IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN ATGUDU - ABUJA
ON THURSDAY THE 21STDAYOF NOVEMBER, 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO. PET/05/2024

BETWEEN

HANATU AUDU EKWU (MRS) ---------- PETITIONER
AND
MR. AUDU EKWU---------- RESPONDENT

JUDGMENT

The Petitioner by a Petition filed 8/2/2024against the Respondent claims the following:

1. A decree of dissolution of marriage between the Petitioner and the Respondent celebrated at KADUNA NORTH LGA Marriage Registry, KADUNA STATE on 12/03/2011 on the grounds that the marriage which the Respondent physically and emotionally abused and abandoned the Petitioner and the children being a voidable marriage has broken down irretrievably and that the Respondent has deserted the Petitioner.
2. AN Order of the Honourable granting custody of the Children Master David AuduEkwu 12 years and Miss Deborah AuduEkwu 9 years respectively to the Petitioner until they become adult to take decision for themselves.
3. And for such other reliefs as this Honourable court may deem fit to make in the circumstances of this case.

In support of the Petition, the Petitioner filed verifying affidavit and witness statement on oath. The Respondent was served with the originating processes and hearing notices. He did not file any answer or process in challenging the petition. Petitioner averred that she married the Respondent on March 12, 2011, at the Kaduna Marriage Registry. That the marriage produced two (2) children a male child named David AuduEkwu 12 years and a female child named Deborah AuduEkwu 9 years.That their marriage has been marked by resentment, violence, and physical abuse. They often went months without speaking unless when necessary, and the respondent frequently returned home angry, creating a hostile environment for their children. That he fails to provide financial support for the family, and the petitioner was left to manage household expenses

alone.That the abuse escalated in 2015 when the respondent physically assaulted her for the first time by slapping her. A few months later, he hit her ear, causing pain that lasted for days. In October 2017, he attempted to strangle her in front of their two children. He later asked her to leave the house, and she only stayed due to her mother's intervention.That the violence reached a peak on July 16, 2020, two months after her mother's death, when the respondent attacked her in the bathroom, hitting her while she was wrapped in a towel. That the incident occurred in front of their children and her brother. That in August 2020, the petitioner left the house with her children. Since then, no efforts have been made to reconcile. Throughout their nine years together, the petitioner endured continuous verbal abuse alongside physical violence, with the respondent insulting both her and their son, calling the boy derogatory names.

In evidence the Petitioner tendered one (1) document which was admitted in evidence and marked as follows;

> Marriage certificate No.13113 issued on 30th of November 2017dated 12/3/2011. **Exhibit A**

As earlier stated, the Respondent was served with originating processes and hearing notices. He did not file any answer or process in challenging the petition neither was he represented by counsel. At the end of the Petitioner's case, the Respondent stated thus;

> "All I want is visiting right to my children".

Case was then adjourned for adoption of final written addresses. The Petitioner's counsel adopted his final written address filed8/5/2024 wherein he raised a sole issue for determination to wit;

> Whether the Petitioner is entitled to the reliefs sought in view of the fact that the Respondent did not oppose to the dissolution of the marriage.

Summarily Learned counsel submitted that the marriage between the Petitioner and the Respondent has broken down irretrievably.Counsel relied on the following authorities **Section 15 (1) (2) of the Matrimonial Causes Act and ANIOKE V. ANIOKE (2011) LPELR-3774 (CA) (PP. 34) Para B**.

Having carefully considered the petition, the unchallenged evidence led and the address of counsel, the narrow issue is;

> **"Whether the Petitioner is entitled to the reliefs sought in her petition".**

I had at the beginning of this judgment stated that the Respondent rests his case on that of the Petitioner. Hence the Respondent did not challenge the evidence adduced by the 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. The Supreme Court in **GOV. ZAMFARA STATE & 3ORS V. GYALANGE & 12 ORS (2012) 4 S.C. 1 AT 12** held:

> *"The settled law is that evidence that is neither attacked nor successfully challenged is deemed to have been admitted and the court can safely rely on the evidence in the just determination of a case".*

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 Petitioner to the relief(s) she seeks. I find in support of this 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 establishes 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..."*

Therefore, from the above, the point appears sufficiently made that the burden of proof lies on the petitioner as in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the unchallenged evidence.

