

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE:- 11TH APRIL,2022

FCT/HC/PET/140/21

JONAH ILOABUCHI-----

PETITIONER

AND

UDEME JONAH-----

RESPONDENT

JUDGMENT

The petitioner by a notice of petition No:FCT/HC/PET/140/2021 dated and filed on the 16th March,2021 prays this Court for decree of dissolution of marriage on the following grounds:-

1. The Petitioner's marriage has broken down irretrievably as the Respondent has willfully and persistently refused to consummate the marriage.
2. The Petitioner's marriage has broken down irretrievably as since the marriage the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with her.

The petitioner therefore seeks the following orders:-

- A. A decree of dissolution of the marriage on the grounds that since the marriage the Respondent has behaved in such a way that the

Petitioner cannot reasonably be expected to live with the Respondent.

B. A decree of dissolution of the marriage on the ground that the Respondent has willfully and persistently refused to consummate the marriage.

By verifying affidavit deposed to by the Petitioner himself of 12 paragraphs and one annexure, the facts averred by the Petitioner inter alia are that:-

1. The Respondent has willfully and persistently refused to consummate the marriage on the ground that the petitioner is an old man, and has thereby denied his conjugal rights.
2. That the Respondent has constant fits and outbursts of anger during which she threatened to leave the house and end the marriage.
3. The Respondent subjected the petitioner to constant verbal and emotional abuse, as well as physical attacks during the marriage with her constant nagging, blackmail, abuse, name calling at the slightest provocation and her violent dispositions.
4. The Respondent's persistent harassment, abuse, quarrels, fighting and assault on the Petitioner and the fact that the Respondent persistently and constantly quarreled with the Petitioner at any slightest provocation never allowed peace and rest in the matrimonial home.
5. The Respondent refused to communicate properly to resolve issues but resorted to using sex as a tool for blackmailing and manipulating the petitioner.
6. The Respondent frequently attacks the Petitioner's office, nagging, blackmailing, abusing, name calling shouting and always attempting to distort the flow of affairs at the Petitioner's office.

7. The Respondent constantly threatened the Petitioner with divorce and physically assaulted the Petitioner in incidences of domestic violence.
8. The Respondent in May, 2020 threatened to spend their money held in trust as well as commits suicide to frame the Petitioner and recorded their heated exchange to blackmail the Petitioner with. The Respondent then swallowed some life threatening pills which landed them in hospital. This led to the Petitioner moving out of the matrimonial home.

The Respondent filed an answer to the petition dated 21st June, 2021 wherein she averred the following:-

1. The Respondent admits that herself and the Petitioner both live at the already mentioned address, until this petition but does not admit that the marriage has broken down irretrievably for refusal to consummate the marriage, verbal and emotional abuses, physical attacks, name calling, quarrels, harassment, assault and such other frame-ups by the petitioner. The Respondent claims to love her husband and could not insult or disrespect him in such manner.
2. That the Respondent was only given an advance copy of the petition by the Petitioner's Counsel on or about 17th March, 2021 when the original divorce petition of the Petitioner was struck out at High Court 30 of the FCT. There was no information as to the Court where the present suit was pending and the Respondent has still not been officially served by the Bailiffs of the Court which process would have supplied the missing information as to which Court the matter was pending and proceedings held. This answer is therefore filed as a precautionary measure to express the Respondents good will to defect the petition and not be shut out by active connivance of the Petitioner.

3. The Respondent denies paragraphs 5 and states that she had not at any time refused and/or failed to consummate her marriage with the Petitioner except only one when had a miscarriage and suffered from pains and profuse bleeding to the knowledge of the petitioner. The Respondent had at all times and throughout her marriage submitted herself to the Petitioner for purposes of consummation. The petitioner abandoned the matrimonial home in the midst of peaceful co- existence and without any notice to lodge in a hotel guest house sometime in June, 2020 after a romp of sexual consummation with the Respondent the dawn of same day.
4. The Respondent denies paragraph 7 (a) – (c) and states that it is false and not admitted that the Respondent has been assaulting and has persistently refused to consummate the marriage or the she had been calling the petitioner names or insulting him.
5. In further response to paragraph 7 (d)- (h), the Respondent states that it is false that the Respondent has been cruel, refused to communicate properly with the Petitioner, attempted to distort the state of affairs at the petitioner’s office or provoked the petitioner at the slightest provocation or threatened the petitioner with divorce, neither has she threatened to spend the petitioner’s money.
6. The Respondent denies paragraphs 9 and states that it is strongly believed that there is an element of connivance and collusion between the petitioner and some third parties to dissolve this marriage. The petition is not properly brought as it is tainted with suspicion of condonation, connivance and collusion.

The Respondent did not connive with the petitioner to bring this petition.

7. The Respondent denies paragraph 11 and does not admit the fact that the marriage has broken down irretrievably or et al on grounds of non- consummation of marriage by the Respondent. It is also not true that the marriage has broken down on the ground that the Respondent has broken down on the ground that the Respondent has since the marriage behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
8. There has not been any attempt at reconciliation as falsely claimed in the certificate.
9. The Respondent denies paragraph 12 and does not admit that the reliefs sought should be granted because the marriage between them has not broken down irretrievably for the reasons given or for any other reason at all. The Respondent would urge the Court to find that the petition is incompetent and should be dismissed. However, the Respondent shall be open to be properly settled and be given part of the matrimonial properties should the Petitioner insist on terminating the marriage. The Respondent can and will only walk away if so properly settled.

