

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON WEDNESDAY THE
7TH DAY OF FEBRUARY, 2024.

BETWEEN: **SUIT NO. B/80^D/2023**
MRS. OTASOWIE PRINCESS ERIBO – OMAGBON ----- PETITIONER
AND
MR. OSAMAGBE DANIEL OMAGBON ----- RESPONDENT

JUDGMENT

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner on the 2nd of February, 2023. The Grounds for the Dissolution of the Marriage are as follows:

- i. That since the Marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him; and*
- ii. That the marriage between the Petitioner and the Respondent has broken down irretrievably.*

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

- i. A decree of dissolution of the marriage contracted between the Petitioner and the Respondent on the 13th day of March 2018 and the 23rd day of June, 2018 at Oredo Marriage Registry and Central Baptist Church, Ring-Road Benin city, Edo-state respectively;*
- ii. An order of this Honourable Court directing the Respondent to give the Petitioner access to the house to pick her personal belongings, her credentials and other relevant documents in the Respondent's apartment at his parents' house; and*
- iii. An order of this Honourable Court directing the Respondent to desist from further threatening to kill the Petitioner and her mother.*

Upon being served with the Petition and other accompanying processes, the Respondent filed his Answer and Cross petition on the 2nd day of March 2023. However, subsequently on the 24th day of October 2023, the learned counsel to the Respondent withdrew his Cross Petition and informed the Court that they were not opposed to the divorce.

At the hearing of this Petition, the Petitioner testified and tendered one exhibit. The Petitioner's case is that she got married to the Respondent on the 13th of March, 2018 at the Oredo Marriage Registry and the wedding was solemnized on the 23rd of June 2018 at the Central Baptist Church. She tendered their Marriage Certificate which was admitted in evidence as Exhibit "A".

She said that immediately after the wedding, she cohabited with the Respondent in his parent's house at Godwin Abe Way, off Limit Road, G.R.A., Benin City and at another house at No. 4 Ohenhen Street Benin City. She alleged that they later moved back to his parent's house sometime in 2020.

She said that the marriage is not blessed with any child. That immediately after the wedding the Respondent became violent and constantly assaulted her. She said that her parents' in-law employed them to be working in their Event Centre in Benin City. That while they were working at the Event Centre, she discovered that whenever the Respondent saw her discussing with any customer whether male or female the Respondent will start quarrelling with her and the customer.

She alleged that her parents' in-law eventually got fed up with them, sacked them from the Event Centre and placed them on a monthly allowance of N30,000.00 with some foodstuff.

She urged the Court to dissolve their Marriage, grant her access to collect her credentials from the Respondent's parent's house and order the Respondent to desist from threatening her and her mother.

After the Petitioner testified, she closed her case and the Respondent's counsel informed the Court that they were not contesting the Petition so the Court adjourned the matter for final address.

In her Final Written Address, the learned counsel for the Petitioner, *Ivie Salome Osagie Esq.* formulated a sole issue for determination as follows:

“Whether the Petitioner has presented enough materials to warrant the dissolution of the marriage between the Petitioner and the Respondent.”

Arguing the sole issue, the learned counsel submitted that from the Petitioner has presented before this Honourable Court, sufficient materials to warrant the dissolution of the marriage between the Petitioner and the Respondent more so as the evidence is unchallenged.

She submitted that it is trite law that when the evidence of a party is unchallenged, the court is enjoined to act on it and she relied on the cases of ***MILITARY GOVERNOR OF LAGOS STATE v ADEYIGA (2012)5 NWLR PART 1293 @ PAGES 331- 332 PARAGRAPHS H-C;*** and ***C.B. N. v. OKOJIE (2015) 14 NWLR PART 1479 PAGE 231 @ 239.***

Furthermore, she submitted that from the evidence of the Petitioner, it is clear that she has satisfied the condition set out in ***Section 15 (1) and (2) (a) of the MATRIMONIAL CAUSES ACT CAP. M7 LFN 2004*** to prove that the marriage has broken down irretrievably.

