

IN THE HIGH COURT OF JUSTICE
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP,
HON.JUSTICE P.A.AKHIHIERO,
ON WEDNESDAY
THE 22ND DAY OF JULY, 2020.

BETWEEN: SUIT NO: HCU/3D/2017
MRS. OMONJIE EROMOMENE PETITIONER/RESPONDENT

AND

MR. RAPHAEL EROMOMENE.....RESPONDENT/CROSS PETITIONER

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 25th day of April, 2017.

The orders sought by the Petitioner in paragraph 12 of the Petition are as follows:

- (a) A Decree of Dissolution of marriage between herself and the Respondent on the ground that the marriage has broken down irretrievably because since December, 26th 2015, the Respondent has deserted her and abandoned their matrimonial home for another woman 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 parties have lived apart for more than two years immediately preceding the presentation of this petition;
- (c) An order for the Petitioner to refund the bride price of one thousand naira only to the Respondent.

The Respondent in answer to the petition filed a Cross Petition along with his answer to the petition.

At the hearing of this petition, the Petitioner testified that she got married to the Respondent on the 25th of April, 2015 and they lived together for eight months after the wedding but she had no child for him.

She said that they have lived apart since December 26th 2015 and the Respondent has been living with another woman since 2015. She testified that the Respondent was always beating her when they were living together. She tendered her Marriage Certificate which was admitted as Exhibit A.

The Respondent/Cross Petitioner also testified at the hearing. He stated that on their wedding night, when he wanted to have sex with the Petitioner, he discovered that she was lactating profusely and he asked her why it was so. He said that she explained that about thirteen years back, somebody raped her, she became pregnant and she had to abort the

pregnancy. That after the abortion she started lactating. He said that he asked her why she did not inform him of such an important fact before the marriage and she apologized and asked him to forgive her.

The Respondent said that he contacted a doctor who asked her to do a prolactin test to determine the cause of the lactation. That she went for the test and it was discovered that she had some hormonal imbalance and her two fallopian tubes were blocked. She was referred to a gynecologist who promised to flush the two tubes. The treatment was carried out at the cost of one hundred and sixty four thousand naira but the lactation did not stop.

The Respondent stated that he later gave the Petitioner the sum of fifty thousand naira to go to Uromi to undertake some traditional treatment to stop the lactation but after the traditional treatment the lactation continued. He then asked her what could have caused such abnormality and she told him that sometime ago, her cousin by name Monday raped her. He said that the Petitioner informed her family about the problem and they took a decision that Monday and the Petitioner must undergo some traditional rituals involving the sacrificing of two goats and he gave her money to perform the rituals but the lactating did not stop.

He testified that later on, he discovered that the Petitioner was having an affair with a man somewhere and he became afraid of sleeping with her. He stated that another cause of problem between them was the issue of Church. That before their wedding he was a Catholic although they were wedded in the Petitioner's church which is a Pentecostal church. That after the wedding, he insisted that she must stop attending the Pentecostal church and start attending the Catholic Church with him. He said that this issue generated much quarrel until he allowed her to continue attending her church.

Again, he said that he discovered that she once lived in Italy and was still communicating with her Italian boyfriend. He said that they quarreled often and she reported the matter to his boss and told him several negative things about him which made his boss to terminate his appointment. He said that eventually she left his house and relocated to live with her sister. That eventually she came with two policemen and packed her property away from his house.

He said that sometime during the marriage he had sex with the Petitioner and he was infected with gonorrhoea. He said that he did not sleep with any other woman apart from her. He said that he never vandalized the Petitioner's apartment or took her things.

He pleaded with the Court to dissolve the marriage.

Before the conclusion of evidence in this suit, the learned counsel for the Petitioner **D.I.Odafen Esq.** passed on and the Petitioner did not brief another counsel. The petition was thereafter adjourned for final address.

In his final written address, the learned counsel for the Respondent/Cross Petitioner **E.J.Ezewele Esq.** formulated a sole issue for determination as follows:

“Whether there is a supportable ground in accordance with the law under which the Court can dissolve this marriage”.

Arguing the sole issue, the learned counsel submitted that in paragraphs 6 and 8 of the Respondent's Answer to the Petition, he averred that the Petitioner committed adultery with her cousin, one Mr. Monday Oko-Okpujie from Uromi, Edo State of Nigeria and her ex-police boyfriend that live in Ikeja, Lagos.

He said that these averments were neither challenged nor controverted. That it is trite law that any unchallenged and uncontroverted fact in an affidavit remains undisputed

and is deemed admitted by the adversary and the Court will so hold. He referred the Court to the Supreme Court decision in the case of *Inegbedion V Selo-Ojiemen & Anor (2013) Vol 216 LCRN 53 Ratio 2 & 3 at Pp 57 & 58* respectively. He also relied on the following decisions:

- i. *Matanmi & Ors V Dada & Anor (2013) Vol 221 LCRN 223 Ratio 5 at P 230.*
- ii. *Ehimen Esene V The State (2017) LPELR – 41912 (SC) Per Ogunbiyi, JSC (Pp.23 – 24 Paras. F-A).*

He submitted that from the totality of the unchallenged and uncontroverted evidence of the Respondent in paragraphs 3 – 12 (particularly paras 6 & 8) of the Respondent's answer to the petition, and verified in paragraph 3 of the Affidavit Verifying the Petition, the marriage has broken down irretrievably.

