

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 20 GUDU - ABUJA
ON THURSDAY THE 30TH DAY OF JUNE 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO. PET/383/2020

BETWEEN

CHUKWUNONSO AGHANYA=====PETITIONER

AND

ADANNIA AMALACHUKWU AGHANYA=====RESPONDENT

JUDGMENT

The Petitioner filed this Petition on the 3rd day of August 2020 wherein the Petitioner claimed against the Respondent as follows:

- a. A decree of dissolution of marriage between the Petitioner and the Respondent.
- b. Joint custody of the children of the marriage, Miss Adaolisa Zoe Aghanya, and Master Bryan Tobenna Joe Aghanya.
- c. Right of access of the Petitioner to the children of the marriage especially weekends and holidays.

The grounds upon which the Petitioner seeks for a dissolution of the Marriage are as follows;

1. That the petitioner and the Respondent have lived separately for a continuous period of 3 years preceding the presentation of this petition.
2. That the Respondent has behaved in such a way that the petitioner cannot be expected to live together with her.

3. That the Respondent has caused the petitioner so much pain and heart break.

Upon receipt of the Petition, the Respondent filed her answer and cross petition wherein Respondent claimed the following against the petitioner:

1. A decree for the dissolution of the marriage celebrated at the St. Peter's Anglican Church, Amawbia with Certificateno. A/No/815/2012 on the 11th day of February 2012.
2. An order of custody of Adaolisa Zoe Aghanya (Female) and Tobenna Bryan Aghanya (Male) to the Respondent/Cross Petitioner and restrict visitation rights of the Petitioner to within Anambra State except in the company of the Respondent considering the tender age of the children of the marriage and the high risk involved in taking them to the north especially in the face of the insurgency.
3. An order against the Petitioner for a monthly payment of N120,000.00 as cost for maintenance and upkeep of the children.
4. An order of Court for the payment of school fees and Medicals to be paid by the Petitioner as at when due and any other bill that may come up occasionally.

The grounds upon which the Respondent/Cross petitioner filed the cross petition are as follows:

- a. That the petitioner has deserted the Respondent/Cross petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.
- b. That since the marriage the petitioner has behaved in such way that the Respondent/Cross petitioner cannot reasonably be expected to live with the petitioner.

Trial in this case commenced on the 29th day of March 2022 with the Petitioner testifying as the sole witness and adopting his witness statement on oath as evidence. From the facts stated in the witness statement on oath, it is the case of the Petitioner that the parties got married at the Awka Marriage Registry in Anambra State on the 11th day of February 2012 and was issued with a marriage certificate with Certificate No: A/NO/815/2012 under the Marriage Act and church wedding blessed at St. Peter's Anglican Church, Amawbia. That the marriage is blessed with two children namely: Adaolisa Zoe Aghanya (8 Years, 2 months) and Tobenna Bryan Aghanya (Age 7 years, 11 months). That after the marriage, parties moved to Petitioner's station in Gombe State where he works at the Federal Teaching Hospital, Gombe. That his marriage has over the years been saddled with so much unhappiness, sadness, disrespect, lack of commitment, refusal of deserved sexual rights and emotional distress and blackmail, very serious maternal influence and interference and desertion of home with refusal to come back since 2016. That Respondent in the year 2014, left their matrimonial home in Gombe on the pretence that she was going back to Awka to take a master's degree programme that will last for 18 months. That she didn't return afterwards but preferred to live at her father's house in Awka where she is still date. That information got to him that Respondent lived an ignominious lifestyle and in fact, caught her red handed on or about 7th March 2020 at a night club in Awka when Respondent entered the night club at 1:30am with a man holding Respondent's waist and exhibiting love gestures, holding hands, feeding themselves, kissing and leaning on themselves. That she was confronted, and Respondent apologised to Petitioner who gave her one week to think about it and take a decision of returning to Gombe, which she decided not

to return to Gombe. That the marriage has broken down irretrievably parties having lived apart since 2014.

