

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA  
IN THE BENIN JUDICIAL DIVISION  
HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP: THE HON. JUSTICE V.O. EBOREIME, JUDGE  
SITTING IN HIGH COURT NO. 12, BENIN CITY  
ON 11<sup>th</sup> April, 2013, THIS 11<sup>th</sup> DAY OF April, 2013.

SUIT NO. B/175D/2013

BETWEEN:

PRO. JUDE A. O. ORONSAYE	vs	PETITIONER/APPLICANT
AND		
1. MRS. FELICIA ORONSAYE	vs	RESPONDENT/CROSS PETITIONER
2. RITA ERHABOR	vs	CO-CROSS RESPONDENT/APPLICANT
(Party cited for adultery with the Petitioner/Cross Respondent)		

J U D G M E N T

On the 16<sup>th</sup> day of April, 2013, the Petitioner filed a Petition against the Respondent in this Honourable Court seeking the following order:

“A decree of dissolution of the marriage between the Petitioner and the Respondent.”

The Respondent filed her answer to the Petition on the 17<sup>th</sup> day of July, 2013 wherein the Respondent/Cross-Petitioner claims the following reliefs:

- “(a) The sum of N50,000,000.00 (fifty million naira) as damages for adultery against the Cross Respondent and Co-Cross Respondent (party cited) jointly and severally.
- (b) An order directing the Cross Respondent to be paying the sum of N100,000.00 (One hundred thousand naira) per month to

the Cross Petitioner for the maintenance of the Cross  
Petitioner.

On the 5<sup>th</sup> day of September, 2013, the Petitioner/Cross Respondent filed his Reply to Answer and Cross Petition of the Respondent/Cross Petitioner including the Co-Cross Respondent's Reply to the Answer/Cross Petition of the Respondent/Cross Petitioner. It should be noted that the above two documents had earlier been filed before this Court on the 23<sup>rd</sup> day of August, 2013.

On the 9<sup>th</sup> day of June, 2014, this Honourable Court directed parties to file their Written Statements on Oaths. In compliance with that directive, the Petitioner filed his Written Statement on Oath on the 5<sup>th</sup> day of August, 2014 which was served on the Respondent by the bailiff of this Court on the 8<sup>th</sup> day of October, 2014 at 11:45am. (See pages 61 and 62 of the case file for the Affidavit of Service). The Respondent/Cross Petitioner did not comply with the directive of this Court to file her Written Statement on Oaths.

On Wednesday, the 3<sup>rd</sup> day of December, 2014, the Petitioner opened his case by testifying for himself and adopted his Written Statement on Oath. After his evidence, he was accordingly cross-examined by the Learned Counsel to the Respondent/Cross Petitioner, M. O. Okhwarobo, Esq.

The evidence on Oath of the Petitioner is contained at pages 56 ó 60 of the case file which is reproduced as follows:

õXxxxxx pls copy pp 56 ó 60 of case file xxxxxö

In the course of the hearing of the case of the Petitioner, an exhibit was admitted in evidence which is:

1. Exhibit 5 Certificate of Marriage between the Petitioner and the Respondent/Cross Petitioner dated the 30<sup>th</sup> day of June, 1979.

From the 3<sup>rd</sup> day of December, 2014 when the Petitioner testified and closed his case to the 6<sup>th</sup> day of April, 2016 when this Court adjourned the case for Judgment, the Respondent/Cross Petitioner neither filed her Written Statement on Oath as directed by this Court nor testified orally in proof of her Cross Petition irrespective of the hearing notice served on her by the bailiff of this Court on the 10<sup>th</sup> day of December, 2015. (See pages 73 and 74 of the case file for the Affidavit of Service).

On the 3<sup>rd</sup> day of March, 2016, the Learned Counsel to the Petitioner, Augustine C. Ugwu, Esq., vide a Motion on Notice filed the Petitioner's Final Written Address which was adopted on the 6<sup>th</sup> day of April, 2016. In this Written Address, the Learned Counsel to the Petitioner/Cross Respondent canvassed two issues as follows for determination.

- (i) Whether from the evidence adduced by the Petitioner/Respondent, the marriage between the parties could be held to have broken down irretrievably.

- (ii) Whether the Respondent/Cross Petition has behaved in such a way that the Petitioner/Respondent cannot reasonably be expected to live with her.ö

The Learned Counsel to the Petitioner argued the above issues together and cited authorities. He finally urged Court to grant the relief sought by the Petitioner.

