IN THE HIGH COURT OF JUSTICE
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON. JUSTICE P.A.AKHIHIERO,
JUDGE, ON THURSDAY THE
4TH DAY OF FEBRUARY, 2021.

BETWEEN: SUIT NO: HCU/4D/2019

MR. GABRIEL OKONOFUA ----------PETITIONER

AND

MRS. OSEH BOSE OKONOFUA ----------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 14th day of August, 2019.

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

(a) That the Respondent and the Petitioner have lived apart for over two years preceding the presentation of this petition; and

(b) That since the marriage the Respondent willfully and persistently refused to consummate the marriage and has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

The orders sought by the Petitioner in paragraph 14 of the Petition are as follows:

A decree of dissolution of marriage between (himself) the Petitioner and the Respondent on the ground that it has broken down irretrievably since July, 2017 when the Petitioner and the Respondent started living apart.

AND any similar and further orders as the Court may deem fit to make as just and expedient.

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 on the 1st day of April, 2017 at the Akoko Edo Local Government Council Marriage Registry before it was solemnized at the Christ Apostolic Church, Igarra. A certified true copy of the said Marriage Certificate issued by Registrar of Marriage was admitted as Exhibit "A" at the trial.

According to the Petitioner, a few months after their wedding, the Respondent started making some clandestine phone calls at odd hours of the night which excited his suspicion. Subsequently, sometime in July 2017, the Respondent invited a male stranger to their matrimonial home without the consent or approval of the Petitioner.

The Petitioner sought to know why the Respondent brought in a male third party to come and reside in their house and there was a disagreement between which made the Petitioner to move out of their matrimonial home and they started living apart.

That the families of both parties waded into the matter in a bid to reconcile them but the Respondent made it clear that she was no longer interested in the marriage.

That since about the month of July 2017 the parties have been living apart up to the filing of this petition.

That the Respondent is not opposed to this petition since the marriage has broken down irretrievably.

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, ***O.M.Okoekoh Esq***. formulated a sole issue for determination as follows:

"Whether this Honourable Court ought to act on the unchallenged evidence of the Petitioner and give judgment in his favour."

Arguing the sole issue for determination, the learned counsel submitted that this Honourable Court has unhindered power to grant the relief sought by the Petitioner.

He posited that in a bid to prove his case, the Petitioner, led evidence on the 10/3/2020 to support his petition and tendered exhibit "A" which is a certified true copy of the marriage certificate between him and the Respondent. He said that despite the service of court processes, the Respondent failed to come and defend the Petition. That although not in the court's record, instead of coming to defend the Petition, the respondent's family through one Chief Oseh Zekeri wrote an unsigned letter dated the 14th day of September, 2019 to the Petitioners family allegedly dissolving the marriage between the Petitioner and the Respondent. That accompanying the said letter was the sum of N5, 000.00 (Five Thousand Naira) representing the bride price paid by the petitioner to the Respondent's father.

He said that the petition and evidence of the Petitioner was never challenged or controverted throughout the length and breadth of the case. He therefore submitted that the Petitioner is entitled to the judgment of this Honourable Court because there is nothing to put on the other side of the imaginary scale of justice to counter balance the case of the Petitioner.

Learned counsel submitted that any evidence/fact not challenged or controverted is deemed to be true and correct and the court is obliged to so hold. He cited the case of ***Mantec Water Treatment Nig. Ltd V PTF (2007)3 FWLR. Pg 4330 at Pg. 4344*** in support.

He referred the Court to the evidence of the Petitioner that a few months after the marriage, the Respondent started making clandestine calls at odd hours of the night and eventually invited a male stranger to the matrimonial home without the consent or approval of the Petitioner. That trouble broke out when the Petitioner sought to know why the respondent should bring a third party to the house which led to Petitioner and Respondent living apart. He said that all these facts are contained in the processes served on the Respondent but she never deemed it necessary to respond. He therefore submitted that the only conclusion to be drawn is that all the Petitioner said is true and correct. He therefore urged the Court to give judgment in favour of the Petitioner. He submitted that the court has a duty to act on unchallenged evidence of a party to a case provided that such evidence of fact is credible. For this view, he referred to the case of ***Bolanle V Abeke (2007) 3 FWLR Pg. 5037 at Pg. 5039*** where the Supreme Court held thus:

"When evidence of a party to a suit is not challenged or debunked by the opposite party which had the opportunity to do so, the trial court or tribunal seised of the proceedings ought to accept and act on it".

Furthermore, counsel submitted that this petition was filed on the 14th of August, 2019 and the court processes were served on the Respondent and she failed to avail herself of the opportunity to defend same so she cannot complain of breach of her right to fair hearing.

He referred to the case of ***Senator Amange Nimi Baringha v PDP & 2 ors (2013) MRSCJ Vol. 15, Pg. 29 at Pg. 34 – 35*** where the court stated thus:

"The Appellant by the reason of service having been validly effected on him cannot be heard to complain that he was not given a (fair) hearing. Who or what stopped him from making appearance on the date fixed for hearing of the application? Who is to blame? Answer to these questions are best known to the appellant, I do not think it is charitable to lay blames on the court below for doing its own statutory assignment"

He submitted that from the totality of the Petitioner's case coupled with the attitude of the Respondent, it is abundantly clear that the marriage between the Petitioner and the Respondent has broken down irretrievably. That nothing is left to be savaged and the parties are impatiently waiting for the day the marriage will be pronounced dissolved so that they will be free. He therefore urged the Court to grant the reliefs sought by 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 adopt the sole issue for determination as formulated by the learned counsel for the Petitioner which is as follows: ***"Whether this Honourable Court ought to act on the unchallenged evidence of the Petitioner and give judgment in his favour."***

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 following grounds:

(a) That the Respondent and the Petitioner have lived apart for over two years preceding the presentation of this petition; and

(b) That since the marriage the Respondent willfully and persistently refused to consummate the marriage and has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

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 Petitioner and Respondent have been living apart since July, 2017. Furthermore, the Respondent does not object to a decree being granted.

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.*** It will be quite unnecessary to consider the ground that the since the marriage, the Respondent has willfully and persistently refused to consummate the marriage and 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 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
04/02/2021

COUNSEL:

1. ***O.M.Okoekoh Esq. …..……..……..……..Petitioner***
2. ***Unrepresented…….……..……Respondent***