In proof, Petitioner tendered a copy of parties Marriage certificate dated 11thFebruary 2012 with Certificate no: A/no/815/2012 which was admitted as Exhibit A.

The Petitioner closed his case, and the Respondent opened her case testifying as the sole witness and adopting her witness statement on oath as her evidence. From the facts stated in the statement on oath, it is the evidence of the Respondent that her moving to Awka was mutually agreed by parties. That she never denied the petitioner his conjugal rights whenever they were together. That at no point did she desert the petitioner, rather she remained in Awka based on a mutual understanding with the Petitioner, due to the security situation in the north, the distance between Gombe and Awka, and the petitioner's regular postings out of Gombe State. That the sale of car was out of necessity as the Petitioner was inconsistent with money for the maintenance of the family.

That the Petitioner in 2019, stopped taking Respondent's calls and started sending the children's fees directly to the school and also continued to skip sending money for maintenance and when he sends it was mostly inadequate.

That she has been very faithful to the petitioner and had never ever and will never cheat on the petitioner. That there was a party which was held on the 8th day of March 2020 which lasted to 11:30pm and not 1:30am as alleged by the petitioner. That when the petitioner approached her, she was with a female friend having a drink and there was no guy holding her by the waist as alleged by the petitioner.

That the ground upon which the petitioner is seeking the dissolution of this marriage is unfounded, as parties have not lived apart for a continuous period of 3 years as alleged.

That the petitioner has failed to meet up with his obligation of providing for his family despite being a Senior Medical Practitioner who earns N470, 000 monthly, which has caused Respondent pains and emotional torture thus behaving in a way that the respondent is not reasonably expected to live with the petitioner.

At the close of trial, the Court ordered parties to file their final written addresses. The Petitioner's Counsel filed his address and raised a sole issue to be determined as follows:

- (1) Whether the Petitioner has proved that the marriage between the parties has broken down irretrievably as to entitle him to the relief sought in this suit.

Counsel arguing the issue submitted that the petitioner specifically pleaded that the petitioner and the respondent have lived separately for a continuous period of 3 years preceding the presentation of this petition falls under one of the grounds to show that the marriage between the parties has broken down irretrievably upon the respondent's refusal to return to their matrimonial home since she left in 2014. Counsel submitted that this fact was not controverted by the Respondent. Submitted further that the persistent refusal of the Respondent to return to the matrimonial home in Gombe shows that the Respondent deserted their matrimonial home.

Counsel therefore urged the Court to hold that the petitioner has met the condition imposed by section 15 (2) of the Matrimonial Causes Act the parties having lived apart for a period of more than 3 years.

On the ground that the Respondent has behaved in such a way that the petitioner cannot be expected to live with the Respondent, Petitioner's Counsel contended that from the evidence led by both parties before this Court, the respondent behaved in a manner that is not tolerable and reasonable to the extent that the petitioner cannot reasonably be expected to put up with the respondent and continue to live with her under the same roof. Counsel therefore urged the Court to hold that the marriage between the petitioner and the respondent has broken down irretrievably and accordingly dissolve same and award joint custody of the children and cost of their upkeep as proposed by the petitioner. Counsel relied on the following case laws.

1. Ekrebe v. Ekrebe (1999) 3 NWLR (pt. 596) 514 at 424 paras. b-g. 3.03
2. Network Security ltd. v. Dahiru (2008) all FWLR (pt. 419) 475 at 498, paras. f-g.
3. Orji v. Emovon (1991) 1 NWLR (pt.186) 476.
4. Ajidahun v. Ajidahun (2000) 4 NWLR (pt. 654) 605 at 612 paras. c-d.
5. Livingstonbe-stallard v. Livingston-stallard (1974) 2 ALL ER 766 at 771,
6. O'neil v. O'neil (1975) 1 WLR 1118; (1975) all er 289 at 295
7. Ash v. Ash (1972) 2 WLR 347.
8. Bergin v. Bergin (1983) 1 ALL ER 905
9. Buffery v. Buffery (1988) 2 FLR 365 CA.

