IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU'AZU
SUIT NO. FCT/HC/PET/306/2022
DATE: 18 – 04 -2024

BETWEEN:

OJIAKOR PEACE………………………………………………………………PETITIONER

AND

OJIAKOR SAMUEL…………………………………………………………...RESPONDENT

Appearance:
Noah Ajare, Esq, with Abdullahi Sufiyanu, Esq, for the Petitioner
No Appearance for the Respondent.

JUDGMENT

The Petitioner Ojiakor Peace whose address is House 88, Jalingo Street, Jedo Estate Lugbe Airport Road Abuja got married to the Respondent Ojiakor Samuel at St. Peters Anglican Church Abagana on the 15/10/2015. The Petitioner alleged that her marriage with the Respondent has broken down irretrievable. The particulars of such break down are as follows:-

(a) Unreasonable behavior of the Respondent.
(b) That since the marriage, the Respondent has behaved in such a way that the Petitioner finds it intolerable to live with the Respondent.

(c) Lack of love
(d) Cruelty
(e) Inability to provide for the family
(f) Breakdown in communication.

The Petitioner then filed this petition against the Respondent and sought for the following reliefs:-

(a) The Petitioner seeks a decree of dissolution of the marriage between her and the Respondent.
(b) Custody of the children of the marriage.

Upon service, the Respondent filed a memorandum of conditional appearance dated 16/9/2022 and filed on the 20/9/2022. Parties the informed the court that attempts at settlement have broken down. The matter proceeded to hearing.
The Petitioner testified on the 15/5/2023. The case of the Petitioner is that she got married to the Respondent under the Marriage Act at St. Peters Anglican Church on the 31/10/2015 and at the Marriage Registry.
That the marriage of the Petitioner and the Respondent was blessed with two children namely:-

1) Harry Samuel, male born on 22/11/2016
2) Michelle Samuel Female born on 12/9/2018.

Petitioner further avers that the Respondent has since the marriage failed to make provision for the family and severally abused the Petitioner, emotionally and psychologically.

That it is only the Petitioner that has been taken care of the welfare and medical needs of the children till date. That there is no longer love between the parties as all effort at reconciliation has proved abortive.

(1) Pw1 tendered marriage certificate in evidence as Exhibit P1.
(2) Birth certificate, medical report, school fee receipts in evidence.

Pw1 was cross examined by learned counsel for the Respondent and suit adjourned for defence. Owing to failure of the Respondent to enter his defence after a considerable delay, the Respondent's right to enter a defence was foreclosed and matter was adjourned for filing and adoption of final written addresses.
Learned counsel for the petitioner in its final written address formulated a lone issue for determination to wit;

> ***Whether the Petitioner is entitled to her request for an order of dissolution of marriage and an order for custody.***

Learned counsel argued the above issue citing relevant cases in urging the court to grant reliefs sought.
On his part, learned counsel for the Respondent formulated a sole issue for determination to wit;

> ***Whether the marriage between the Petitioner and the Respondent has broken down irretrievably and the parties are bound to the dissolution of their marriage.***

Learned counsel answer the above issue in the affirmative in urging the court to grant the dissolution of the marriage.

From the evidence before me, I find the following facts undisputed between the parties.

1) That the Petitioner and the Respondent are both no longer interested in keeping the marriage.
2) That the marriage has broken down irretrievably between the parties.
3) That the parties have lived apart for a continued period of 2 years immediately preceding the presentation of this petition.
4) That the two children of the marriage are minors.

I have also appreciated the area of contradiction that stand distinct between the parties, to wit: **The issue of custody of the children of the marriage.**

In the court's opinion, the issue now is whether the marriage is to be dissolved on the ground that the Petitioner finds it intolerable to live with the Respondent and cannot reasonably be expected to live with him or on the ground that the marriage has broken down irretrievably.

I shall beam my searchlight on the evidence led by the Petitioner before the court in proof of her case regarding the dissolution of their marriage.

Matrimonial causes matters are in a world of their own, that is why they are called ***sue generis***. The procedure for the dissolution of marriage under the Act is provided under the Matrimonial Causes Act. No marriage will be dissolved merely because the parties have agreed that it be dissolve. It will not be dissolved merely because it is a contract between two persons.

Marriage is the foundation of a stable society. It is the families that make the society. Marriages that are entered into and discontinued by mere agreement of parties will not augur well for the society.

