

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON MONDAY THE
8TH DAY OF MAY, 2023.

BETWEEN: **SUIT NO. B/265^D/2022**
MR. AUSTINE EFOSA -----PETITIONER

AND

MRS. TEMI TRACY EFOSA -----RESPONDENT

JUDGMENT

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner on the 22nd day of March, 2022. The Grounds for the Dissolution of the Marriage are as follows:

- (i) That the Petitioner and the Respondent were lawfully married at Egor Marriage Registry, Edo State under the Matrimonial Causes Act but the marriage has since broken down irretrievably;*
- (ii) That the marriage has broken down irretrievably because the Respondent has behaved in such a way and intolerable manner that the Petitioner cannot reasonably be expected to live together with the Respondent;*
- (iii) That the Petitioner and the Respondent have been living apart since March, 2021 immediately preceding the presentation of the Petition and the Respondent does not object to a decree being granted;*
- (iv) That soon after the marriage, the Respondent started acting strange without any iota respect for the Petitioner, the Petitioner reported the Respondent's attitude to her parents but the advice to the respondent didn't yield positive result;*
- (v) That sometime in February, 2021, the Petitioner discovered that the Respondent was deceitful and full of lies to the extent that the Respondent*

was having a secret affair with another man, a fact the Respondent concealed from the Petitioner during the Marriage which action was intolerable to the Petitioner;

(vi) That there has been serious mistrust and love lost between the Petitioner and the Respondent in the marriage since late 2020;

(vii) The Respondent refused all entreaties to live as a good and faithful wife to the Petitioner. Thus, Respondent abandoned the Petitioner and moved out of the matrimonial home sometime March, 2021 and finally travelled abroad in June, 2021; and

(viii) That there is no reasonable probability of reconciliation between the parties.

In this Petitioner, the Petitioner is seeking the following orders:

(i) A decree of dissolution of the marriage between the Petitioner and the Respondent contracted at Egor Marriage Registry on the 1st day of August, 2020, on the grounds stated in paragraph 8 of this petition.

(ii) Such further Order or Other Orders as this Honourable Court may deem fit to make in the circumstances of this case.

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

In his testimony, the Petitioner narrated how he got married to the Respondent on the 1st of August, 2020 at the Egor Local Government Marriage Registry at Uwelu. Their marriage certificate was admitted in evidence as Exhibit A.

After the wedding the Petitioner and the Respondent lived together at No.3 Thomas Isibor Street, Oluku and he started to notice some changes in the character of the Respondent. He said that he tried to explain some things to her, but she refused to listen to him.

He said that he reported the matter to her mother and her mother spoke to her but she did not listen. He said that in February, 2021 he went to Lagos to do some work and before he returned, the Respondent informed him that she was travelling for a burial with her cousin.

He said that when I got back home, he noticed that the Respondent left the house with some of her belongings and his properties. He said that he tried to reach her but her phone was not reachable. He waited for some days and eventually he found out that the Respondent had eloped with another man to Abuja.

He alleged that the last time that he saw the Respondent was in February, 2021. He said that he was informed that the Respondent has since travelled out of the country. He said that he was no longer interested in marrying the Respondent.

After the Petitioner testified, he closed his case and the petition was adjourned for final address.

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

“Whether the marriage between the Petitioner and the Respondent has broken down irretrievably.”

Arguing the sole issue for determination, the learned counsel submitted that ***S.15 (1) of the Matrimonial Causes Act, 2004*** provides that a petition for a decree of dissolution of marriage may be presented to the court by either of the parties to the marriage upon the ground that the marriage has broken down irretrievably and he cited the case of ***ANIOKE V. ANIOKE (2013) F.W.L.R PT.658 PG.925@986 PAR.G***. He posited that ***S.15 (2) a) to (h) Act*** provides for several grounds upon which a petition for the dissolution of a marriage can be brought which include the grounds relating to the present Petition, particularly paragraphs C & D.

He submitted that in proof of his case, the petitioner is not expected to prove all the grounds provided for under ***S.51 (2) (a-h) of the Act*** that the proof of one ground will be sufficient for the court to dissolve the marriage.

He submitted that the Petitioner has adduced evidence to establish the grounds under ***S.15 (2) (c & d) of the Act***. He said that from the evidence before the Court, it is clear that since the marriage the Respondent has not only behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, but the Respondent has also deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.

He therefore urged the Court to dissolve the marriage and he relied on the case of ***OKORO V.OKORO (2015) ALL FWLR PT572 PG1249@1793 PAR.G-H***.

The learned counsel pointed out that the Respondent did not offer any defence to this action at all despite the service of the originating process on her. He said that the position of the law is that evidence that is neither challenged nor controverted remains good and credible evidence which should be relied upon by the trial judge who will in turn ascribe probative value to it. See ***EBEINWE V. STATE (2011)17NWLR (PT124)402***; and ***MANAKAN V.ODILI (2010)2NWLR (PT.1179)419***.

Finally, counsel submitted that from the totality of the evidence of the Petitioner it is clear that the Petitioner and the Respondent are incompatible and irreconcilable. He urged the Court to hold that the marriage has broken down irretrievably and grant the Petitioners reliefs.

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 Petition is whether the Petitioner has proved that the 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 grounds 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 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 evidence adduced at the trial is to the effect that the respondent has deserted the petitioner since February, 2021 and they 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.

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

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 the following relief: A decree of dissolution of the marriage between the Petitioner and the Respondent contracted at Egor Marriage Registry on the 1st day of August, 2020, on the grounds that:*

- (i) The Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of this Petition; and*
- (ii) The parties to the marriage 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.*

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.AKHIHIRO
JUDGE
08/05/2023

COUNSEL:

- 1. Moses Igiede Esq.Petitioner**
- 2. Unrepresented.....Respondent**

