IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA

THIS THURSDAY, THE 10TH DAY OF OCTOBER, 2022.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: PET/271/2021

BETWEEN:

ANUOLUWAPO AYOBAMI OPABUNMI ……PETITIONER

AND

TAIWO EBENEZER OPABUNMI .....RESPONDENT

JUDGMENT

By a Notice of Petition dated 12th July, 2021 and filed on 19th July, 2021, the Petitioner sought for the following Reliefs:

i. **A dissolution of the marriage with the respondent on the ground that the marriage has broken down irretrievable, incompatibility, and that the respondent has behaved in such a way that the petitioner could not reasonably be expected to live with the respondent and that the respondent has behaved in such a way that the petitioner could not reasonably be expected to live with the respondent.**

ii. **And a consequential order of jactitation of marriage restraining the respondent from henceforth calling or referring the petitioner as his wife.**

The Respondent was duly served with the originating process by substituted means on 17th June, 2022 vide Courier service. He was also served with hearing notice for today's hearing on 30th September, 2022 also by substituted means by Courier service. The Respondent never appeared in court or filed any process.

The matter therefore proceeded to trial. The petitioner testified in person as PW1 and the only witness. The substance and summary of her unchallenged evidence is that she got married to the Respondent at Ministry of Interior Federal Marriage Registry, Lagos on 19th October, 2019. The Certificate of marriage was tendered as **Exhibit P1.**

The petitioner stated that she cohabited with Respondent at No. 4, Sunday Taiwo Street, Ikotun, Lagos. That some few months into the marriage on 29th March, 2020, her phone got stolen and she went to Ikorodu to get a new hand set and got back late at night around 10 pm and her husband was already at home. She knocked the door severally but he refused to open the door. Her co-neighbours then told her to go and check the back window to be sure he was at home only for her to see him lying on the floor giggling and playing with his phone. She called out his name but he still refused to open the door. After waiting for about 30 minutes, she said she went to the nearby bus stop to borrow a bread seller's phone and called her parents and told them what happened. Her parents told her to go back home and keep knocking, that her husband will sooner or later open the door. She went back and kept knocking till about 11:30 pm but he refused to open the door.

PW1 said that she now noticed that the kitchen window was opened, so she entered the house through the window. She greeted him and then moved towards her room to freshen up when he started abusing her parents. She objected to the abuse and the next thing he did was to attack her and attempted to strangle her and she had to fight him off to save her life.

In the process of the fight, his phone rang so he left the house and out of fear that he will continue the beatings when he comes back, she locked the door and refused to allow him in until neighbours intervene and she opened the door. That when he came in, he attacked her as she feared and neighbours had to intervene again and took him out and he slept at the neighbours house.

She stated that the following morning on 30th March, 2020, her mother came to the house to intervene and settle the quarrel only for the Respondent to attack and beat her mother and when she tried to come in between, he also attacked and beat her.

That the neighbours intervened and took him away. That since he left on 30th March, 2020, cohabitation has ceased and there is no communication at all

between them. That once a while, he sends her torrent of abuse through social media.

PW1 urged the court to grant the petition since she can no longer reasonably be expected to live with the respondent with his intolerant behavior and that they have now lived apart for over a period of two (2) years with each one living an independent life.

With the evidence of PW1, the right of Respondent to cross-examine Petitioner was foreclosed and petitioner was discharged. The right to defend was similarly foreclosed since no defence was filed or issues joined by Respondent on the petition.

Learned counsel to the petitioner sought leave of court to address orally which the court granted. His address which forms part of the Records of court is basically to the effect that parties have live apart for a period of nearly three (3) now and that the intolerant and violent behaviour of Respondent to the Petitioner has made in impossible for the Petitioner to continue to live with Respondent and that it will serve the greater interest of justice to dissolve the marriage so that parties can move on with their lives.

