

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF
DELIVERED ON THE 21ST NOVEMBER 2023

FCT/HC/PET/431/2021

BETWEEN:

ELIAS CHUKWUEMEKA OKWOR PETITIONER

AND

BLESSING ANN OKWOR RESPONDENT

JUDGMENT

By a Notice of Petition together with the accompanying processes, filed and dated the 21/10/2021, the Petitioner seeks as follows: -

1. A Decree of this Honourable court for dissolution of marriage with the Respondent on the grounds of the Respondent deserting the Petitioner for a period of time exceeding two years, and that the Petitioner and the Respondent being parties in the marriage have lived apart since sometime in April, 2019, being a continued period of time exceeding two years immediately preceding the presentation of this Petition.
2. An Order of this Honourable court granting legal custody of the three children of the marriage to the Petitioner, so that the youngest child can live and grow up with his two elder ones who are already leaving with the Petitioner.

The grounds upon which the Petition was filed are as follows:

1. Since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;
2. The Respondent has deserted the Petitioner since sometime in April 2019, being a continuous period exceeding two years preceding the presentation of this Petition; and
3. The Petitioner and the Respondent, being parties to the marriage have lived apart continuously since sometime in April, 2019, being a continuous period exceeding two years immediately preceding the presentation of this petition, and the Respondent has by previous acts of intending to seek a dissolution of the marriage, may not object to a decree of dissolution of the marriage being granted by this court.

The facts of the grounds upon which the Petition was filed are as follows: -

- a. The Petitioner and the Respondent started having serious marital issues when, sometime in late 2018 the Petitioner noticed a man, by name Mr. Emmanuel Ogene, coming around the Respondent's Chemist Shop at Optionbar Plaza, Biazin Across, Kubwa, Abuja, to pay visits to one Donatus EkwemUgwu, one of the Petitioner's brothers-in-law who was the Respondent's shop assistant;
- b. Since then, the Petitioner most times meet Mr. Emmanuel Ogene in the Respondent's Chemist Shop, charging his handset whenever the Respondent's generator is on;
- c. Thereafter, Donatus Ugwu got admitted into a higher institution in Enugu State and left for school accordingly;
- d. After sometime the Petitioner began to notice frequent presence of Mr. Emmanuel Ogene whenever he visits the Respondent's Chemist Shop, even though his friend, Donatus Ekwem Ugwu had left for school;

- e. Soon after, the Respondent began to leave her Chemist Shop in the care of Mr. Emmanuel Ogene;
- f. On a certain day, the Petitioner called the Respondent's attention to his frequent observation of her leaving her Chemist Shop in the care of Mr. Emmanuel Ogene, who is not a trained or a person with knowledge on management of a chemist shop; nevertheless, the Respondent put up a defence, insisting that Mr. Emmanuel Ogene was only helping her to clean up the shop;
- g. Weeks later, the Petitioner continue to observe closeness and intimacy between the Respondent and Mr. Emmanuel Ogene, such that Mr. Emmanuel Ogene started seeing the Respondent off, close to their matrimonial home in the above stated address, after close of business in most of the days, between the hours of 9p.m and 10p.m respectively at night;
- h. Unknown to some of the Petitioner's neighbors that the Petitioner was already observing the Respondent's extra marital adventure with another man, the Petitioner was in more than one occasion advised by some of his neighbors to watch out for a strange man whose visit to his home whenever he was away had become frequent in recent time;
- i. Upon further probe, the Petitioner discovered that the description of the strange man who visits his home in his absence fits that of Mr. Emmanuel Ogene;
- j. Consequent upon paragraphs a, b, c, d, e, f, g, h, and I above, the Petitioner informed the Respondent of his desire for them as a family to celebrate the upcoming Easter celebration of 2019 with the Respondent's parent and his family at Madalla, Niger State;
- k. The Respondent along with the three children had gone ahead of the Petitioner to Madalla, Niger State, wherein the Petitioner

