

IN THE HIGH COURT OF JUSTICE  
IN THE UROMI JUDICIAL DIVISION  
HOLDEN AT UROMI  
BEFORE HIS LORDSHIP, HON. JUSTICE P.A.AKHIHIERO,  
JUDGE, ON WEDNESDAY THE  
15<sup>TH</sup> DAY OF JULY, 2020.

BETWEEN: SUIT NO: HCU/1D/2019

JACOB AZEKE.....PETITIONER

AND

ESTHER AZEKE.....RESPONDENT

J U D G M E N T

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner on the 20th day of February, 2019.

The orders sought by the Petitioner in paragraph 10 of the Petition are as follows:

- (a) A decree of dissolution of marriage between the petitioner and the respondent on the ground that the marriage between the petitioner and the respondent has broken down irretrievably for the reason that the respondent has since the marriage behaved in such a way that the petitioner cannot be reasonably allowed to live with him;
- (b) A decree of dissolution of marriage on the ground that the parties have lived apart for more than sixteen (16) years immediately preceding the presentation of this petition;
- (c) And other Order or Orders as this Honourable Court may deem fit to make in the circumstances of this case.

The Grounds for the Dissolution of the Marriage as contained in paragraph 8 of the Petition are as follows:

The petitioner and the respondent stopped living together in the same matrimonial home since the 15th day of December, 2002 as the respondent behaved in such a way that the petitioner cannot reasonably be expected to live with her.

**PARTICULARS**

- i) The respondent has shortly after the marriage seized to show love and care towards the respondent;
- ii) The respondent has consistently insulted, battered and threatened to eliminate the petitioner by any means without any provocation;
- iii) The unbearable attitude of the respondent got out of hands sometime in 2001 when the respondent started abandoning the petitioner and the children of the marriage in the matrimonial home for days without any explanation; and
- iv) Though the spouses lived together in the same house, virtually all forms of matrimonial consortium ceased since some time in the year 2001.

When this petition was filed, the Bailiff of this Court made several unsuccessful attempts to effect personal service of the petition on the Respondent. Eventually, the Petitioner was granted leave to serve all the court processes in respect of this petition by substituted service. Thus, all the court processes were served on the Respondent by substituted service.

However, when the petition came up for mention on the 14th of January, 2020, the Respondent was absent and the Petitioner applied that the petition be set down for hearing and it was adjourned to the 6th of February, 2020 for hearing.

The Respondent never showed up at the hearing of this petition. On the 17th of March 2020, the Petitioner testified and closed his case.

In his evidence, the Petitioner stated that on the 7<sup>th</sup> of February, 1975, he got married to the Respondent in the Jehovah Witness Kingdom Hall in Emu and a Certificate of Marriage was issued to them. He tendered the Certificate of Marriage which was admitted as Exhibit A. He said that after they got married, they lived together happily, God blessed them with six children and the youngest child is now nineteen years old.

He said that later, the Respondent's character later changed for the worse. According to him, sometime in 1984, the Respondent left his house and the elders of their Church brought her back to him. That when she came back she refused to sleep with him, cook for him or wash his clothes. That she was always quarreling with everybody and when he wants to leave for work, the Respondent would hold him and tear his clothes while their neighbours would gather around them. He said that he reported these developments to the Respondent's parents and they came and tried to settle them but could not. He said that some elders also tried to settle them but failed. He said that in the year 2002 she left him and never came back. That he wants the Court to dissolve the marriage.

The Respondent did not put up any defence and the matter was adjourned for final address.

In his Written Address dated and filed on the 15<sup>th</sup> of May, 2020, the learned counsel for the Petitioner, *D.V.Okojie Esq.* formulated a sole issue for determination as follows:

***WHETHER THE PETITIONER HAD LED CREDIBLE EVIDENCE BEFORE THIS HONOURABLE COURT ENTITLING HIM TO THE RELIEFS SOUGHT IN THE PETITION.***

Arguing the sole issue, learned counsel submitted that from the totality of the evidence of the Petitioner, it is clear that he has proved his case to warrant this Court to grant his reliefs. He said that the Petitioner gave evidence of how he and the Respondent got married on the 15th of February, 1975 and they cohabited together until when the Respondent ceased to show love and care towards him and her children. That the Respondent consistently insulted and battered the Petitioner whose clothes she was in the habit of tearing whenever the Petitioner was prepared to go to work. And that she was in the habit of picking quarrels with neighbours.

He posited that the unbearable attitude of the Respondent got out of hand sometime in 2001 when the Respondent started abandoning the Petitioner and the children for days without any explanation. That when the Respondent's parents

intervened in the matter, the Respondent did not listen to them and in the year 2002, the marriage broke down irretrievably as a result of the Respondent's infamous conduct.