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 claims of the petitioner. Similarly I had also stated that the Respondent despite the service of the originating court process and hearing notices did not file anything or adduce evidence in challenge of the evidence adduced by petitioner. In law, it is now an accepted principle of general application that in such circumstances, the Respondent is assumed to have accepted the evidence adduced by Petitioner and the trial court is entitled or is at liberty to act on the Petitioner's unchallenged evidence. See **Tanarewa (Nig.) Ltd. V. Arzai (2005) 5 NWLR (Pt 919) 593 at**

636 C-F; Omoregbe v. Lawani (1980) 3-7 SC 108; Agagu v. Dawodu (1990) NWLR (Pt.160) 169 at 170.

Notwithstanding the above general principle**,** the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case of **Nnamdi Azikiwe University v. Nwafor (1999) 1 NWLR (Pt.585) 116 at 140-141** where the Court of Appeal per Salami J.C.A. expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence... the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. **The Supreme Court in Duru v. Nwosu (1989) 4 NWLR (Pt.113) 24** stated thus:

"…a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a prima-facie case, in which case the trial judge does not have to consider the case of the defendant at all."

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff or petitioner in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the presence and/or absence of the defendant or respondent. See **Agu v. Nnadi (1999) 2 NWLR (Pt 589) 131 at 142.**

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 from her petition seeks for the dissolution of the marriage with respondent on the ground that the marriage has broken down irretrievably and essentially predicated the ground for the petition on the fact that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

The Petitioner gave unchallenged evidence of the detestable conduct of Respondent. She gave evidence of how he locked her out of the matrimonial home and the violence directed at her person and even her mother. The violence and the fight was intolerable which led to the intervention of their neighbours and the Respondent had to be dragged out of the house and he even slept out.

It is also in evidence that since he left the house after the incidence in 2020, he completely ceased cohabitation and communication with Petitioner and has completely abdicated his responsibilities as husband towards the Petitioner and that the marriage has completely collapsed. She stated that apart from the abuses she sometimes receives from Respondent through social media, parties have essentially moved on independent of each other.

The evidence of the Petitioner as stated earlier is unchallenged. In law such unchallenged evidence are deemed to stand as the true facts. Indeed it is trite principle that where a party gives evidence which are material to the case in dispute the opposing party has a duty to challenge or counter the evidence and failure to do so, the evidence will be deemed unchallenged.

It is doubtless therefore that the petition was brought within the purview of **Section 15 (1) (c), (e) and (f) 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 on 19th October, 2019.

2. That parties cohabited at their Ikotun home until 29th March, 2020 when they had a serious altercation when he locked her out of the matrimonial resulting in severe beatings and violence directed at her person.

3. That neighbours had to intervene and he had to be dragged out of the matrimonial home where he slept or stayed with a neighbour.

4. That the intervention by her mother the following day to settle the quarrel led to an attack and unprovoked beatings inflicted on her mum by the Respondent and when she intervened, he equally attacked her.

5. That the Respondent vacated the matrimonial home on 30th March, 2020 and since then cohabitation and communication has ceased.

6. That he uses social media to abuse and sent curses to petitioner.

7. That the marriage is devoid of love, care and attention and the Respondent has completely abandoned his responsibilities to her as a husband.

8. The Respondent has since moved on with his life completely independent of petitioner.

The above pieces of evidence and or facts on the detestable conduct of Respondent has 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 seized 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.**

This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts.

Consequently where a defendant chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G Oyo State v. Fair Lakes Hotels Ltd. (No 2) (1989)5 NWLR (Pt .121) 255, A.B.U. v Molokwu (2003)9 NWLR (Pt.825) 265.**

Indeed the failure of the Respondent to respond to this petition confirms in all material particulars the fact that the marriage has broken down irretrievably and that they have lived apart now for nearly two (2) years.

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 of the detestable conduct of Respondent; the violence not only directed at Petitioner but her mother; the abandonment of the marriage for nearly 2 years, the abdication of his Responsibilities as a husband show clearly that this marriage has broken down irretrievably and parties have no desire to continue with the relationship; these facts provide clear and sufficient grounds to situate a decree of dissolution of 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 appears to be the earnest desire of parties if viewed from the conduct of Respondent and the period parties have continuously lived apart. The unchallenged petition in the circumstances has considerable merit.

Now with respect to **Relief (ii),** since counsel to the petition has withdrawn same, it is accordingly struck out.

In the final analysis, having carefully evaluated the petition, the unchallenged evidence of the Petitioner, I accordingly hereby make the following order:

An Order of Decree Nisi is granted dissolving the marriage celebrated between the Petitioner and Respondent on 19th October, 2019.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. **Ayodeji Akande, Esq., for the Petitioner.**