

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP,
HON. JUSTICE P.A.AKHIHIERO,
ON MONDAY THE
6TH DAY OF DECEMBER, 2021.

BETWEEN:

SUIT NO: HCU/4D/2017

MRS. ORIABURE MARIS -----PETITIONER

AND

MR. ORIABURE SAMUEL -----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 18th day of August, 2017.

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

- (a) That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;***
- (b) The Respondent has deserted and abandoned the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; and***
- (c) The parties to the marriage have lived apart for a continuous period of two years preceding the presentation of this petition as a result of which the marriage has broken down irretrievably.***

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

- (a) A Decree of dissolution of marriage between (herself) the petitioner and the Respondent on the ground that the marriage has broken down***

Irretrievably for the reason that the Respondent has since November, 29th 2014 deserted and abandoned the petitioner in 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 (2) years immediately preceding the presentation of this petitioner;

(c) An order of court enabling the petitioner recover her personal house effects from the matrimonial home which items includes:

- i. One big cooking Pot;*
- ii. Eight (8) sets of coolers;*
- iii. 34 big and medium coolers;*
- iv. Four (4) sets of baby bath;*
- v. 1 wooden mortal & pestle;*
- vi. Two (2) big Aluminum basin;*
- vii. One (1) Big Rubber water basin;*
- viii. One (1) stainless bucket;*
- ix. One (1) medium stainless tray; and*
- x. One set of Aluminum cooking pot.*

(d) An order for the petitioner to refund the bride price of one thousand naira only (1,000) to the Respondent.

And any similar and further order(s) as this Honourable court may deem fit to make as just and expedient.

The Petition and all other processes were duly served on the Respondent and he filed an Answer and a Counter-Affidavit to the Petition.

Upon receipt of the Respondent's processes, the Petitioner filed a further and better affidavit and reply to the Answer on the 5th day of December, 2017. Thereafter, the Petition was set down for hearing.

At the hearing, the Petitioner testified and tendered the marriage certificated which was admitted in evidence as Exhibit 'A'. The Petitioner thereafter called her sole witness who testified as the P.W.1 and thereafter closed her case.

The Petitioner's case is that she married the Respondent at the Marriage Registry of Esan North East Local Government Area and the marriage was solemnized at the Apostolic Church, Amedokhian Branch, Uromi.

According to the Petitioner, during the wedding ceremony, people gave her several gifts such as one big cooking pot, eight set of big coolers, thirty four big and medium coolers, four sets of baby baths, one wooden mortar and pestle, one big rubber basin, two stainless basins, one stainless medium tray, one stainless bucket, one set of aluminum cooking pots. She said that all the gifts were taken to their matrimonial home after the wedding.

The Petitioner initially informed the Court that two months after the wedding, the Respondent abandoned her and went to another woman. She said

that she never slept with the Respondent during the period of their cohabitation and that he refused to consummate the marriage. She alleged that during their brief cohabitation, they were living in the Respondent's parents' house and she reported the Respondent's conduct to his parents but they did not do anything. In the course of her evidence, the Petitioner stated that it was after five months that the Respondent abandoned her and went to live with another woman at Efandion village in Uromi.

She alleged that she reported these developments to her relations and they paid her a visit and actually saw that the Respondent had abandoned her. She alleged that the Respondent came back after two months of the abandonment to fight her and destroy her properties. She said that the Respondent's parents later advised her to go and look for her husband.

She said that the Respondent's parents stopped eating her food so she was constrained to leave their house after two years when she learnt that another woman had given birth to a child for the Respondent. She said that when she left their house, the Respondent never came to look for her. She said that the dowry which the Respondent paid on her was the sum of N1, 000.00 (one thousand naira) only and that she is ready to refund the dowry. She urged the Court to allow her to pack her things out of the house and to dissolve the marriage.

Under cross examination, the Petitioner stated that she did not cohabit with the Respondent for six months. She also denied having any affair with other men while she was living in the Respondent's parents' house. She also denied ever refusing to have sexual intercourse with the Respondent. She maintained that the gifts which she enumerated that she received at the wedding were given to her and that the Respondent did not receive any gift at the wedding ceremony.

