IN THE HIGH COURT OF THE FEDERAL CAPITALTERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS TUESDAY, THE 7TH DAY OF NOVEMBER, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE

PETITION NO: PET/470/2021

BETWEEN

AKEEM SUNDAY ADEKUNLE ……. PETITIONER

AND

IBIDAYO SELIMOT ADEKUNLE …… RESPONDENT

JUDGMENT

By a Notice of Petition dated 11th November, 2021 and filed same date at the Court's Registry, the Petitioner claims for the following Reliefs:

i. **An Order for Dissolution of the Marriage contracted and celebrated by the Petitioner and the Respondent on the 6th November, 2014.**

ii. **An Order granting the general custody of the only child of the marriage to the Respondent until the Child attains the age of majority wherein he can decide which of the parents to live with.**

iii. **An Order of this Honourable Court allowing the Petitioner to have access to the only Child of the marriage while in the custody of the Respondent at least once in every month in a place the parties may agree upon.**

iv. **An Order of this Honourable Court allowing the Petitioner to have access to the only Child of the marriage in school and to stay with the Petitioner during school holidays.**

v. **An Order of this Honourable Court directing the Petitioner to take responsibility for the education of the only child of the marriage up to University education.**

The Respondent was duly served with the Petition on 21st February, 2022.

The matter then came up for hearing on 13th December, 2022. The Respondent appeared in person and informed the court that she was not opposing or contesting the divorce but that the amount the Petitioner was paying for maintenance was too small. The court informed her to get a lawyer to properly formulate any claims she may have. The matter was then adjourned for definite hearing.

The matter then came up on 7th December, 2023 for hearing. The Respondent was again served with hearing notice on 31st October, 2023 but she did not appear in court. Indeed nearly a year after she was given time to take steps to file a response, she did not take any steps.

Hearing then commenced.

The Petitioner testified in person as PW1 and the only witness. He adopted his witness statement dated 11th November, 2021. He stated that he got married to the Respondent on 6th November, 2014 at the Marriage Registry at Ikoyi, Lagos State and the marriage was blessed with one child. A copy of the Marriage Certificate was admitted as **Exhibit P1**. After the marriage, they cohabited at Kubwa but due to irreconcilable differences, arising from mistrust, communication break down and quarrels, parties separated.

PW1 stated that sometime in December 2018, he discovered that both parties have AS Genotype and the only child of the marriage was discovered to as a consequence have SS Genotype. That indeed the incessant health challenges of their son made them check of the status of their Genotype and this made them not to have another child.

PW1 further testified that all efforts to settle their differences proved abortive and these include intervention of even family members and friends.

PW1 stated that since he left the matrimonial home on 14th May, 2020, parties have lived apart and moved on with their lives independent of each other.

PW1 then prayed the court to dissolve the marriage since the marriage has broken down irretrievably and respondent was not contesting same and grant all the reliefs he is claiming.

On application of counsel to the petitioner, the right of Respondent to cross-examine PW1 and to defend the action was foreclosed and the court granted petitioner's counsel leave to proffer final address orally.

Counsel to the petitioner at the close at trial addressed the court and urge the court to grant the claims of petitioner which is unchallenged since parties have lived apart now for over two years and both have clearly evinced their clear intention for the marriage to be dissolved.

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

ISSUE 1

Whether the petitioner has on a preponderance of evidence established/satisfied the legal requirements for the grant of the petition.

I had at the beginning of this judgment stated the Reliefs in the petition. I had also situated the unchallenged evidence of petitioner alluding to the complete breakdown of the marriage and the irreconcilable differences which led to the filing of the petition. I had equally alluded to the fact that the respondent informed court herself that she was not contesting the petition.

Now in matrimonial proceedings, 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** (The Act) provide thus:

1) **For the purposes 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 seeks for the dissolution of the marriage with the respondent on the ground that the marriage has broken down irretrievably and predicated the petition on grounds of differences arising from mistrust, communication breakdown and quarrels. The fact that both have AS Genotype which affected the only son of the marriage who now has SS Genotype also put a strain on the relationship because of the health challenges he is facing.