- joined them two days later alongside Chinedu Okwor, one of the Petitioner's brothers;
- l. While there, the Petitioner demanded from the Respondent's father for them to have a family meeting involving some members of both families;
 - m. In attendance of the meeting were: Mr. Donatus Ugwu [Respondent's father], Nkechi Ugwu [Respondent's younger sister], Fredrick Ugwu [Respondent's uncle], Mr. Anayo Respondents brother in-law. Chinedu Okwor (Petitioner's younger brother), and the Petitioner;
 - n. The Petitioner reported the Respondent to the gathering as contained in paragraphs a, b, c, d, e, f, g, h, and l above;
 - o. Wherein the Respondent, in her response, told the gathering that, " instead of me to leave Mr. Emmanuel Ogene, I had rather leave my marriage with Elias Okwor, because I am tired of the marriage..."
 - p. Thereafter, upon realizing that the meeting had become rowdy and about to result to a serious fracas, the Petitioner decided to take his leave, before Fredrick Ugwu calmed him, concluding that he believed that it was evil spirit that was responsible for the Respondent's actions and decision to leave the Marriage;
 - q. Having left the Respondent and his children in his father-in-law's house at Madalla, Niger State; the following week, the Petitioner kept some amount of money for home upkeep with his younger brother, Chinedu Okwor to be handed over to the Respondent when she returns to their home in Kubwa, Abuja, because he was to travel outside Abuja;
 - r. A few days later, Chinedu Okwor called the Petitioner on the phone to inform him that the Respondent had gone to their matrimonial home at Back of Chief's Palace, Biazin Across, Kubwa, Abuja to take her personal belongings as well as some

of the Petitioner's personal belongings and moved out of the matrimonial home;

- s. At his return home, the Petitioner found the information contained in paragraph r. above to be true, that indeed, the Respondent had taken her personal belongings as well as some personal belongings of the Petitioner and has moved out of their matrimonial home; and
- t. On further search, the Petitioner discovered that the Respondent has taken the original copy of the FORM E-FIRST SCHEDULE Certificate of Marriage with Registration.

Pursuant to the Order of Court dated 13th day of April, 2022 the Petitioner's processes were served on the Respondent via substituted means; however, the Respondent chose not to respond or file an answer to the allegations as made out in the petition against her

The Petitioner testified on the 16/11/2022. The highlights of the facts pleaded and evidence adduced by the Petitioner, is that parties celebrated their marriage on the 23 of July, 2011. He tendered a copy of the marriage certificate marked as exhibit A; that the Petitioner and Respondent cohabited at the back of Chief's Palace, Biazin Across, Kubwa, Abuja. The marriage produced three children; Michael Okwor (Male) born on 24th July, 2012; Joshua Okwor (Male) born 20th May, 2014; and Gideon Okwor (Male) Born on the 3rd January, 2018. According to the Petitioner, there have been Civil and Criminal proceedings at three different courts between parties. He states that he observed that the Respondent and one Mr. Emmanuel Ogene were close and intimate; that some of his neighbors also advised him to watch out for a strange man who visits his home whenever he was away; that in probing further, the description given to him, confirms that the strange man was Mr. Emmanuel Ogene. He continued that in 2019, he informed the Respondent of his desire for them to celebrate the Easter with the Respondent's parent at Madalla, Niger State. He said whilst they

were at the Respondent's family house, he demanded to have a family meeting involving some members of both families; he said at the meeting, he told them about his wife's involvement with Mr. Emmanuel Okwor; that the Respondent stated thus “...instead of me to leave Mr. Emmanuel Ogene, I had rather leave my Marriage with Elias Okwor, because I am tired of the marriage...”