A decree for the dissolution of marriage would therefore be granted if the petitioner has proved that the marriage has broken down irretrievably as provided under Section 15(2) (a-h) of the Act or one of such provided grounds as contained therein. And the court hearing a petition for a decree of dissolution of marriage shall hold that the marriage has broken down irretrievably if, but only if, the Petitioner satisfies the court that one or more of the situations set out in Section 15 (2) (a)-(h) of the Act exists. **PIUS VS. OLORUNFEMI (2020) LPELR 49529 (CA).**

I will for the purpose of clarity and avoidance of doubt reproduce the provision of Section 15(a) – (h) of the Act to wit;

(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 two years immediately preceding the presentation of the petition and the Respondent does not object to the decree being granted.

(f) That the parties to the marriage have lived apart for a continuous period of at least 3 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 registration of conjugal rights made under this Act.

(h) That the other party to the marriage has been absent from the petition for such time and in such circumstances as to provide reasonable grounds for assuming that he or she is dead.

For emphasis, the existence of one or more of the conditions enumerated under Section 15(2) above will suffice to hold that, the marriage has broken down irretrievably. ***HARRIMAN VS. HARRIMAN (1989) 5 NWLR (PT 119) 6.***

Going by the testimony of the Petitioner before me, parties have lived apart for more than two years as clearly stated in evidence of the Petitioner. This explanation however leaves the court with no option but to assume that there was desertion in the marriage due to the surrounding circumstances.

This instance has clearly been frowned at by Supreme Court in line with their definition of what amounts to desertion in a marriage in the case of **ANIOKE VS. ANIOKE (2015) ALL FWLR PT (666) 521** where it held thus:

> *Desertion of spouse is defined as the withdrawal of support and cessation from cohabitation without the consent of the other spouse and with intention of abandoning allegiance, fidelity or responsibility and remaining separated in perpetuity*.

The Petitioner has led evidence to show that she is the one taken care of herself and that the Respondent does not take responsibility of her welfare. And these and more assertions were not countered by the respondent.

I therefore, find a case of intolerable behavior proved as alleged by the petitioner and of the opinion that the marriage could be dissolved on that ground. I so hold.

Accordingly, it is my considered view that the petitioner has satisfied the requirement of Section 15(2) (c) & (d) of the Matrimonial Causes Act, 2004 which states that;

> *(c) The since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; and that*
> *(d) 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 the decree being granted.*

Accordingly I hold on these that the marriage between the Petitioner and the Respondent has broken down irretrievably and that the petitioner is entitled to the relief one sought.

Accordingly, I will and do hereby record a decree Nisi for the dissolution of the marriage contracted on 15/10/2015 between the Petitioner and the Respondent. The decree Nisi shall become absolute by operation of law upon the expiration of three months from today.

I shall now, consider the issue of custody of the children of the marriage having dissolved the marriage between the parties. Custody of a child in matrimonial causes connotes not only the control of the child but carries with it the concomitant implication of the preservation and adequate care of the child personality, physically mentally and morally. **ALABI VS.**

ALABI (2008) ALL FWLR (PT 418) 248 AT 257 PAGE 296 PARA C (CP).

Often, it is the welfare of the children that is of paramount importance and parameters to be used in the determination of the issue of custody.

It is the contention of the petitioner that the two children of the marriage:

(1) **Harry Samuel born 22/11/2016.**

(2) Michelle Samuel born 12/9/2018 should be granted custody to her.

Indeed, judicial discretion of a judge is what is often called upon when the issue of custody of children is before the court.

The age of the children, welfare generally, upbringing and the arrangement for their accommodation, the conduct of the parties to the marriage are the factors always borne in mind by the Judge in determining who to have custody. **ODUCHE VS. ODUCHE (2005) LPELR 8976 (CA).**

Guided by wisdom and reason, however, considering the fact that the children are minors, the petitioner shall have the custody of the children.

The Respondent shall pay in full the children's school fees as accessed by the academic institution the children attend.

The Respondent shall provide monthly upkeep expenses of the children in the sum of N70,000.00.

The Respondent shall have unfettered access to his children any time provided he gives the Petitioner reasonable prior notice by phone call or SMS/WhatsApp messaging.

Signed
Hon. Judge
18/04/2024.