Furthermore, he posited that the parties stopped living together in their matrimonial home since December 2002 and the Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with her since the marriage has broken down irretrievably. That the Respondent has left her matrimonial home for a period of eighteen years.

On when a marriage can be said to have broken down irretrievably, he referred to **Section 15 (2) (a) (c) (d) (e) (f) of the Matrimonial Causes Act, 1970.**

Furthermore, he said that the Respondent was served with all the court processes in respect of the petition but she did not lead any evidence to contradict the evidence of the Petitioner.

He submitted that where the evidence of a party is not contradicted and controverted, the court is entitled to rely and act on it and cited the case of **Shell Petroleum Development and Co. V Edomkwe (2009) 43 WRN p.1 at p.16.**

He maintained that the Respondent did not lead any evidence before this Honourable court and referred to the case of **Alenchenu V Oshoke (2012) FWLR (Pt.85) p/281 at p.284** on the effect of failure to lead evidence.

In conclusion, he urged the Court to grant all the reliefs of the Petitioner.

I have carefully gone through the evidence adduced at the trial together with the address of the learned counsel for the Petitioner. From the records contained in the court's file in this petition, all through the case, the Respondent virtually abandoned the trial and never responded to all the Hearing Notices served on her.

Thus, the evidence of the Petitioner remains unchallenged. The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See: **Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663.**

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendant, the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See: **Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24.**

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See: **Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341.** Even where the evidence is unchallenged, the trial court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: **Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650.**

Applying the foregoing principles, I will evaluate the evidence adduced by the Petitioner to ascertain whether they are credible and sufficient to sustain the Petition.

I am of the view that the sole Issue for Determination in this suit is: **whether the Petitioner is entitled to the reliefs claimed in this Petition.**

I will now resolve the issue.

In every civil action, including a matrimonial petition, the burden of proof is on the Claimant or Petitioner, as he who asserts must prove. Furthermore, the standard of proof required is on the preponderance of evidence or the balance of probabilities. See: **AGAGU V MIMIKO (2009) 7 NWLR (PT. 1140) 223.**

In the instant case, the Petitioner is seeking a Decree of Dissolution of Marriage on the ground that the petitioner and the respondent stopped living together in the same matrimonial home since the 15th day of December, 2002 and that the respondent has behaved in such a way that he cannot reasonably be expected to live with her.

By virtue of **Section 15(2) of the Matrimonial Causes Act**, the Court upon hearing a petition for dissolution of a marriage shall hold that the marriage has broken down irretrievably if, but only if the petitioner satisfies the Court of one or more of the following facts namely:

- 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 a 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 of restitution of conjugal rights made under the law;*  
*and*
- h) *that the other party to the marriage has been absent from the petitioner for such a time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.*

In effect there are eight grounds for divorce and proof of one of these grounds or facts is in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage. See **Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383.**

A Court cannot dissolve a marriage or declare a marriage to have broken down though it appears the marriage has broken down irretrievably unless one of the listed facts is established by the petitioner. The law requires that the petitioner should state clearly the specific ground or grounds for divorce as listed in Section 15(2) above. See **Ibrahim v. Ibrahim (supra) and Damulak v. Damulak (2004) 8 NWLR (Pt. 874) 151.**

The law provides that in matrimonial causes, a matter or fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court. Thus in divorce suits, a decree shall be pronounced if the Court is satisfied on the evidence that a case for the petition has been proved.

In the instant case the evidence adduced at the trial is to the effect that the Respondent abandoned her matrimonial home for a period of eighteen (18) years. In other words for a period of about eighteen years the parties have lived apart.

By virtue of *section 15(2) (e) & (f) of the Matrimonial Causes Act*, that is sufficient proof that the marriage has broken down irretrievably.

The section provides as follows:

**“Section 15-**

***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 3 years immediately preceding the presentation of the petition.”***

In essence, the Petitioner has established two of the conditions to prove the irretrievable breakdown of the marriage. As earlier stated, proof of one of these grounds or facts is in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage. See *Ibrahim v. Ibrahim (2007) 1 NWLR (Pt. 1015) 383*.

In the event *the sole issue for determination is resolved in favour of the Petitioner. The petition succeeds and the Petitioner is granted a decree of dissolution of marriage on the ground that the parties have lived apart for more than sixteen (16) years immediately preceding the presentation of this petition.*

***I hereby Order a Decree Nisi which will be made a Decree Absolute after three months unless there is a cogent reason to vary same. I make no order as to costs.***

P.A.AKHIHIERO  
JUDGE  
15/07/2020

COUNSEL:

1. D.V.Okojie Esq.....Petitioner
2. Unrepresented.....Respondent