

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 6TH DAY OF OCTOBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: PET/536/2020

BETWEEN:

EGBUCHÉ IFEANYI EMMANUEL ----- PETITIONER

AND

EGBUCHÉ OBIAGELI ALEXANDRA ----- RESPONDENT

JUDGMENT

The Petitioner Egbuche Ifeanyi Emmanuel filed the instant Petition on the 5th November, 2020 seeking for the dissolution of his marriage with the Respondent Egbuche Obiageli Alexandra Celebrated at the Federal Ministry of Interior Marriage Registry, Garki, Abuja on the 17th September, 2011. The Petitioner in presenting his Petition had relied on the following grounds:

1. That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

2. That the Petitioner and the Respondent have lived apart for a continuous period of at least 2 years immediately preceding the presentation of the Petition.

3. And the fact that the Respondent has deserted the Petitioner for a continuous period of at least one year preceding the presentation of the Petition.

Upon service of the Notice of the Petition on the Respondent, the Respondent on the 8th July, 2021 filed her Answer and Cross-Petition.

On the 21st September, 2021 when the Petition came up for hearing, Mr. Emmanuel Adedeji Esq. Counsel representing the Petitioner informed the Court that parties had filed terms of settlement on all ancillary reliefs and sought to discontinue the Petition against the Respondent. The Notice of Petition was subsequently struck out.

Learned Counsel for the Petitioner and Respondent adopted the terms of settlement dated and filed on the 27th

July, 2021 and urged the Court to enter the said terms as part of its Judgment in this case.

Now, the Petition having been discontinued and struck out, the only process before the Court is the Cross-Petition of the Respondent/Cross-Petitioner.

The Cross-Petitioner relied on a sole ground 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 Petitioner/Respondent does not object to a decree being granted.

She testified as sole witness and adopted her Witness Statement of Oath of 8th July, 2021. Her testimony is that the marriage with the Petitioner was never peaceful on account of the Petitioner's explosive temperament and penchant for all forms of violent abuse. She stated that in 2014 while she was pregnant, the Petitioner beat her mercilessly on a number of occasions.

On one of such episodes of beatings when the PW1 was 4 months pregnant, the Petitioner removed his belt and flogged her thoroughly with it and in the process, the buckle of the belt hit her at the lower abdomen. According to the witness it was due to all the trauma, she had still birth on the 1st January, 2015.

The witness further testified that the Petitioner/Respondent to Cross-Petition inflicted untold hardship, trauma, physical, mental, psychological and emotional torture and injury on her and the children of the marriage. She stated that in the Seven (7) years they lived together, the Petitioner forced her and the children to return to her parents' house seven different times.

The Cross-Petitioner testified also that in 2018, the Petitioner made a request to the Metropolitan Tribunal of Abuja requesting for a two year separation from her under their Catholic Church marriage. In April, 2018, the Tribunal granted the Petitioner's request for 2 years separation

which compelled the Cross-Petitioner and her children to move out of the matrimonial home amidst Petitioner's threat to her life.

The Cross-Petitioner finally stated that the marriage is blessed with two children, Miss Obianuju Flora Egbuche (8 years old) and Miss Chioma Alexandra Egbuche (4 years old).

Through this witness, the marriage Certificate of the parties was tendered and admitted and same is marked as Exhibit A.

At the conclusion of the Cross-Petitioner's testimony, the Petitioner's Counsel informed the Court that they are not Cross-Examining the witness and also not defending the Cross-Petition. Consequently, the Petitioner's right to Cross-Examine PW1 and defend the Cross-Petition was foreclosed.

Both learned counsel waived their right to address the Court and the Cross-Petition was adjourned for judgment.

Generally, the law is 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.

It follows therefore that in the absence of proof of any of the facts listed, the Court cannot suo moto 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 a 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.

In this instance, as stated earlier, the Cross-Petition is premised on the ground that parties have lived apart for a continuous period of at least two years immediately

preceding the presentation of the Cross–Petition and the Respondent to the Cross–Petition does not object to a decree being granted. This ground is provided for under Section 15(2)(e) of the Matrimonial Causes Act.

The evidence of the Cross–Petitioner in support of this fact is that the Respondent to the Cross–Petition sometime in 2018 made a request to the Metropolitan Tribunal of Abuja requesting for a two years separation from the Cross–Petitioner. In April, 2018 the Tribunal granted the Respondent’s request and he compelled the Cross–Petitioner and her children to move out of the matrimonial home. From that date parties have been living apart until the filing of the instant Cross–Petition on the 8th July, 2021 which is a period of more than two years.

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 presented 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 ECSR, 63, Omotunde vs. Omotunde (2001)9 NWLR (Part 718) 252. For the purpose of subsection (2)(e) of Section 15 above, the parties to a marriage shall be treated as living apart unless they are living with each other in the same household. See Section 15(3) Matrimonial Causes Act. In this instance, parties had lived apart for a continuous period of more than two years and the Respondent through her Counsel informed this

Court that she had no objection to the grant of dissolution of the marriage.

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).

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.

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 Cross-Petition and the Respondent to the Cross-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 Cross Petitioner and the Cross Respondent celebrated on the 17/9/2011. The decree shall become absolute after the expiration of three months.

On the reliefs sought in the Cross-Petition which essentially relate to the custody and maintenance of the two children of the marriage i.e. Miss Obianuju Flora Egbuche born on the 4th October, 2012 and Miss Chioma

Alexandra Egbuche born on the 6th January, 2017. The parties filed a document embodying the agreement reached. The terms agreed upon are as follows:

a. "The Respondent shall have custody of Miss Obianuju Flora Egbuche (8 years) and Miss Chioma Alexandra Egbuche (4 years).

b. That the Petitioner shall have access to the children of the marriage and shall also have the opportunity of spending time with them, two times in a month, (first and last Saturday of every month) between the hours of 3:pm to 5:pm at a public place in the presence of a representative of the Respondent. This arrangement will be in place until parties are able to develop trust between them, then the Petitioner may be allowed to take them out alone.

c. The Petitioner shall give the Respondent the sum of N100,000:00 (One Hundred Thousand Naira)

monthly as maintenance for the upkeep of the children.

d. The Petitioner shall pay the sum of N250,000:00 (Two Hundred and Fifty Thousand Naira) annually for clothing for the children while he continues do what he has been doing by way of gifts of clothing for his children.

e. The Petitioner shall be responsible for the school fees of the children”.

The above terms as mutually agreed by the parties and their respective Counsel are hereby incorporated to be part of this judgment.

Signed
Honourable Judge

Appearances:

Emmanuel Adedeji Esq – with him Precious Azubuike for the Petitioner

Charity C. Ibezim – for the Respondent