The law is now settled that, there is only one ground upon which the Court could be called upon to decree for dissolution of marriage, i.e., that the marriage has broken down irretrievably; and the Court upon hearing the petition can hold that the marriage has broken down irretrievably if the Petitioner can satisfy the Court of one or more of certain facts contained in **Section 15 (1) and 15 (2) (a) – (h) of the Matrimonial Causes Act, 2004**. 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"

Therefore, upon proof of any of the factors stated in **Section 15(2) (a-h) of the Matrimonial Causes Act**, to persuade the Court that the marriage has broken down irretrievably, the Court shall grant a decree of dissolution of the marriage if it is satisfied on all the evidence adduced as held in **UZOCHUKWU V. UZOCHUKWU (2014) LPELR-24139 (CA).**The burden or standard of proof required in matrimonial proceedings is also now no more than that required in civil proceedings.This is so because in civil cases, the only criterion to arrive at a final decision at all times is by determining on which side of the scale the weight of evidence tilts. Indeed **Section 82 (1) and (2) of the Matrimonial Causes 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.*

The Petitioner adduced evidence to the satisfaction of the Court 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 and this is not contradicted nor challenged by the Respondent who was present in court. The law is trite and enjoins a Court to act on unchallenged evidence. The Court in the case of **MATAZU V. MAZOJI (2014) LPELR-23071 (CA), Per ABIRU JCA in P. 70, paras. D-F** held

"The law is that where evidence of a witness is credible and it is not challenged under cross examination or met by contrary evidence, it is tantamount to an admission and should be relied upon by the trial Court".

Thus, by virtue of **Sections 15(1) and 15 (2) (f) of the Matrimonial Causes Act**, the Court shall hold that a marriage has broken down irretrievably if there is evidence showing thatthe parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition

In the circumstances, I therefore hold that the marriage has broken down irretrievably Petitioner having proved **Sections 15(1) and 15 (2) (f) of the Matrimonial Causes Act** the marriage ought to be dissolved and **IT IS ACCORDINGLY DISSOLVED.**

In relief 2, the Petitioner is seeking for custody of thechildren of the marriage. By **Section 71(1) of the Matrimonial Causes Act**, the court must prioritize the best interest of the child of the marriage. The court has the authority to make appropriate orders regarding custody, guardianship, welfare, advancement, or education of the child. Determining the best interest of the child is not easily defined and extends beyond material possessions. It includes factors that support the child's psychological, physical, and moral development, as well as their happiness and security. As held in**ODOGWU V ODOGWU (1992) LPELR – 2229 (SC) and ODUSOTE V ODUSOTE (2011) LPELR – 9056 (CA).** In this instant case, the childrenarein the custody of the Petitioner and the Respondent in this case is not opposed to the grant of custody to the Petitioner but however prays the court for visitation rights to the children. There is no evidence that Petitioner is not capable of caring for the child neither is there evidence that the child has been treated unfairly by Petitioner.Consequently, custody of the childrenof the marriage(David AuduEkwu 12 years and Deborah AuduEkwu 9 years)are hereby granted to the Petitioner until theyattain the age of 18years. It is important to state that the childrenneedtheir father for wholesome and balanced development.There is uncontroverted and unchallenged evidence before me that the Respondent has assaulted the Petitioner in front of their children and Respondent also insults his son calling him derogatory names. It will not be in the best interest of the children to be with the Respondent unsupervised due to the violent and abusive character of Respondent.

Consequently, I hereby order as follows;

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **HANATU AUDU EKWU (MRS)**and the Respondent, **MR. AUDU EKWU**at Kaduna North LGA Marriage Registry, Kaduna State on the 12th ofMarch, 2011.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three 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 Petitioner shall have custody of the children of the marriage (David AuduEkwu 12 years and Deborah AuduEkwu 9 years)until they attain the age of 18years.
4. Respondent is hereby granted supervised visiting rights to the children upon due consultation with the Petitioner prior to such visits. Under no circumstances must the children be left in the care of the Respondent without supervision.

Parties: Petitioner is present. Respondent is absent.
Appearances: Petitioner is not legally represented. Respondent is not legally represented.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
21ST NOVEMBER, 2024