The Petitioner filed his final written address dated the 11th February, 2022 where he raised a sole issue for determination:-

"Whether the Petitioner has proven his petition for dissolution of marriage on the balance of probabilities and therefore entitled to the reliefs sought."

Petitioner argued that a petition for a dissolution of marriage may be presented to the Court by either party, upon the ground that the marriage has broken down irretrievably and cited section 15(1) of the Matrimonial Causes Act and the case of ***DAM ULAK V DAMULAK (2004) 8 NWLR (pt 874) 651.***

Petitioner further referred to section 15(2) of the Matrimonial Causes Act which provides factual situations which when proved by the petitioner to its satisfaction, the Court shall hold the marriage had broken down irretrievably. The section provides that:-

“ 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 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 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 2 years immediately preceding the presentation of the petition.
- f. That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of this 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 at least three years immediately.

In the case of ***ANIOKE V ANIOKE (2011) LPELR 3774 CA.*** the Court in explaining the burden of proof on a Petitioner in divorce proceedings held thus:-

"In divorce proceedings, the onus of proof with regards to the facts set out in section 15(2), (a) – (h) of the Matrimonial Cause Act lines on the Petitioner's success or otherwise of the petition depends largely on how diligently and adequately this burden is discharged. Failure in this regards will entail a dismissal of the petition, more so, where one of the parties opposes the dissolution. Thus, by virtue of the said provision of the law, a Petitioner at the hearing in a Matrimonial Causes proceeding, must satisfy the trial Court of the fact or alleged or relied upon. Again, by virtue of section 82(1) and (2) of the said Act, such matter or facts shall be established to the reasonable satisfaction of the Court. Put differently, the matter or fact as alleged shall be sufficiently proved once the Court is reasonably satisfied of the existence of the ground, fact or matter as alleged"

The instant case falls within categories a and c thus, that the Respondent has willfully and persistently refused to consummate the marriage; and that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, as seen in paragraphs 3-10

of the Petitioner's verifying affidavit, and also his testimony in Court on 12th December, 2021.

However, in the Respondent's answer to petition, Respondent denies all the claims of the petitioner that their marriage has broken down irretrievably and that the Respondent has refused to consummate the marriage and behaved in a way that the Petitioner cannot be expected to live with her.

As mentioned earlier, per ***ANIOKE V ANIOKE (2011) LPELR – 3774 (CA)***, the onus of proof in divorce proceedings lies on the Petitioner, where failure to adequately prove the facts set out in section 15 of the Matrimonial Causes Act will entail a dismissal of the petition, especially where one of the parties opposes the dissolution of the marriage as in the instant case.

Furthermore, a Court can hold that a marriage has broken down irretrievably on the ground that one spouse has been proved to be guilty of cruelty to the other, as seen in ***DAMULU V DAMULU (2004)8 NWLR (PT 874)CA. By paragraphs 4 – 10*** of the Petitioner's verifying affidavit, he is alleging cruelty on the part of the Respondent. Even though cruelty is not one of the grounds set out under section 15(2) of the Matrimonial Causes Act for divorce, it remains one of the old grounds for divorce. In the instant case however, the Petitioner cannot succeed on the strength of alleging cruelty on the part of the Respondent as what were depicted were minor acts of cruelty which cannot be relied upon.

The Respondent also states that she believes there is an element of connivance and collusion between the Petitioner and some third parties to dissolve this marriage, thus the petition is not properly

brought. The Respondent also claims that there has not been any attempt at reconciliation.

In conclusion, the Petitioner has led enough evidence, from his affidavit and testimony, to show that the marriage has broken down irretrievably, even though the burden of proof lies on him, especially since the Respondent has claimed otherwise and urges the Court to dismiss the petition.

However this Court deems it fit to state in this judgment that the Respondent at a point in time stopped coming to Court completely despite several hearing notice served on her through her Counsel.

I would like to add in this judgment that Respondent was duly notified of the subsequent adjournments of this matter through her Counsel. The medium used by the Court subsequently was through whatsapp this was simply because neither the place of residence nor the office of the Respondent's, Counsel can be located because the Respondent have moved out to unknown destination. From the content of the Petitioner petition in this divorce proceeding. It was well established to the satisfaction of the Court that the marriage has broken down irretrievably. The Defendant was given full opportunity to defend the petition but same failed to do the needful accordingly thereby leaving the Court with no option than to grant the Petitioner's prayer. However it is hereby ordered that Decree Nisi from today when the judgment is read in Court to the 30th of July, 2022 is hereby granted. If nothing come out possibly from the Respondent the marriage would automatically be presumed as being dissolved irretrievably this is strongly in line with section 15 (2) Matrimonial Cause Act. I so hold. I also ordered that the Respondent be served with Courts judgment viz: whatsapp

number of the Respondent Counsel, whatsapp number 08022243108.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Chinasa Maduka:- For the Petitioner

Sign
Judge
11/4/2022

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