In the circumstances, he urged the Court to resolve the lone issue for the determination in favour of the Respondent by dissolving the marriage and dismissing the petition.

I have carefully considered the Petition, the Cross Petition, the evidence in proof thereof and the Written Address of the learned Counsel for the Respondent/Cross Petitioner.

It is settled law that in matrimonial proceedings a cross petition is itself a petition for it is in the same category as a counter-claim. The cross petitioner must therefore prove every averment in the cross petition. See the cases of *Nwanya v Nwanya (1987) 3 NWLR (62) 697 at 704*; and *Otti v Otti (1992) 7 NWLR (252) 187 at 212*.

Furthermore, in matrimonial proceedings, the Petitioner's proof of his petition is not dependent on the existence of the Respondent's cross petition and so does not bear any relationship with the existence of the cross petition for the purpose of proof even if there are facts in the cross petition that could be considered to be admission by the Respondent. This is because divorce proceedings are considered *sui generis* because they are not governed by the general rules of practice in pleadings but by the Matrimonial Causes Act and Rules specifically enacted to regulate them.

The petitioner is therefore required to strictly prove his averments of the petition irrespective of any admission by the Respondent to the petition. See *Section 82(1) & (2) of the Matrimonial Causes Act, 1970*; *Okala v Okala (1973) 3 ECSLR, 67*; *Ibeawuchi v Ibeawuchi (1973) 3, 56*; *Oviasu v Oviasu (1973) Suit No. SC/264/70, SCNJ*; *Olowu v Olowu (1977) Suit No AB/57/71 of April 10th, 1973*

Furthermore, since a petition and a cross petition are independent and separate claims, the failure of one does not automatically translate into the success of the other because each of them would be determined by the Court premised upon the evidence proffered by the parties thereof in support of their claims. See the case of *UZOKWE v. UZOKWE (2016) LPELR-40945(CA)*.

Consequently I am of the view that the issues for determination in this petition and cross petition are as follows:

1. ***Whether the Petitioner is entitled to the reliefs claimed in this Petition; and***
2. ***Whether the Respondent/Cross Petitioner is entitled to the reliefs claimed in the Cross/Petition***

I will now resolve the issues.

ISSUE 1:

Whether the Petitioner is entitled to the reliefs claimed in this Petition

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 marriage has broken down irretrievably because since December, 26th 2015, the Respondent has deserted and abandoned their matrimonial home in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and that they have lived apart for more than two years immediately preceding the presentation of this petition.

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 had 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, from the evidence adduced by both parties, it is common ground that the Petitioner and the Respondent have been living apart since December 2015 up till the time this petition was filed. This is a period of over four years before the filing of this petition.

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

For the avoidance of doubt, the section provides as follows:

“Section 15(2)-

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.”

As relating to *section 15(2) (e) of the Matrimonial Causes Act*, the Respondent testified that he does not object to the dissolution of the marriage. 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 *issue one is resolved in favour of the Petitioner*.

ISSUE 2:

Whether the Respondent/Cross Petitioner is entitled to the reliefs claimed in the Cross/Petition.

In the instant case, the Respondent/Cross Petitioner is seeking a Decree of Dissolution of Marriage on the ground that the marriage has broken down irretrievably because:

- i. 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 Petitioner does not object to the decree being granted.
- ii. That since 26/12/2015, the Petitioner has by her behaviour forced the Respondent to move out of their matrimonial home.
- iii. That since the marriage, the Petitioner has behaved in such a way that the Respondent cannot reasonably be expected to live with the Petitioner.
- iv. That since the marriage, the Petitioner has committed adultery and the Respondent finds it intolerable to live with the Petitioner.
- v. That under Section 15(2) of the Matrimonial Causes Act, the above conducts are grounds under which a Court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably.

As I earlier stated in this judgment, 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 eight grounds listed in the said section. Proof of just one ground is sufficient to sustain the petition.

The first ground of the cross petition is 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 Petitioner does not object to the decree being granted.”

This ground is in line with ***section 15(2) (e) of the Matrimonial Causes Act***. At the trial it was common ground that the Cross Petitioner and the Petitioner have been living apart for a period of over four years before the filing of this petition. Moreover, the Petitioner is not objecting to the decree being granted. Consequently, the Cross Petitioner has established the ground for the dissolution of the marriage in line with ***section 15(2) (e) of the Matrimonial Causes Act***. Issue two is therefore resolved in favour of the Cross Petitioner.

In the event, ***the petition and the cross-petition succeed and it is ordered 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 since the parties have lived apart for more than two years immediately preceding the presentation of this petition;

(b) An order for the Petitioner to refund the bride price of one thousand naira only to the Cross Petitioner

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
22/07/2020

COUNSEL:

1. Unrepresented.....Petitioner/Respondent
2. E.J.Ezewe Esq.....Cross/Petitioner/Respondent