IN THE HIGH COURT OF JUSTICE
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON. JUSTICE P.A.AKHIHIERO,
ON THURSDAY, THE
28TH DAY OF JANUARY, 2021.

BETWEEN: SUIT NO: HCU/3D/2019

MR. CHRISTOPHER OSE AKEMERE ……..…… PETITIONER
AND
MRS. EVELYN EWANOSE AKEMERE ……..… 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 24th day of June, 2019.

The Grounds for the Dissolution of the Marriage are as follows:

(a) Since the celebration of the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; and

(b) The Respondent has deserted the Petitioner and the matrimonial home for at least 2 years immediately preceding the presentation of this petition namely since 14th April, 2017, when the Respondent abandoned the matrimonial home with the intention of bringing co-habitation permanently to an end.

The orders sought by the Petitioner in paragraph 9 of the Petition are as follows:

1. ***A decree of the dissolution of the marriage on the ground that the marriage has broken down irretrievably.***
   PARTICULARS:
   i. ***Parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of the petition.***
   ii. ***Since the marriage, the respondent has behaved in such a way that the petitioner finds it intolerable to live with the respondent and the petitioner cannot reasonably be expected to live with the respondent.***
2. ***And such other Orders or further Orders that this Honourable Court may deem fit and proper to make in the circumstance of the petition.***

The Petition was served on the Respondent but she refused to present herself before this Court to defend the suit. The matter was eventually fixed for hearing and the Petitioner opened his case and testified on oath.

He testified that he got married to the Respondent at Saint Patrick Catholic Church, Ebhoiyi, Uromi and tendered a Certificate of Marriage dated 24/9/16 which was admitted as Exhibit A. He stated that since the Marriage the Respondent and he lived at No. 1 Joseph Ezehi Avenue, Uromi but the marriage was not been blessed with children. That since the marriage, they have not instituted any Court action.

He said that on the 5th of October, 2016 the Respondent complained of stomach pain and he took her to the Catholic Church Clinic where she was treated and discharged the next

day. Few days later, she complained of the same stomach pain and he took her to the same hospital. She was discharged the same day and few weeks later she again complained of the stomach pain. This time, he said that he took her to Victory Hospital and the doctor examined her and series of tests were conducted.

He said that from the test results, it was discovered that she was pregnant. The doctor advised that the pain may be because it was her first pregnancy. She was discharged and she kept complaining of the stomach pain after that day. The Petitioner took her back to the hospital and the doctor examined her again. The doctor advised that nothing was wrong with her that she should take it easy.

He said that they discharged her and when they got home she started calling her parents and her sister. That after some days, she still complained of the same stomach pain and he took her back to the hospital. He said that the Respondent's sister asked them to abort the pregnancy and he refused.

He said that two days later the Respondent told him that the she suffered a miscarriage. He said that his mother in-law requested him to release the Respondent to go with her to enable her take care of her and he agreed. His mother in law took her away with few of her clothes. He said that he made efforts to visit her but when he went to her mother in law's house, she was not there. He called her number severally but she did not pick his calls.

He said that he contacted their marriage sponsors Mr. and Mrs. Anthony Oboniye who also went to look for her and his mother in law told them that she has not seen the Respondent for some time. He said that on the 14th of April, 2017, the Respondent and her mother came to pack her things away from his house and she never returned ever since hence his petition for divorce.

After the Petitioner testified, the petition was adjourned for cross examination and fresh Hearing Notice was issued and served on the Respondent. However, the Respondent never appeared in Court and the matter was adjourned for final address.

In his Final Written Address, the learned counsel for the Petitioner, ***E.J.Ezewele Esq.*** formulated a sole issue for determination as follows:

"Whether the Petitioner has proved before this Honourable Court that this marriage has broken down irretrievably".

Arguing the sole issue for determination, learned counsel submitted that the marriage has broken down irretrievably and should be dissolved.

He submitted that by virtue of ***Section 15(2) of the Matrimonial Causes Act***, the Court upon hearing a Petition for dissolution of 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 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 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.

Learned counsel submitted that in proof of his case the petitioner gave unchallenged and uncontroverted evidence to establish two of the grounds in section 15(2) of the MCA namely:

1. That the respondent had deserted the petitioner and the matrimonial home for at least two years preceding the presentation of this petition namely since 14th day of April, 2017, when the Respondent abandoned the matrimonial home with the intention of bringing co-habitation permanently to an end; and
2. 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.

He submitted that proof of any one or more of the grounds in Section 15(2) of the Matrimonial Causes Act is in the eye of the law conclusive proof of irretrievable breakdown of the marriage and he referred the Court to the case of ***Ibrahim V. Ibrahim (2007) I NWLR (Pt.1015) 383.***

Furthermore, he submitted 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. For this submission, he referred the Court to the following authorities: ***Inegbedion V SeloOjiemen 7 Anor (2013) vol 216 LRCN 53 Ratios 2& 3 at Pp 57 & 58; and Matanmi&Ors V Dada &Anor (2013) Vol 221 LCRN 223 Ratio 5 at P.230.***

He posited that the petitioner gave uncontroverted evidence of how the respondent formed the habit of procuring abortion each time she got pregnant on the unwarranted excuse of pains in her stomach. That this respondent's conduct became an embarrassment to the petitioner because he went into the marriage in the first instance for procreation – a God ordained phenomenon which the respondent was bent on making impossible for the petitioner to achieve. He urged the Court to hold that the respondent's conduct was anti-family, un-African and un-religious. He submitted that in the African context, marriage is principally for procreation.

He said that the petitioner gave uncontroverted evidence of how the respondent habitually denied him of sex and that denial of sex could be dangerous in a marriage relationship. He referred the Court to the case of ***Johnson V Johnson (1963) 2 ALLER 962 at 992*** where the Court held that unreasonable refusal of sexual intercourse, nagging, habitual intemperate drinking etc. were weighty and unreasonable acts for the petitioner to endure.

He submitted that in totality of the unchallenged and uncontroverted evidence of the respondent's desertion for not less than 2 years preceding the presentation of the petition and the parties to the marriage living apart for a continuous period of at least 2 years immediately preceding the presentation of the petition and the respondent not objecting to the decree being granted, the marriage has broken down irretrievably.

In the circumstances, he urged the Court to resolve the lone issue for determination in favour of the petitioner by granting a decree for the dissolution of the marriage.

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 adopt the sole issue for determination as formulated by the learned counsel for the Petitioner which is as follows: ***"Whether the Petitioner has proved before this Honourable Court that this marriage has broken down irretrievably".***

I will now resolve the sole issue for determination.

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 since the celebration of the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and that the Respondent has deserted the Petitioner and the matrimonial home for at least 2 years immediately preceding the presentation of this petition namely since 14th April, 2017.

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 since the14th of April, 2017. In other words,the parties have lived apart for a period of over three years before the filing of this Petition. Furthermore, the Respondent does not object to a decree being granted.

By virtue of ***section15(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.*** It will be quite unnecessary to consider the ground that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

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

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

P.A.AKHIHIERO
JUDGE
28/01/2021

COUNSEL:

1. ***E.J.Ezewele Esq. ….……..……..……..……..Petitioner***
2. ***Unrepresented…….……..……Respondent***