

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 4TH NOVEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: PET/254/2018

BETWEEN:

ELIAS OGBONNAYA UKOROBO -----
PETITIONER

AND

ADAEZE STELLA UKOROBO ----- RESPONDENT

JUDGMENT

The Petitioner is praying the Court for an order of dissolution of his marriage to the Respondent celebrated on the 18/1/2012 at the Abuja Municipal Area Council (AMAC) Marriage Registry; the ground being unreasonable behaviour and living apart for more than 3 years. The Petitioner has also prayed the Court for custody of the children of the marriage or when they attain the age of 7 years. Finally, he prayed for access to the children during weekend and to travel with them during holidays.

The Respondent filed an Answer and Cross Petition praying the Court for dissolution of the marriage premised on cruelty, desertion and living apart for 3 years. She also prayed for custody of the two children of the marriage, settlement of properties and monthly maintenance for the children.

During the course of the proceedings, parties filed terms of settlement on the 16/2/2021 concerning all ancillary reliefs. In proof of their case, the Petitioner testified on the 21/10/2021. He adopted his witness statement on oath and tendered the certificate of marriage. The Petitioner was not cross examined. Thereafter, the Respondent took the stand and adopted her witness statement on oath, and she was also not cross examined. Both parties adopted the terms before the Court and prayed the Court to dissolve the marriage.

Okey Nwafor Esq for the Petitioner and **A.N.C. Ikoro Esq** for the Respondent both waived their rights to

address the Court and the Petition was adjourned to judgment.

Divorce proceedings are considered *sui generis* because they are not governed by the general rules of practice in pleadings but by the Matrimonial Causes Act and Rules specifically enacted to regulate them. The Petitioner is required to strictly prove his averments in the petition irrespective of any admission by the Respondent to the Petition. See Adeparusi vs. Adeparusi (2014) LPELR - 41111 (CA), Ezeabagbulem vs. Ezeabagbulem (2019) LPELR - 47558 (CA).

Basically, in divorce proceedings, the onus of proof with regards to the facts set out in Section 15(2)(a - h) of the Matrimonial Causes Act, lies on the Petitioner. Success or otherwise of the petition depends largely on how diligently and adequately this burden is discharged. Failure in this regard will entail a dismissal of the petition, *moreso*, where one of the parties opposes the dissolution of the marriage. Thus, by virtue of the said

provision of the law, a Petitioner at the hearing in a matrimonial causes proceeding, must satisfy the trial Court of the fact or facts alleged or relied upon. Again, by virtue of Section 82(1) and (2) of the said Act, such matter or facts shall be established to the reasonable satisfaction of the Court. Put differently, the matter or fact as alleged shall be sufficiently proved once the Court is reasonably satisfied of the existence of the ground, fact or matter as alleged. It is noteworthy, that the phrase reasonable satisfaction, has not been defined in the Act. Nevertheless, it connotes adducing all available relevant and adequate evidence in support of the averments before the trial Court and reasonably satisfactorily too. See Anioke vs. Anioke (2011) LPELR - 3774 (CA).

The Petition is premised on unreasonable behaviour and living apart for 3 years pursuant to Section 15(2)(c) and (f) of the Matrimonial Causes Act. Looking at the position of the law regarding living apart for 3 years immediately preceding the presentation of the Petition,

i.e. the non fault provision of the law, that is, in situations where cohabitation has completely collapsed, the position of the law is that it is immaterial who has between the parties caused them to live apart, because Section 15(2)(f) of the Matrimonial Causes Act does not permit the Court to go into a fault finding expedition. See Uzochukwu vs. Uzochukwu (2014) LPELR – 24139 (CA), Omotunde vs. Omotunde (2001) 9 NWLR (part 718) 252, Agunwa vs. Agunwa (1972) 2 E.C.L.R. 20 at 22, McDonald vs. McDonald (1964) 6 FLR 58. By the said Section 15(2)(f) of the Matrimonial Causes Act, the Court hearing a petition will grant dissolution where the Petitioner successfully satisfies the Court that parties have lived apart for a continuous period of 3 years immediately preceding the presentation of the Petition.

The evidence of the Petitioner before this Court is that cohabitation between the parties ceased on the 27/10/2014 when he returned home to discover that the Respondent had packed all her belongings including

some of the Petitioners properties and left the matrimonial home. She even locked the house and left with the keys. He had to go after her to recover the keys and his international passport. Parties have lived apart since then. The Respondent did not cross examine the Petitioner on this fact. The Respondent in her Answer to the Petition admitted that cohabitation between the parties ceased on the 27/10/2014. This petition was filed on the 31/05/2018 a period of more than 3 years immediately preceding the presentation of this petition. Within this period of living apart, it is evident that a lot of water has passed under the bridge, and there is no evidence of any attempt at reconciliation. It is paramount in situations like this to consider the interest of the community at large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down. See Enekebe vs. Enekebe & anor (1964) LPELR - 25146 (SC).

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.”*

The ground under Section 15(2)(f) has been established to the reasonable satisfaction of the Court and entitles the Petitioner to a dissolution of the marriage. Having proved one of the facts as stated above, there is absolutely no need to consider other grounds stated on the petition. In the circumstance, I am satisfied that this petition succeeds pursuant to Section 15(2)(f) of the Matrimonial Causes Act.

Now to the Cross Petition. It is elementary that a Cross Petition is itself a Petition for it is the same category as a counter claim. The Cross Petitioner must therefore prove every averment in the Cross Petition. See Eluwa vs. Eluwa (2013) LPELR – 22120 (CA), Otti vs. Otti (1992) 7 NWLR (part 252) 187 at 212. The Cross Petitioner has also relied on living apart for three years

immediately preceding the presentation of the Petition. The Cross Petitioner stated that cohabitation ceased on the 27/10/2014 which fact was amply corroborated by the Cross Respondent. The Cross Petition was filed on the 23/07/2018 which is a period of more than 3 years immediately preceding the presentation of the Cross Petition. Once there is evidence that the parties have lived apart for a continuous period of three years, it is a strong and irrefutable presumption in favour of the Petitioner that the marriage has broken down irretrievably. See Tagbo vs. Tagbo (1966 - 1079) Vol. 5 Oputa LR page 138.

In the circumstance, I hold that the Cross Petition also succeeds. A Decree Nisi is granted dissolving the marriage between the Petitioner and the Respondent celebrated at the Abuja Municipal Area Council (AMAC) Marriage Registry on the 18/1/2012. It shall become absolute upon the expiration of three months from today.

On the other reliefs sought in the Petition and Cross Petition which essentially relate to the custody and maintenance as well as settlement of properties; the parties filed a document embodying the agreement reached. The terms agreed upon are as follows:

- “1. That the custody of the two children of the marriage be left with the Respondent/Cross Petitioner.*
- 2. That the Petitioner pay a monthly maintenance fee of Forty Thousand Naira (N40,000) for the children of the marriage without prejudice to his right to do shopping as often as he deems fit for them.*
- 3. That the Petitioner shall have unfettered access to the children of the marriage, and shall be at liberty to have them with him during certain convenient weekends and holidays.*
- 4. That the Petitioner shall continue with the responsibility of footing the educational bills of the children of the marriage.*

5. *That any party shall have the right to travel with the children of the marriage out of Abuja or Nigeria provided that such travel is made with the knowledge of the other party.*
6. *That no one such trip/travel shall exceed a period of four 30 (thirty) days without returning the children to Abuja/Nigeria as the case may be.*
7. *That save on special circumstances understood and agreed on by both parties, no such trip/travel shall take place except during vacations/holidays so that the children's studies in school will not be negatively affected.*
8. *That all other claims of the Petitioner and Respondent/Cross Petitioner except as contained herein save order for dissolution of the marriage are dropped/withdrawn.*

Signed
Elias Ogbonnaya Ukorobo
Stella Ukorobo

Signed
Adaeze

Okey Nwafor
(Petitioner's Counsel)
Counsel)"

ANC Ikoru
(Respondent's

The Court adopts these terms and make them to form part of the judgment of the Court.

Signed

Honourable Judge

Appearances:

Okey Nwafor Esq – for the Petitioner

A.N.C. Ikoru Esq – for the Respondent