**COURT:**

I have carefully considered the Petition of the Petitioner, the evidence led and the Final Written Address filed on behalf of the Petitioner, including the authorities cited therein. I have also considered the Cross Petition of the Respondent. It being not supported by evidence, it stands on nothing unworthy of receiving further consideration by this Court. The principle of law is trite that civil matters are decided on the preponderance of evidence and balance of probability as it is he who asserts a fact that must prove it. See MRS. ETHEL ONYEMAECHE DAVID ORJI V. DORJI TEXTILES MILLS (NIG.) LTD & ORS (2010) VOL. 182 LRCN PAGE 129 where Mukhtar, JSC held at page 163 thus:

öIt is elementary law that civil matters are determined on preponderance of evidence, and balance of probabilityí . The law is also trite that he who asserts a fact must prove it, and it is he who has failed to produce the evidence that will fail in his case. The burden of proof is not static for it shifts from one party to the other.ö

Having failed to adduce evidence, the Cross Petitioner has failed woefully to prove his Cross Petition and as such all the claims contained therein have accordingly failed. I so hold.

Now, what is left for this Court to consider is the case of the Petitioner. The single issue to be determined in the case therefore is as follows:

“Whether the Petitioner has proved his petition to be entitled to the relief sought by him.”

The Petitioner seeks a decree of dissolution of the marriage between him and the Respondent. Exhibit “A” is a proof that there is a marriage between them contracted on the 30<sup>th</sup> day of June, 1979.

The six (6) grounds for the dissolution of the said marriage as couched by the Petitioner at paragraph 8 of the petition are as follows:

“8 GROUND FOR DISSOLUTION OF MARRIAGE

That the marriage has irretrievably broken down:

- a) That sometime in 1989 the Respondent physically assaulted the Petitioner’s aged father who died few months later and refused to apologise to him before his death and the entire Oronsaye’s family till date.
- b) That also in the month of June, 1989 the Respondent moved out of the Petitioner’s house at No. 87 Owina Street, Off Agbado Street, Benin City and they have lived apart since then till date.

- c) That the Petitioner tried to reconcile with the Respondent personally to no avail.
- d) That in the same vein as in sub-paragraph (c) above all the effort to reconcile the parties by their relations and the church has failed.
- e) That the Respondent for the greater part of the marriage has behaved in such a way that the Petitioner cannot reasonably be expected to live with her.
- f) That notwithstanding the facts and circumstances set out in the petitioner's discretion statement the court is being asked to grant a decree to dissolve this marriage.ö

The Learned Counsel to the Petitioners in his Final Written Address submitted that the Petitioner has proved Section 15, 2 (c) and (f) of the Matrimonial Cause Act.

It is quite elementary that the Address of Counsel cannot take the place of evidence. See SALZGITTER STAHL GMBH V. TUNJI DOSUNMU INDUSTRIES LTD (2011) VOL. 194 LRCN PAGE 216 paragraph Z.

Under Section 15 (2) of the Matrimonial Cause Act, the Court can only hold that the marriage between the Petitioner and the Respondent has broken down irretrievably if, but only if , the Petitioner satisfies the Court of one or more of the facts contained in sub-paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) therein.

For the purpose of emphasis, ground (b) of the grounds for the dissolution of the marriage filed by the Petitioner is as follows:

õb) That also in the month of June, 1989 the Respondent moved out of the Petitioner's house at No. 87 Owina Street, Off Agbado Street, Benin City and they have lived apart since then till date.õ

The date of filing of the Petition was 16<sup>th</sup> April, 2013, twenty four (24) years after the allegation of both parties living apart. Paragraph (f) of Section 15 (2) of the Matrimonial Causes Act provides that the Court can hold that a marriage has broken down irretrievably if the Petitioner satisfies:

õ(f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation the petition.õ

What was the evidence of the Petitioner on record? It is that since the month of June, 1989, the Respondent deserted the house after assaulting the Petitioner's father; that all reconciliation attempts ever since failed. (See paragraphs 8, 12, 15 and 16 of the Statement on Oath of the Petitioner as reproduced earlier.

Even under Cross-examination, the Petitioner strengthened the above evidence when he said:

õAs at 1989, I had problem with Respondent because she fought my father. It is not true that why the Respondent's load was thrown out

is because she insisted we moved to my Quarters in Uniben. The Panel set up by Court to reconcile us broke down. We appeared before two Tribunals in the Church. The reconciliation broke down.ö

That the Petitioner and the Respondents have lived apart for about twenty four (24) years before the institution of this petition is not in doubt as it has been proved by evidence. That is a ground upon which this Court can hold that the marriage has broken down irretrievably. And I so hold.

From my foregoing reasoning therefore, it is my firm view and holding that the Petitioner and the Respondent having lived apart for more than three years continuously immediately preceding the filing of this petition, the marriage between them has broken down irretrievably. I therefore give an Order of Decree Nisi dissolving the marriage between the Petitioner and the Respondent. This Decree Nisi becomes Decree Absolute after three months if no reasonable cause is shown to the contrary.

HON. JUSTICE V. O. EBOREIME  
JUDGE  
í ..DATE

COUNSEL: