant a decree for dissolution of marriage suo moto. It follows therefore that the issue of dissolution of a marriage is one that even the society is interested in and it cannot be dissolved not even by consent of the parties. That is the essence of the Section 15(2)(a – h) of the Act.

It is no wonder that the Matrimonial Causes Act made provisions for the standard of proof required in matrimonial proceedings which is proof to the reasonable satisfaction of the Court. See Section 82 of the Matrimonial Causes Act.

Section 15(2)(e) of the Matrimonial Causes Act states thus:

> *"15(2) The Court hearing a Petition for a decree of a dissolution of a 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 two conditions must be present to warrant the Court granting a decree of dissolution of the marriage under Section 15(2)(e) of the Matrimonial Causes Act. See: Odili vs. Odili (1973)3 ECSLR, 63, Omotunde vs. Omotunde (2001)9 NWLR (Part 718) 252.

The first condition as per Section 15(2)(e) of the Act is living apart. The parties to a marriage shall be treated as living apart, unless they are living with each other in the same household. It is important for the Petitioner to prove that they are living apart. Mere physical separation does not constitute living apart. Living apart involves physical separation accompanied by the termination of consortium. There must be a clear intention on the part of one or both

spouses not to return to the other, and the treatment of the marriage as having come to an end. See **Santos vs. Santos (1972) 2 WLR page 889.**

The Petitioner testified that she left the matrimonial home on 29/4/2019 due to continuous neglect, frustration, hopelessness and lack of love. The Petition was filed on the 24/6/2021 which is a period of more than two years, thus satisfying that parties have lived apart for two years preceding the presentation of the Petition.

The 2nd limb is the lack of objection from the Respondent. One of the easiest means of proof of absence of objection is vide a letter by the Respondent, or by coming before the Court and stating that he does not object to a decree being granted. The Respondent in this instance wrote a letter to the Court wherein he stated as follows:

"The Registrar
High Court No. 5,

(Family Court)

Jabi – Abuja

Dear Sir/Ma,

LETTER OF NO CONTEST

I Chukwudi Emmanuel Enemoh state that I am the Respondent in this petition filed by my wife Adaobi Enemoh and I have been duly served with the Court processes. I affirm that I shall not attend the proceedings and I waive my right to hearing notices. I also waive my right to any time limit required by law in filing any response and I am not getting any legal representation to represent me. I am not contesting the petition and I urge the Court to grant her all her reliefs. I respect her request for a divorce and give my full consent.

I request that the Court proceeds without me and grant her all her request.

Thank you.
Yours faithfully,
signed
Chukwudi Emmanuel Enemoh"

The Court in **Pheasant vs. Pheasant (1971)1 All ER 587,** held 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: **Agunwa vs. Agunwa (1972)2, Omotunde vs. Omotunde (2001)9 NWLR (Part 718).**

It takes two to marry and perform the marital obligations and the law has empowered the Court not to maintain the marriage which is no longer in existence, but in destroying the empty legal shell of an irretrievably broken down marriage.

In this instance, time has passed between the parties since the cessation of cohabitation. I am satisfied that the marriage has broken down irretrievably the parties having lived apart for a continuous period of at least two years preceding the presentation of the Petition and the Respondent to the Petition does not object to a decree being granted. Having proved the fact under Section 15(2)(e) of the Matrimonial Causes Act, it will be sufficient for the Court to dissolve the marriage.

I therefore grant a *decree nisi* for the dissolution of the marriage between the Petitioner and the Respondent celebrated on the 8/8/2018. The decree nisi shall become absolute after the expiration of three months.

Signed
Honourable Judge

Appearances:

Onyeka Mbakwe Esq – for the Petitioner

Respondent absent and not represented