

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA ON THE 19TH SEPTEMBER, 2023

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/PET/319/21

COURT CLERK: JOSEPH BALAMI ISHAKU.

BETWEEN:

MAYOWA GARUBA.....PETITIONER

AND

EVELYN GARUBA.....RESPONDENT

JUDGMENT

The Petitioner's Petition dated the 30th day of August 2021 against the Respondent is for the following:

- (1) A decree of Dissolution of Marriage.
- (2) Custody of the children.

The Petition and all other Originating Processes were served on the Respondent. She failed, refused and or neglected to enter appearance or file an Answer to the Petition.

On the 15th day of June 2022, the Petitioner opened his case and gave evidence in proof thereof. He said he is a businessman and a student and lives at 614 Poland Street, Queen Efab Estate, Gwarinpa. He deposed to a Witness Statement on Oath on the 30/08/2021. He adopted same as his oral evidence. He deposed that he got married to the Respondent on the 9th day of June 2009 at the Calabar Municipal Registry Cross River State.

That since the marriage the Respondent has behaved in such a manner that he could not reasonably be expected to continue living with her. That Respondent told him a lot of lies about so many things which has made it difficult for him to trust her. She had said a man of God saw a vision concerning him which he later discovered to be false. It is all in her bid to manipulate him. She had to lied to him that she was pregnant only for him to discover that it was a lie. That Respondent lives a flirtatious life.

That she lives an irresponsible life by keeping bad company. That she has never been supportive as it concerns the welfare and upkeep of the children. That Respondent's family saw nothing wrong with her bad behavior. That the brother and mother of the respondent failed to call Respondent to order or reconcile them but rather conveyed to him their willingness to return items used

for the performance of her traditional rites during the marriage ceremony.

That he could not tolerate the Respondent's attitude therefore he was forced to move out of the house on or about July 2013. That they have been living apart since then. That sometime between May and September 2018, there was an attempt to reconcile them but it failed. He pays the School Fees of the Children by paying the said sum into the account of the Respondent. He has not condoned, connived or colluded with the Respondent in any way to bring about this Petition.

The Petitioner's Counsel adopted his Final Written Address dated 19th April 2023 and canvassed that the evidence before the Court satisfied the requirement of Section 15(2) of the Matrimonial Cases Act for dissolution of their marriage. He further posited that the Petitioner is in a better position to take proper care of the children.

I have carefully read the only available evidence. I have also considered the Final Written Address of Counsel. In the Petition before the Court, the Petitioner prays for the dissolution of the marriage on the ground that the marriage has broken down

irretrievably. It is true that by Section 15(1) of the Matrimonial Causes Act, a Petition by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to marriage upon the ground that the marriage had broken down irretrievably.

By virtue of Section 15(2), the Court upon hearing a Petition for 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 namely:

- (a) That the Respondent has willfully and persistently refused to consummate the marriage.
- (b) That the Respondent committed adultery and the Petitioner finds it intolerable to live with the Respondent.
- (c) That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- (d) That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition.
- (e) That parties have lived apart for a continuous period of two years immediately preceding the presentation of the

petition and the Respondent does not object to a decree being granted.

- (f) That parties have lived apart for a continuous period of three years immediately preceding the presentation of the petition.
- (g) The other party failed to comply with a decree of restitution of conjugal rights in a period not less than one year.
- (h) The other party has been absent from the Petitioner for such a time and in such circumstances as to presume that the other party is dead.

There are eight grounds or facts to ground a divorce. Proof of one of the above grounds is a conclusive proof of irretrievable breakdown of the marriage.

See ***IBRAHIM VS IBRAHIM (2007) 1 NWLR (PT. 1015) 383.***

The Petition did not specifically states the ground upon which he is seeking the dissolution of his marriage. However in his evidence on oath particularly paragraph (d) and paragraph h1 of Petition. He deposes that since the marriage the Respondent has behaved in such manner that he could not reasonably be expected to

continue living with her. The facts which he relied upon for the above assertion are:

- (1) The Respondent told him a lot of lies about so many things which made it difficult for him to trust her.
- (2) That several times she told him that a man of God saw visions about him only for him to discover that it was a lie she used just to manipulate him.
- (3) In 2011, the Respondent lied to him that she was pregnant with their child only for him to discover that the Respondent was not pregnant but only used that as a ploy to extort money from him.
- (4) That the Respondent lives a flirtations life and chats with the opposite sex without regard to him and he finds it difficult to live with such behavior.
- (5) That Respondent has been living irresponsible life and keeping bad company to his and children's detriment.
- (6) That she has never been supportive.
- (7) That her family encourages her bad attitude and he cannot continue to live with such intolerable attitude so he was forced to move out of the matrimonial home.

The test of intolerable behavior is always objective in the sense that it is not sufficient for the Petitioner to allege that he cannot

live with the Respondent because of her behavior. The behavior must be such that a reasonable man cannot endure.

It is true, this Petition is not contested and that evidence goes one way. The evidence which this Court shall accept is evidence that satisfies the law.

In considering what is reasonable, the Court must consider the totality of the matrimonial history of the parties. Allowance ought to be made for ordinary wear and tear.

From Exhibit A, the parties got married on 09/06/2009. The facts given by the Petitioner for dissolution of his marriage are:

- (1) Lies.
- (2) The Respondent is a flirt.
- (3) That she chats with men.

The above facts are not such that the Petitioner cannot reasonably be expected to live with. Suspicion no matter how strong does not constitute proof of adultery.

See ***OKOLO VS OKOLO (1961) WNLR 101.***

Contracting a marriage is a serious business. Flimsy excuses such as given by the Petitioner cannot weigh in his favour to ground a divorce.

Thus the conduct of a Respondent that a Petitioner will not be reasonably expected to put up with must be grave and weighty in nature as to make further cohabitation virtually impossible. The facts as laid down by the Petitioner are not weighty enough in my humble view.

The evidence is that the Petitioner left the matrimonial home as a result of the facts stated above. The law is that there is no desertion if there is no good cause for his leaving the deserted spouse.

Good cause may include:

- (1) Adultery.
- (2) illness connected with the Respondent.

I wish to point out that Verifying Affidavit attached to a Petition is not evidence as the name indicates, it only verify the facts contained in the body of the Petition. The Petitioner's evidence before the Court is the one adopted by the witness on the date of hearing.

It is my view and I so hold that the Petitioner failed to prove that the marriage between him and the Respondent has broken down irretrievably.

The Petitioner did not give evidence of the children of the marriage i.e. names and date of birth. No evidence of the Schools they are attending etc. The interest and welfare of the children is a paramount consideration in cases of custody of children. There is no arrangement made for the welfare, care and upbringing of the children by the Petitioner. This relief also fails.

In totality the petition fails for lack of merit and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
19/09/2023

PARTIES:

O. Vivian Ohazulike for the Petitioner

Petitioner's Counsel: The matter is for Judgment.

Court: Judgment delivered.