Testifying further, the Petitioner states that, he wanted to leave the meeting as it became rowdy and was about to result to a serious fracas, but the Respondent's uncle, Fredrick Ugwu calmed him down and said it was the evil spirit that was responsible for the Respondent's actions and decision to leave the Marriage. The Petitioner continued that, he left the Respondent and his children in his father in law's house at Mandalla, Niger State. He testified to the fact that the because he was travelling outside Abuja, he kept some money with his younger brother, Chinedu Okwor to give the Respondent on her return to Abuja; that few days later, his younger brother called to inform him the Respondent came to their matrimonial home to take her personal belongings as well as some of his own belongings; that on his return home, he found out that it was true what his younger brother told him on phone; that he also discovered that the Respondent had taken the original copy of the Marriage certificate issued to them at the Suleja Local Government Area, Niger State. Despite being given the opportunity to cross examine and to the defend the matter, the Respondent chose not to respond to the hearing notices.

On the 17/10/2023 Petitioner's Counsel made his oral argument in support of his case and adopted his final written address dated and filed the 17/08/2023. He raised a sole issue for determination thus.

Whether the marriage of the Parties before this Honourable Court has not broken down irretrievably, considering that since April, 2019 that the Respondent moved out from the Petitioner's home, the

Respondent deserting the Petitioner, it is a continuous period of time exceeding one year immediately preceding the presentation of this Petition, in fulfillment of provisions of Section 15(2) (d) of the Matrimonial Causes Act?

Counsel to the Petitioner responded to the issue raised above in the affirmative. He relied on Section 15 of the Matrimonial Causes Act that provides thus; *“the Court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievable if, but only if, the Petitioner satisfies the Court of one or more of the following facts: (b) that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition”*.

Counsel argued that the Petitioner has shown to the Hon. Court, that since April 2019, the Respondent moved out from the Petitioner's home, resulting in the Respondent deserting the Petitioner for a continuous period of time which exceeds one year immediately preceding the presentation of this Petition before this Honourable Court and has fulfilled the provisions of Section 15 (2) (d) of the Matrimonial Causes Act. He therefore urged the Court to uphold his argument.

As can be gleaned from the records of the court, it is shown that the Respondent was duly served with the notice of petition and other processes of the court, however she failed to file an answer to the petition or react to the final written address filed on behalf of the Petitioner.

The fact that the Respondent failed to respond to the processes, will not prevent the Petitioner from presenting credible and cogent evidence to the reasonable satisfaction of the Honourable Court See Section 82 of the Matrimonial Causes Act and Section 133 (1) of the Evidence Act.

I have considered the evidence of the Petitioner and read the final address of the Petitioner's Counsel; it is my firm view that the issue to be considered by this Hon. Court is;

Whether from the unchallenged and uncontroverted evidence in this case, the marriage between the Petitioner and the Respondent has broken down irretrievably as to warrant a decree of dissolution of marriage and other reliefs sought.

In a matrimonial proceeding, the party seeking for a decree of dissolution of marriage, must prove that the marriage has broken down irretrievably. See Section 15 (1) of the Matrimonial Causes Act. The success of the divorce petition is the establishment of one of the conditions listed in section 15 (2) a-h of the Matrimonial Causes Act. The facts as stated in Section 15 (2) of the Matrimonial Causes Act that can be the basis for the grounds for dissolution of marriage are as follows: -

- a. That the Respondent has willfully and persistently refused to consummate the marriage;
- b. That since the marriage, the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.
- c. That since the marriage the Respondent has behaved in a way that the Petitioner cannot be reasonably 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 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.

- f. That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.
- g. That the other party to the marriage has for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act.
- h. That the other party to the marriage has been absent from the Petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

It is not the law that the Petitioner should prove all the conditions listed in Section 15 (2) (a)-(h). It is sufficient if the Petitioner proves one or more of any of the above facts.

In the case at hand, it will appear from the grounds stated by the Petitioner for filing this petition against the Respondent that he relies on the facts contained in Section 15 (2) (b), (c), (d) and (e) of the Matrimonial Causes Act as the grounds for the Court to hold that the marriage has broken down irretrievably.