In defence to this Petition, the Respondent testified and did not call any witness. In his testimony, the Respondent stated that on the day of the wedding, the wedding gifts were presented to the Petitioner and himself and not to the Petitioner alone.

He said that on their wedding night, he tried to have sexual intercourse with the Petitioner but she alleged that she was tired and refused. He said that three days later, he attempted to sleep with her again and she still refused. He said that he reported the Petitioner's behavior to his uncle and his mother. He alleged that the Petitioner informed him that he should wait for the Holy Spirit to touch her before they can make love. That he waited for six months and she did not allow him to make love to her. He alleged that his mother once intervened and pleaded with her to sleep with him but as soon as his mother left the room, she left the bed to lie down on the floor. He said that his Pastor once called them to settle the matter but when they got home she still refused.

He said that eventually, the Petitioner packed her things away when he was not at home. He said that his father went to the Petitioner's father's house to see them and they told him that the Petitioner would not return to the Respondent's house.

The Respondent alleged that his father gave the Petitioner's family a bulk sum of N35, 000.00 (thirty five thousand naira) during dowry payment and that they should refund the dowry because he also wants the marriage to be dissolved. He said that he does not have any woman outside but that he had a son before he married the Petitioner and he told the Petitioner about his son before they wedded.

Upon the conclusion of their evidence, the learned counsel for the Respondent did not file any written address within the time stipulated under the rules. Consequently, only the learned counsel for the Petitioner filed a written address and the matter was adjourned for judgment.

In his final written address, the learned counsel for the Petitioner, **J.E.Enaholo Esq.** submitted that the Petitioner has proved her case against the Respondent on the preponderance of available evidence and he urged the Court to grant the reliefs set forth in her petition.

Learned counsel submitted that the first duty of a Petitioner in a divorce proceedings is to prove that there was a valid marriage contracted between the Petitioner and the Respondent.

He posited that in the instant case, the Petitioner has established the fact that she married the Respondent on the 11th day of October, 2014 and that the marriage was solemnized at the Apostolic church, Amedokhian Branch, Uromi in accordance with the provisions of the Marriage Act. He referred the Court to the marriage certificated which was admitted in evidence as exhibit 'A'.

He urged the Court to hold that the Petitioner has proved the fact of Marriage between herself and the Respondent as alleged in her petition.

He further submitted that having proved the fact of marriage, the second burden placed on the petitioner is to prove that the marriage has broken down irretrievably as required by the provisions of **S. 15 (1) of the M.C. Act, 1990.**

He submitted that by the provisions of **S. 15 (1) of the M.C.A.** the facts upon which a court can hold that a marriage has broken down irretrievably are clearly set forth under the provisions of **S. 15(2) (a) - (h) of the Matrimonial Causes Act** and in the case of **KATE V KATZ 1 WLR 955 at 959-60.**

Counsel posited that the Petitioner led evidence of how the Respondent deserted her in their matrimonial home barely two months into the marriage and went to live with another woman at Efandion Village, Uromi.

He said that the Petitioner also led evidence of how the Respondent finally abandoned her in their Matrimonial home and denied her sex all through the period of their cohabitation. He cited the case of **RICHARD EKUNDARE V.A. O. EKUNDARE [1983] FNLR 520.**

He submitted that the Petitioner's case is rooted under the provisions of **S. 15(2) C.D.& F of the M.C.A 1990.**

He submitted that the totality of the Petitioner's evidence is that the Respondent and she have lived apart for more two years without consummation of the marriage and that there is no issue from the marriage before the presentation of this petition as was corroborated by the Respondent in his answer and cross

petition. He urge the Court to hold that the facts stated in the Petition have been established.

Finally, he urged the Court to hold that the marriage contracted between the Petitioner and the Respondent has broken down irretrievably and to grant the reliefs set forth in the Petition.

I have carefully gone through the evidence adduced at the trial together with the address of the learned counsel for the Petitioner.