The Respondent's Counsel in the written address filed, raised a sole issue for determination; "Whether the Respondent/Cross petitioner has proved her case to be entitled to the reliefs sought in the cross petition."

Counsel arguing the sole issue, submitted that the Respondent/Cross Petitioner is not opposed to the dissolution of marriage. Submitted that the petitioner during cross examination confirmed that he had not been sending money to the Respondent/Cross petitioner since they became separated but only sent groceries to the children "last month" and bought the children clothes 2 times last year, which is clear evidence of desertion of the Respondent by the Petitioner. Counsel therefore urged the Court to hold that the marriage had broken down irretrievably on the ground that petitioner has deserted the Respondent for a continuous period of at least one year immediately preceding the presentation of the petition.

Counsel urged the Court to dissolve the marriage between parties and grant the prayers sought as to the custody and maintenance of the children.

Counsel relied on the following cases

1. Oyovbiare V Omamurhomu (1999) 10 NWLR pt 621, 23 at 34 F-G,
2. Adejumo V Adejumo, (2010) LPELR-3602(CA),
3. Hayes v. Hayes (2000) 3 NWLR Pt. 648 page 276 at 293 294
4. Nanna v. Nanna (2006 3 NWLR Pt. 966 page 1
5. Olu-Ibukun v. Olu-Ibukun (1974) NSCC 91.
6. Nanna v. Nanna (2006) 3 NWLR (Pt. 966) 1.
7. Akinboni v. Akinboni (2002) FWLR (Pt. 126) 926, (2002) 5 NWLR (Pt. 761) 564 at 582.
8. Samuel v. Samuel (2019) LPELR-48471(CA)
9. Mr. Robert Ayoade Olaleye V. Wema Bank Limited & 1 Or. (2010) LPELR 4744.

I have examined the Petition of the Petitioner as well as the cross petition of the Respondent. The Petitioner and the Respondent in their firstreliefs of their Petition and Cross Petition respectively, are seeking for the Court to dissolve the marriage celebrated by the parties. The law is very well settled that there is only one ground for the dissolution of marriages under the Matrimonial Causes Act, to wit, “that the marriage has broken down irretrievably” which is provided for under Section 15(1) of the Act. The sub paragraphs of subsection 2, that is Section 15(2) list the various species or facts of breakdown under (a) to (h). Hence, a Petitioner who satisfies the Court on any one or more of those facts stated in Section 15(2) (a to H), would be entitled to a finding that the marriage has broken down irretrievably and would consequently be entitled to a decree dissolving the said marriage. In the case of **IBRAHIM V. IBRAHIM (2006) LPELR-7670(CA) Per ARIWOOLA, J.C.A in Pp. 16-17, paras. E-F held**

"The law also provides for the facts, one or more of which a petitioner must establish before a Court shall hold that a marriage has broken down irretrievably. It reads thus - Section 15(2) - "The Court hearing a petition for a decree of 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-- (a) that the Respondent has wilfully 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 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 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"

See also **Bassey .V. Bassey (1978) 10-12 CCHCJ. P. 241 at p. 250 and Yusuf .V. Yusuf (1978) 10-12 CCHCJ. p. 66 at p. 71.**

In this instant petition, the Petitioner is relying on Section 15(2) (f) of the Matrimonial Causes Act, while and the Respondent in her cross petition is relying on Section 15(2) (b) &(d) of the Act, which is that the Petitioner has behaved in a way the Respondent cannot reasonably be expected to live with the Petitioner and that the Petitioner deserted the Respondent for a continuous period of at least one year immediately preceding the presentation of the Petition. From the evidence before this Court, the Respondent has failed to prove the behavior which she cannot reasonably be expected to live with. Merely stating that the Petitioner has neglected her, caused her pain and emotional torture without more is not sufficient. The Respondent is also urging on this Court to dissolve the marriage on the

fact that the Petitioner has deserted her. For the Court to hold that the Petitioner has deserted the Respondent, there must be separation of one spouse from the other with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. See the case of BAKARE VS. BAKARE (2016) LPELR - 41344 (CA). In NWANKWO VS. NWANKWO (2014) LPELR - 24396 (CA) the Court per TSAMMANI J.C.A. held as follows:

"To constitute desertion therefore, the Petitioner must plead and lead credible evidence to prove the following facts: (a) Defects or physical separation; (b) The manifest intention to remain permanently separated; (c) Lack of just cause for withdrawal from cohabitation; and (d) Absence of consent of the deserted spouse.