I have had a careful consideration of the facts and evidence put forward by the Petitioner, it is crystal clear that the Petitioner failed to prove the facts stated in paragraphs 7a – t of the petition, particularly where the Petitioner stated in paragraph 7h that, *“unknown to some of the Petitioner’s neighbors that the Petitioner was already observing the Respondent’s extra marital adventure with another man, the Petitioner was in more than one occasion advised by some of his neighbors to watch out for a strange man whose visit to his home whenever he was away had become frequent in recent time.”* That the Petitioner discovered that the description of the strange man who visits his home in his absence fits that of Mr. Emmanuel Ogene. See paragraphs 7h and I of the petition. See also paragraphs h and I of the Witness Statement on Oath. The Petitioner is required by law to sue the Mr. Emmanuel

Ogene as a Co-Respondent to this suit. Section 32 (1) of the Matrimonial Causes Act is to the effect that where in a petition for a decree of dissolution of marriage or in an answer to such a petition, a party to the marriage is alleged to have committed adultery with a specified person whether or not a decree of dissolution of marriage is sought on the basis of that allegation;That person shall except as provided by the rules of Court be made a party to the proceedings. [Underlined emphasis mine]. This would have afforded the said person the opportunity to defend himself. In the case at hand, the Respondent failed to comply with the provision of the law. See Section 32 (1) Matrimonial Causes Act, Order VII Rule 1 (5) & (6) Matrimonial Causes Rules; See also *Eigbe V Eigbe* (2012) LPELR 19690 (CA). The established fact here, is that the Respondent failed to comply with Section 32 (1) MCA.

Also, the Petitioner in Paragraphs 7m-p, testified to the fact that he requested for a meeting at the family home of the Respondent. He mentioned those at the meeting as follows: The Respondent's father, her younger sister, the uncle, his brother-in-law, his own younger brother and himself; however, he failed to call any of them to support his evidence. By virtue of section 82 (1) of the Matrimonial Causes Act, a matter of fact shall be taken to be proved, if it is established to the reasonable satisfaction of the court; though, the Respondent chose not to respond to the petition, the Petitioner is under the obligation to prove his case as he would have done, if the Respondent had been actively participating in the proceedings. It is an established principle that the petitioner's success rest on the strength of his own case and not weakness of the respondent's. See the case of *AKINNAWO V. AYODELE* (2013) LPELR-20318 (CA).

Going further, it can be discerned from the evidence of the Petitioner, that parties became husband and wife on 23rd July, 2011; See Exhibit A, the copy of the Marriage Certificate tendered in

support of the assertion; the Petition was filed on 21/10/2021; He stated that parties started living apart sometimes in 2019. By way of calculation, it is shown that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition. See section 15 (2) (d) Matrimonial Causes Act. There is no contrary evidence to what the Petitioner states in this instance; therefore, I am left with no choice than, to dissolve the marriage between the parties.

Consequently, I hold that the marriage celebrated between the Petitioner Elias Chukwuemeka Okwor and the Respondent Blessing Ann Okwor on the 23rd July, 2011 at St Luke Catholic Church, Kubwa, Abuja in Nigeria has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the Parties. The Order Nisi shall become absolute after a period of three months from today.

On the second relief sought which is for the Court to grant legal custody of the three children of the marriage to the Petitioner, so that the youngest child can live and grow up with his two elder ones, who are already living with the Petitioner. On this issue, I must say that the Petitioner failed to plead fact as well as testify to the fact that two of the children are staying with him. The Petitioner states in evidence that the Respondent along with the three children had gone ahead of him to Madalla, Niger State...He equally stated that he left the Respondent and the children at his father in law's house in Madalla, Niger State and also that he was informed by Chinedu Okwor that the Respondent came to the matrimonial home to pack her belongings etc. See paras 7K, Q & R of the Petitioner's witness statement on oath. Now, at this stage, the question is – when did the Respondent return the two elder ones to the Petitioner? This answer was not provided by the Petitioner in his pleadings or evidence. In any event, there is no credible evidence to buttress the fact that the

marriage is blessed with three children as the Petitioner failed to present copies of their birth certificate. Accordingly, relief 2 hereby fails.

ASMAU AKANBI- YUSUF

(HON. JUDGE)

APPEARANCES:

Charles L. Obehi – Abel, Esq. for the petitioner;

Respondent absent and not represented.