From the Answer to the Petition and the Counter-Affidavit filed by the Respondent, it appears as if the Respondent was trying to cross-petition against the Petitioner. Unfortunately, the Respondent's counsel did not file any final address to clarify this position. However, it is settled law that there is a world of difference between an Answer and a Cross-Petition. In the case of *EFFANGA BASSEY EFFIOM v. BASSEY EFIOM EDET (2016) LPELR-42047(CA)* the Court of Appeal explicated on this point when they stated thus: "*...while the Answer is in essence a rebuttal of the facts contained in the petition and narration of a contrary story as in a Statement of Defence in a civil action commenced via a Writ of summons without seeking any prayer within the context of a matrimonial cause, a cross-petition goes further to seek a dismissal of the petition while seeking a relief in the context of a matrimonial cause similar to a Counter-Claim.*" *Per OYEWOLE, J.C.A.*

Applying the above principle to the instant case, I observed that in the Answer filed by the Respondent, he did not seek any relief in the context of a matrimonial cause similar to a Counter-Claim. Consequently, I hold that the Respondent did not file any cross-petition.

Sequel to the foregoing, I am of the view that the two issues for determination in this Petition are:

- 1. Whether the Petitioner has proved that the marriage has broken down irretrievably; and**
- 2. Whether the Petitioner is entitled to the reliefs sought in her petition.**

I will now resolve the issue seriatim.

ISSUE 1:

Whether the Petitioner has proved that the marriage has broken down irretrievably

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 since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;***

- (b) The Respondent has deserted and abandoned the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; and***
- (c) The parties to the marriage have lived apart for a continuous period of two years preceding the presentation of this petition as a result of which the marriage has broken down irretrievably.***

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 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 Petitioner and the Respondent are *ad idem* on the salient fact that both of them have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the Respondent does not object to a decree being granted. Furthermore, it is an undisputed fact that both of them have lived apart for a continuous period of at least three years immediately preceding the presentation of this petition.

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

In essence, the Petitioner has established two of the grounds 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 any other ground enumerated in the petition.

In the event, issue one is resolved in favour of the Petitioner.

ISSUE 2:

Whether the Petitioner is entitled to the reliefs sought in her petition.

In this Petition, the Petitioner is seeking the following reliefs:

(a) A Decree of dissolution of marriage between (herself) the petitioner and the Respondent on the ground that the marriage has broken down Irretrievably for the reason that the Respondent has since November, 29th 2014 deserted and abandoned the petitioner in 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 (2) years immediately preceding the presentation of this petitioner;

(c) An order of court enabling the petitioner recover her personal house effects from the matrimonial home which items includes:

- i. One big cooking Pot;***
- ii. Eight (8) sets of coolers;***
- iii. 34 big and medium coolers;***
- iv. Four (4) sets of baby bath;***
- v. 1 wooden mortal & pestle;***
- vi. Two (2) big Aluminum basin;***
- vii. One (1) Big Rubber water basin;***
- viii. One (1) stainless bucket;***
- ix. One (1) medium stainless tray; and***
- x. One set of Aluminum cooking pot.***

(d) An order for the petitioner to refund the bride price of one thousand naira only (1,000) to the Respondent.

And any similar and further order(s) as this Honourable court may deem fit to make as just and expedient.

From my findings on Issue 1, it is evident that Relief (a) and (b) on the dissolution of the marriage automatically succeeds. We are now left with Reliefs (c) and (d).

On Relief (c) which is an order of court enabling the petitioner recover her alleged personal house effects from the matrimonial home. She enumerated the items which includes one big cooking Pot, eight sets of coolers, 34 big and medium coolers etc., etc.

In her evidence the Petitioner predicated her request for these items on the fact that they were gifts that were given to her personally during their wedding ceremony. She alleged that all the gifts were given to her personally and that the Respondent did not receive any gift. However, the Respondent has seriously disputed this fact. According to him, the gifts were given to both of them.