Despite several intervention by friends and family members, parties could not agree to a peaceful resolution which led the petitioner to leave the matrimonial home in May 2020 and parties have since lived apart.

It is doubtless that the petition was brought within the purview of **Section 15 (1) (c) of the 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 categorised 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.

Now, from the uncontroverted evidence of the petitioner before the court, I find the following essential facts as established to wit:

1. **That parties got married in November 2014 vide Exhibit P1.**
2. **That about four years into the marriage, parties started having differences arising from mistrust, communication breakdown and quarrels.**
3. **That parties discovered they had AS Genotype which affected the only child of the marriage who has SS Genotype and this put a strain on the relationship because the child had various health challenges.**
4. **That because of these challenges and differences, the petitioner left the matrimonial home in 2020 and since then parties have lived apart.**
5. **All efforts at peaceful resolution of their differences has failed.**
6. **That both parties have agreed in court that the marriage be dissolved.**

The above pieces of evidence and or facts have not been challenged or controverted in any manner by the Respondent who was given all the opportunity of doing so. The law has always been that where evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seize 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.**

By a confluence of these facts, it is clear 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 that parties have lived apart for over 2 years now; the stated and expressed unwillingness on both sides, not to cohabit or to settle their differences and also despite the health challenge faced by their only son who unfortunately is a sickler show clearly that this marriage has broken down irretrievably with no desire on their part to continue with the marriage.

If parties to a consensual marriage relationship cannot live any longer in peace and with mutual respect for each other, then it is better they part in peace. This clearly is the earnest desire of parties as evidenced by the unchallenged evidence of both parties at the trial. The unchallenged petition in the circumstances has considerable merit. **Relief (i)** is granted and ordered as prayed.

Relief (ii) praying for an order granting general custody of the only child of the marriage to the respondent until the child attains the age of majority wherein he can decide which of the parents to live with is also **granted and ordered as prayed**.

Relief (iii) relating to access appears to me reasonable and fair. The petitioner should be able to have access and visitation rights to the only child of the marriage at reasonable times during weekends and holidays.

Relief (iv) has been overtaken by **Relief (iii)** and is struck out.

The final **Relief (v)** directing the petitioner to take responsibility for the education of the only child of the marriage up to University education is granted and ordered as prayed.

I note however that there is no monetary relief or anything to do with the upkeep and welfare of the child. I don't know whether this is an oversight on the part of the petitioner. The court has no powers to make or grant reliefs not claimed or properly delineated with clear factual basis. Even if the court was minded to make consequential monetary orders with respect to the welfare of the child acting under extant provision of **Section 71 (1) of the MCA**, in the absence of adequate information on the financial capacity of the petitioner, it will be difficult to be able to make an assessment of what is or will be reasonable in the rather fluid and unclear factual scenario. It is equally to be noted again that the only child of the marriage is a special needs child but nothing was provided on the specifics of this serious health challenge and its demands. The court cannot therefore be seen to be making orders which essentially would be based on mere conjectures.

In the circumstances, it is important that the petitioner is made aware that his responsibility does not end at just paying school fees. There are other needs of the child like money for his feeding, clothing, general welfare and upkeep etc. This is more so when in this case, the child is a sickler with special needs. The petitioner must do much more to help the mother, the respondent in this case. I leave it at that.

For the avoidance of any doubt, having carefully evaluated the unchallenged evidence of petitioner, I accordingly make the following Orders:

1. **An Order of Decree Nisi is granted dissolving the marriage celebrated between petitioner and respondent on 6th November, 2014.**
2. **The Respondent is hereby granted custody of the only child of the marriage, ADEKUNLE SULTAN OLUWADAMILOLA until he attains the age of majority when he is then at liberty to decide which of the parents to live with.**
3. **The petitioner is granted access to the child of the marriage at reasonable times during vacations and holidays at any place parties agree on.**
4. **Relief (iv) is struck out.**

5. **The Petitioner shall take responsibility for the education and welfare of the only child of the marriage up to University education.**

6. **No Order as to cost.**

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***A.O. Ayeni with K.I. Madueke (Miss) for the Petitioner.***

2. ***Respondent appears in person.***