

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIERO,
ON WEDNESDAY THE
11TH DAY OF DECEMBER, 2024

:

BETWEEN: **SUIT NO. B/12^D/2024**
DR. UABOI OVBIAGELE -----PETITIONER

AND

MRS. JULIET BUKKY OVBIAGELE -----RESPONDENT
(NEE UDUGBEZI)

JUDGMENT

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner on the grounds inter alia that the marriage has broken down irretrievably upon the facts that the Respondent has long abandoned the Petitioner and travelled out of the country.

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

- 1) An Order of decree of dissolution of the marriage between the Petitioner and the Respondent conducted on the 11th day of March, 2016 at St. Thomas Aquinas Catholic Church, Benin City; and***
- 2) Any other Orders or relief that the Court may consider just and fair in the circumstances.***

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 in proof of his Petition.

In his evidence, the Petitioner stated that he married the Respondent on the 8th day of April (sic), 2016 at St. Thomas Aquinas Catholic Church, Benin City. He tendered a Marriage Certificate which was admitted in evidence as Exhibit “A”.

According to the Petitioner, after their wedding, they cohabited at No. 17B Obaseki Street, at Ikpoba Hill, Benin City. He alleged that during the marriage they quarreled very often and the Respondent was always very disrespectful to his mother. He said that he reported the matter to her parents more than five times but she did no change her behaviour.

He alleged that sometime in 2021, the Respondent left him and relocated to her father’s house in Sabongida Ora, Edo State, and thereafter travelled out of the country. He said that there are no children in the marriage.

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

In her Final Written Address, the learned counsel for the Petitioner, *Dibie Ishioma Rosemary Esq.* formulated a sole issue for determination as follows:

“Whether on the unchallenged evidence before this Honourable Court, the Petitioner has proved that the marriage has broken down irretrievably.”

Arguing the sole issue for determination, the learned counsel for the Petitioner submitted that it is trite law that for a Petition for a decree for dissolution of marriage to succeed, the Petitioner must satisfy the court of one or more of the facts enumerated in *Section 15(2) of the Matrimonial Causes Act*.

She posited that the marriage between the Petitioner and the Respondent has broken down irretrievably due to the intolerable behavior of the Respondent and the fact that the Respondent has deserted the Petitioner for a continuous period of one year immediately preceding the presentation of the Petition. She referred the Court to the provisions of *Section 15(2) of the Matrimonial Causes Act* and submitted that the Petitioner has been able to plead and prove the facts enumerated in *Section 15(2) (c) and (d) of the Matrimonial Causes Act* to the effect that since the marriage, the Respondent deserted and abandoned her matrimonial home and that she has behaved in such a way that the Petitioner cannot reasonably be expected to live with her anymore. She urged the Court to hold that the marriage has broken down irretrievably and cited the case of *OMOTUNDE V. OMOTUNDE (2001) 9 NWLR (PT. 718) 252. P. 284, PARAS D-E*.

Learned counsel submitted that the evidence of the Petitioner was un-contradicted and unchallenged and she urged the Court to act upon it. She referred the Court to the cases of *SUNMONU OLOHUNDE V. ALH ALIMI ODUOLA (2000) 79*

LRCN 2297 AT 2330E RATIO 11 and NZERIBE V. DAVE ENGINEERING COMPANY LTD (1994) NWLR (PT. 361) 124.

She finally urged the Court to grant the reliefs sought in this 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 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. Ekiola (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?***

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 that the marriage has broken down irretrievably upon the fact that the Respondent has behaved in a manner that he cannot continue to live with her and she has long abandoned the Petitioner and travelled out of the country.

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 Respondent has deserted the Petitioner since the year 2021. Thus they have been living 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.

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 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*.

I therefore resolve the sole issue for determination in favour of the Petitioner.

Having resolved the sole issue for determination in favour of the Petitioner, *I hold that the Petition succeeds and I hereby make an order of decree of dissolution of the marriage between the Petitioner and the Respondent conducted on the 11th day of March, 2016 at St. Thomas Aquinas Catholic Church, Benin City.*

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
11/12/2024

COUNSEL:

- 1. Dibie Ishioma Rosemary Esq.-----Petitioner**
- 2. Unrepresented-----Respondent**