From the evidence adduced at the trial the issue of the ownership of the enumerated items appears rather contentious. However, I find it a bit curious that the Petitioner would boldly assert that all the gifts which they received on their wedding day belongs to her alone. At the trial, she did not lead any convincing evidence to prove that every single wedding gift was specifically given to her to the exclusion of her husband. That would be a strange proposition which does not accord with the normal trend of events. The concept of the marriage union is that the two are joined together as one. It appears quite abnormal to believe that all the wedding guests who gave their gifts singled out the Petitioner to the exclusion of the Respondent. That is quite unbelievable. I hold that the gifts were given to both of them.

On the sharing of property after dissolution of marriage, *Section 72 of the Matrimonial Causes Act* dealing with settlement of property states as follows:

"1. The Court may, in proceedings under this Act, by order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of, the marriage, such a settlement of property to which the parties are, or either of them is, entitled of them is, entitled (whether in possession or reversion) as the Court considers just and equitable in the circumstances of the case.

2. The Court may, in proceedings under this Act, make such order as the Court considers just and equitable with respect to the application for the benefit of all or any of the parties to, and the children of, the marriage of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements on the parties to the marriage, or either of them."

In *Doherty vs. Doherty (2010) All FWLR (Pt 519) 1165* it was stated that the purport of the above provisions is that settlement of property is based on what the Court considers ***just and equitable*** in the circumstances of a particular case. The provision gives the Court a lot of discretion on the issue.

Also expounding on the discretionary powers of the Court in matrimonial proceedings, in the case of **MR. ABDULAZEEZ AKINLOLU v. DR. AMINAT YEWANDE AKINLOLU (2019) LPELR-47416(CA)**, the Court of Appeal stated thus: ***“Before placing the very last dot to this judgment, I have deemed it expedient to reiterate the trite fundamental doctrine, that in the course of the determination of the petition for divorce or any aspect of the Matrimonial Causes Act for that matter, a Court (Judge) is cloaked with an unfettered discretionary power to make such order regarding the subject matter in dispute as it deems fit. Undoubtedly, that discretionary power is in no way fettered, albeit it must be exercised not only judicially, but equally judiciously.”***

Also in the English case of **HINE VS. HINE (1962) 1 WLR 1124**, the Court of Appeal, England, per **Lord Denning Master of the Rolls** postulated thus:

“That the jurisdiction of the Court over family assets is entirely discretionary. Its discretion transcends all rights, legal or equitable, and enables the Court to make such order as it thinks fit. This means, as I understand it, that the Court is entitled to make such order as may be fair and just in all the circumstance of the case.” Per Lord Denning, MR @ 1127.

From the foregoing I am of the view that I am entitled to exercise my discretion judicially and judiciously on the sharing of the enumerated items which I have already held are jointly owned by the Petitioner and the Respondent. In the event, I think the Petitioner will only be entitled to a fair share of the enumerated items. The remaining items should be left for the Respondent.

On the order for the Petitioner to refund the bride price of N1, 000.00 (one thousand naira) to the Respondent, I think that is quite benevolent of the Petitioner because the Respondent did not file any cross-petition to request for the refund of his dowry. In the absence of any cross-petition, the Respondent’s insistence on the refund of the sum N35, 000.00 (thirty five thousand naira) as dowry appears misconceived.

On the whole, this Petition succeeds and the orders sought by the Petitioner are granted as follows:

(a) A Decree of dissolution of marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably for the reason that the Respondent has since November, 29th 2014 deserted and abandoned the petitioner in their matrimonial;

(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 of court enabling the Petitioner to recover the following items from the Respondent:

i. One big cooking Pot;

ii. Four sets of coolers;

- iii. Seventeen big and medium coolers;*
 - iv. Two sets of baby bath;*
 - v. One big Aluminum basin;*
 - vi. One stainless bucket; and*
 - vii. One set of Aluminum cooking pot.*
- (d) An order for the petitioner to refund the bride price of N1, 000.00 (one thousand naira) to the Respondent.*
- 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
06/12/2021

COUNSEL:

- 1. J.E.Enaholo Esq.....Petitioner***
- 2. P.O.Okharedia Esq.....Respondent***