For there to be desertion, the Petitioner/Cross Respondent must be said to have abandoned the matrimonial home or must have abdicated all matrimonial responsibility and has thus, by his conduct expelled the other spouse. Having evaluated the entirety of the Respondent's claim that the Petitioner deserted the Respondent, from the totality of the evidence adduced, it is my view that the facts stated by the Respondent as derived from the Petitioner's cross examination to constitute desertion, that is; failure of the Petitioner not sending money for maintenance does not avail the Respondent in this case, as Petitioner was still responsible for the payment of school fees of the children as well as buying groceries; thus it is my view and I so hold that the Petitioner did not abandon the matrimonial home neither did Petitioner abdicate all his matrimonial responsibility.

The Petitioner on his part is seeking for dissolution of the marriage on the fact that the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition as

provided for in Section 15 (2) (f) of the Matrimonial Causes Act. Evidence of the Petitioner in proof of these facts required for the Court to hold that the marriage has broken down irretrievably are succinctly stated in the earlier part of this judgment and I find these unchallenged and uncontroverted evidence as to the fact that parties have lived apart for a continuous period of more than three years preceding the presentation of this Petition, in conformity with the Section 15 (2) (f).

The Court in *OMOTUNDE V. OMOTUNDE* (2001) 9 NWLR (pt.718) 252 held that, “... *The law is that the provision is mandatory and the Court has no discretion to exercise. The section has the factor of absence of fault element characteristic of other matrimonial offences -the law behind the Section that is 15(f) as far as the living apart is concerned is not interested in right or wrong or guilt or innocence of the parties. Once the parties have lived apart, the Court is bound to grant a Decree.*”

Going by the above, this Court would therefore hold that the marriage between the Petitioner and the Respondent has broken down irretrievably the parties having lived apart for a continuous period of more than three years as provided for in Section 15 (2) (f) of the Matrimonial Causes Act. Therefore, the marriage celebrated between the Petitioner and the Respondent on the 11th day of February 2012 is hereby dissolved.

The parties having agreed to the custody, education, and maintenance of the children of the marriage in open Court, it is hereby ordered as follows.

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **CHUKWUNONSO AGHANYA** and the Respondent, **ADANNIA AMALACHUKWU AGHANYA**, celebrated at Awka Marriage Registry, in Anambra State, on the 11th day of February 2012.

2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.
3. That custody of the Children of the marriage to remain with the Respondent with visiting rights granted to the Petitioner as well as two weeks in a year from December 2022 (Christmas Holiday) to be spent with the Petitioner under the following conditions: -
 - a. That the Nanny shall accompany the kids for the visit to the Petitioner for the 2022 holiday and subsequent visits from 2023 shall be without the Nanny.
 - b. That the Nanny shall accompany the children to their visit to the Petitioner each time he is in his village in Awka.
 - c. That the children would spend one week of their Easter holidays with their father as from the year 2023.
 - d. That the father shall provide a phone without internet for the children for easy communication between the children and their father.
4. That the Petitioner shall be responsible for the school fees of the children for the school agreed upon with the Petitioner and the medical bill shall be shared on a 70/30 basis, with the Petitioner bearing 70%.
5. That the Petitioner shall pay a monthly sum of N100,000.00 for upkeep and maintenance of the children of the marriage.

Parties: Respondent present. Petitioner absent.

Appearances: Temitope Adeyemi, Esq., for the Respondent.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
30-06-2022