She submitted that a Petitioner who satisfies the Court on any one or more of the facts stipulated in that subsection would be entitled to a finding that the marriage has broken down irretrievably and consequently be entitled to a decree dissolving same. She maintained that they do not constitute separate grounds on

the basis of which a dissolution can be granted and she relied on the case of **HARRIMAN v HARRIMAN (1989) 5 NWLR PART 119 AT PAGE 6 @ 15 PARAGRAPHS F-G.**

She submitted that the evidence proffered by the Petitioner shows clearly that the marriage has broken down and by the provision of the law referred to above, the Petitioner is entitled to a grant of an order of this Honourable Court dissolving her marriage with the Respondent and cited the case of **BIBILARI v BIBILARI (2011) 13 NWLR PART 1264 PAGE 207 @ 234 PARAGRAPS F-G.**

Finally, she submitted that the Petitioner has established that since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and that they have stayed apart for a continuous period of exceeding four years. He referred the Court to the case of **NWANKWO v. NWANKWO (2014) LPELR-24396 (C.A)** and urged the Court to dissolve the marriage union.

I have carefully gone through the evidence adduced at the trial together with the address of the learned counsel for the Petitioner. From the record of proceedings, it is clear that the Respondent did not lead any evidence to contradict the evidence of the Petitioner. Thus, it is apparent that the Respondent is not contesting this Petition. 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 Petition is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Petitioner 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 inter alia as follows:

- i. That since the Marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him; and*
- ii. That the marriage between the Petitioner and the Respondent 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 the 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*.

In this Petition, the Petitioner's main ground for the dissolution of her marriage with the Respondent is that since the Marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.

While expositing on the ground of intolerable behavior in the case of *IBRAHIM V. IBRAHIM (2007), NWLR (Pt. 1015) 313 ARIWOOLA, JCA (now CJN)* stated thus:

"The conduct of a Respondent that a Petitioner will not be reasonably expected to put up with must be grave and weighty in nature as to make further cohabitation virtually impossible."

Thus, in order to succeed on the ground of intolerable behavior, the Petitioner must satisfy the Court that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. The corresponding duty of the Court in such circumstances is to consider whether the alleged behavior is one which a right-thinking person would come to the conclusion that the Respondent has behaved in such a way that the Petitioner could not be expected to live with him/her taking into account the characters and the personalities of parties. In other words, the conduct or act must be such that a reasonable man cannot endure.

In the instant case, the Petitioner gave evidence of some of the conduct of the Respondent which she found quite intolerable during the period of her cohabitation with him. For example, she testified of the Respondent's reckless spending, smoking of Indian hemp, gambling, womanizing, taking of hard drugs, staying for one week without having his bath or brushing his teeth, forcefully having intercourse with her, assaults, abandonment in the hospital after a fibroid operation and the Respondent's threats to kill the Petitioner and her mother.

Incidentally, at the trial, the Respondent did not lead any evidence to deny or controvert these weighty allegations of intolerable behavior. Upon a careful consideration of the allegations, I am of the view that the conduct of the Respondent is such that the Petitioner cannot reasonably be expected to continue to cohabit with him. Thus upon the unchallenged evidence of the Petitioner, I hold that she has established the fact that since the Marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.

In essence, the Petitioner has established one 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*.

Consequently, I hold that the marriage between the Petitioner and the Respondent has broken down irretrievably.

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 since the Marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.*

Sequel to the foregoing, I hereby grant the Petitioner the following reliefs:

- i. A decree of dissolution of the marriage contracted between the Petitioner and the Respondent on the 13th day of March 2018 and the 23rd day of June, 2018 at Oredo Marriage Registry and Central Baptist Church, Ring-Road Benin city, Edo-state respectively;*
- ii. An order of this Honourable Court directing the Respondent to give the Petitioner access to the house to pick her personal belongings, her credentials and other relevant documents in the Respondent's apartment at his parents' house; and*
- iii. An order of this Honourable Court directing the Respondent to desist from further threatening to kill the Petitioner and her mother.*

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
07/02/2024

COUNSEL:

1. Ivie Salome Osagie Esq.Petitioner

2. A.O. Osemwegie Esq.....Respondent