IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE OKADA JUDICIAL DIVISION
HOLDEN AT OKADA

BEFORE HIS LORDSHIP HONOURABLE JUSTICE O.S. UWUIGBE
JUDGE

ON THURSDAY THE 31ST DAY OF MAY, 2018

BETWEEN

SUIT NO: HCOK/25/D/2017

MRS. GRACE IDADA ..... PETITIONER
AND
MR. WALTER IDADA ..... RESPONDENT

JUDGMENT

This is a petition for the dissolution of marriage filed by the Petitioner on the 16/10/17. The Petitioner is seeking for the following orders:

1. A decree of dissolution of her marriage with the respondent on the ground that the marriage has broken down irretrievably.
2. Custody of the children of the marriage.
3. And for such further or other orders as this Honourable court may deem fit to make in the circumstances of this case.

The Respondent was served with the Notice of Petition on the 18/10/17. He was personally served with other Hearing Notices on the 24/1/18, 2/2/18 and 8/3/18 respectively. The respondent did not file any answer and did not also appear in court. He was not legally represented.

The Petitioner's case is that she got married to the Respondent on the 15th day of December, 2001 at the Oredo Marriage Registry in Benin City. The marriage certificate issued by the Registry is Exhibit 'A'. She stated that the husband (Respondent) had the habit of going after other women. That the Respondent would go out and come in late and that at other times he will not come back for days or weeks. When she confronted him, it will result to quarrelling and the Respondent would beat her up. She said the Respondent will promise to change but that he will end up doing the same thing.

She said she reported the matter to both families who called for a meeting and addressed both Petitioner and Respondent, but that the respondent said he cannot change his nature because of any woman.

On the 10/1/2015, before the Petitioner came back from work the Respondent came and packed his things from their matrimonial home without living a note as to when he will come back on where he was going to. The family called a meeting. The Respondent came and informed them that he has found someone else and that the Petitioner could do whatever she wanted to do.

She stated that each time the Petitioner left home he does not send anything for the upkeep of the children and herself. The Petitioner had three sons. The first is Walter Idada (Jnr.), born on the 3/4/2002, (15 years old). He is currently in Senior Secondary School (SS 2) at the University of Benin Demonstration Secondary School, UDSS, Ugbowo, Benin City. The second son is Winston Ewaen Idada, born on the 7/10/2003 (14 years old). He is an SS1 student of the University of Benin Demonstration Secondary School, UDSS, Ugbowo, Benin City. The third is Wallace Emwanta Idada, born on the 31/10/2008 (8 years old). He is a primary 4 student of the Federal Staff School, Ugbowo, Benin City.

The Petitioner further stated that since the Respondent left home in 2015, she has been the one taking care of the children and

paying their school fees and that she will continue to do so. She prayed for the dissolution of the marriage and custody of the children as she has not set her eyes on the Respondent ever since he left home. The Petitioner stated that she is a public servant with the University of Benin and that she does business in addition to her job.

She stated that she did not connive with the Respondent to bring this petition to court. The case was adjourned to the 27/3/18 for cross-examination or adoption of final written address by counsel for the Petitioner. The Respondent having failed to appear in court on the 27/3/18, Learned Counsel for the Petitioner S.O. Osazuwa, Esq. adopted his written address filed on the 27/3/18.

In his argument, Learned Counsel cited and relied on some judicial authorities which included the following cases. TOWOENI V. TOWOENI (2002) 15 M.C. 173 at 189, OLUBUNMI ABIOLA ODESANYA V. EDWARD OLATUNDE ODESANYA (1973) 3 U.I.L.R. (pt. II) at p. 169 and AKINOLA V. AKINOLA (1977) 11 C.C.H.J. 2599 at 2603. He urged the court to dissolve the marriage between the

Petitioner and the Respondent and grant the custody of the children of the marriage to the Petitioner.

I have carefully considered the petition before court, the evidence adduced by the Petitioner and the submission of Learned counsel for the Petitioner. From the facts and evidence adduced in this case the ground upon which the Petitioner seeks the dissolution of marriage to the Respondent in this petition is set out in section 15(2)(e) of the Matrimonial Causes Act 2004.

Section 15(2) provides as follows:

"The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the Petitioner satisfies the court of one or more of the following facts.

(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."

In this case the Petitioner led evidence that the Respondent packed away from their matrimonial home on the 10/1/2015 without living a note as to where he was going to, and that she has not set her eyes on him ever since then. In line with the provision of section 15(2)(e) of the Matrimonial Causes Act 2004. It is clear that the Respondent abandoned his Matrimonial home over two years ago, and they have lived apart for that period. Having failed to file an answer to this petition, it shows that he is not opposed to the dissolution of the marriage between him and the Petitioner.

In a case of this nature where the Respondent did not call evidence at the trial, the onus of proof on the Petitioner is discharged on a minimal proof. See the case of AJIDAHUN V. AJIDAHUN Vol. 1(2002) SELECTED MATRIMONIAL CASES p. 24 at p. 38

It should be stated that the unchallenged evidence of the Petitioner amount to satisfactory evidence before court. It constitutes proof of her allegations and this court has a duly to act on it. See the case of NWABUOKU v. OTTIH (1961) ALL N.L.R. p. 457 and OKPOKO V. IGWE (2013) 15 N.W.L.R (pt. 1376) p. 167

I accordingly hold that the Petitioner has established to the satisfaction of this court that the marriage celebrated between her and the Respondent has broken down irretrievably, the parties having lived apart for a continuous period of over two years before this petition was filed.

In the instant case, the Petitioner asked for the custody of the three children of the marriage as they have been under her care as she has been responsible for their upkeep and education. She also stated that apart from being a public servant she does business, and that she has the means of taking care of the children. The evidence of the Petitioner in this respect was also not challenged or controverted.

By virtue of section 71 of the Matrimonial Causes Act, 2004, the court shall regard the interest of children as paramount in making considerations as to issue of custody. It is my respective view that the three children of the marriage shall continue to be in the custody of the Petitioner who will also be responsible for their welfare and education.

Finally, and in sum, in view of the unchallenged evidence on record which I accept, the judgment of this court is as follows:

1. The marriage celebrated between Mrs. Grace Idada and Mr. Walter Idada on the 15th day of December, 2001 at the Oredo Marriage Registry, Benin City is hereby dissolved.
2. Accordingly, I hereby pronounce an order of Decree Nisi, the Decree Nisi shall be made absolute at the expiration of 3 months from the date hereon unless sufficient cause is shown to the contrary.
3. The children of the marriage namely: Walter Owen Idada, Winston Ewaen Idada and Wallace Emwanta Idada shall remain in the custody of the Petitioner who will continue to be responsible for their welfare and education.
4. There shall be no order as to cost.

HON. JUSTICE O.S. UWUIGBE,
JUDGE
31ST MAY, 2018.

COUNSEL:
S.O. OSAZUWA, ESQ. - For the Petitioner