

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON THURSDAY THE
28TH DAY OF JULY, 2022.

BETWEEN: **SUIT NO. B/397^D/2021**
MR. MIKE UJADUGHE-----PETITIONER
AND
MRS. ANITA UJADUGHE-----RESPONDENT

JUDGMENT

This Judgment is in respect of a Petition for the dissolution of marriage filed on behalf of the Petitioner on the 7th day of May, 2021. The Grounds for the Dissolution of the Marriage are *inter alia* as follows:

- 1. The marriage between the Petitioner and the Respondent has broken down irretrievably upon the facts that the parties have been living apart for more than two years and for other facts stated hereunder; and***
- 2. Since their marriage, the Respondent has been behaving in such a way and was carrying out conduct that the Petitioner could not reasonably be expected to live with the Respondent or bear her conduct.***

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

- a. A decree of dissolution of marriage conducted between the Petitioner and the Respondent at the Oredo Marriage Registry, Benin City on the 27th day of March, 2010 on the ground that the marriage has broken down irretrievably and parties have been living apart for more than 2 years now before the institution of this action;***
- b. A decree to dissolve the marriage between the Petitioner and the Respondent on the ground that Since their marriage, the Respondent has been behaving in such a way and have being carrying out conduct that the Petitioner could not reasonably be expected to live with the Respondent or bear her conduct.***

c. AN ORDER giving the Custody of the two children of the marriage to the Petitioner which are Jude Ujadughe, Male, born on the 18th day of July, 2010. Daniel Ujadughe Male, born on the 25th day of April, 2012, who are male and still in their formative ages.

d. AN ORDER directing the Respondent to contribute towards the upkeeps, school expenses of the two children of the marriage until they finish their University Education.

And any other Orders or relief which 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 on oath.

He testified that he got married to the Respondent at the Oredo Local Government Marriage Registry on the 27th of March, 2010 and a Certified True Copy of the marriage Certificate was admitted in evidence as Exhibit A.

The Petitioner testified that the marriage is blessed with two sons, Jude Ujadughe born on 18/7/2010 and Daniel Ujadughe born on 25/4/2012. He stated that the two boys are with him and have been with him for the past four years. He informed the Court that the Respondent left his house on 27/5/2017 with the two children, came back alone on 12/09/2017 and packed all her belongings from my house.

He stated that in 2019 the Respondent brought the children back to him and later left his house ever since. That sometime in December 2021 the Respondent visited them and gave each of his sons a cup of ice cream.

He stated that he wants to divorce the Respondent and that he needs the custody of the children because for the two years that they lived with the Respondent they did not attend any school. 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, ***Osawaru Famous. Eremwanarue Esq.*** formulated a sole issue for determination as follows: ***“Whether with the facts before the court the petitioner has proved his case to be entitled to the relief sought.”***

Arguing the sole issue for determination, learned counsel submitted that it is trite law that for a court to dissolve a marriage, it must find that the marriage has broken down irretrievably in line with the provision of ***Section 15 (1) of the Matrimonial Causes Act*** which stated that the petitioner has the burden of proving of one or more of the facts spelt out in ***Section 15(2) (a) – (h) of the Act*** before the

court can hold that the marriage has broken down irretrievably. He also relied on the case of *Ibrahim vs. Ibrahim (2007) 1 NWLR (Pt. 1015) 383* and *Section 15 (2) (c) (d) (f) of the matrimonial causes Act*.

He posited that the petitioner testified that the respondent deserted the marriage over 2 years ago without reasonable cause on the ground that she is tired of the marriage, despite all effort to bring back the respondent proved abortive. He alleged that since the desertion of the respondent, the petitioner has been living alone for over 2 years now. Furthermore, he posited that the petitioner further testified that during the marriage, they never lived in peace.

Counsel submitted that, the respondent had neither appeared nor filed any response throughout the proceeding in this case, despite the service of the petition and hearing notice on her. Consequently, he posited that the evidence led by the petitioner remained unchallenged and uncontroverted by the respondent. That it is settled law that unchallenged and uncontroverted evidence is deemed admitted and the Court is bound to act on it. See the cases of *Chief Sunday Ogunyade VS. Solomon and Anor (2007) LPELR – 2355(SC)*; and *Cameroon Airline vs. Otutuize (2005) 9NWLR (PT.929)224*.

Learned counsel posited that it was due to the desertion and the behavior of the respondent, which led to the filing of this petition. Furthermore, that the respondent had behaved in a manner that the petitioner can no longer tolerate the respondent, and he relied on *Section 15 (2) (c) (d) (e) (f) of the Matrimonial Causes Act*.

He posited that from the petitioner's evidence was established that there has been physical separation of the parties for over two years and the act of the respondent is one which the petitioner can no longer tolerate. He therefore urged the court to hold that the petitioner has established his case as required by law and grant the prayers of the petitioner as contained in his 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. 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 inter alia as follows:

- 1. The marriage between the Petitioner and the Respondent has broken down irretrievably upon the facts that the parties have been living apart for more than two years and for other facts stated hereunder; and***
- 2. Since their marriage, the Respondent has been behaving in such a way and was carrying out conduct that the Petitioner could not reasonably be expected to live with the Respondent or bear her conduct.***

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 December 2017, 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. Furthermore, the parties 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) (d) (e) & (f) of the Matrimonial Causes Act*, the evidence adduced is sufficient proof that the marriage has broken down irretrievably.

In essence, the Petitioner has established three 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 reliefs:*

- 1. A DECREE OF DISSOLUTION OF MARRIAGE on the grounds that the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition; 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; and the parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition;*
- 2. AN ORDER giving the Custody of the two children of the marriage to the Petitioner which are Jude Ujadughe, Male, born on the 18th day of July, 2010. Daniel Ujadughe Male, born on the 25th day of April, 2012, who are male and still in their formative ages; and*
- 3. AN ORDER directing the Respondent to contribute towards the upkeep, school expenses of the two children of the marriage until they finish their University Education.*

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
28/07/2022

COUNSEL:

- 1. Famous Osawaru Eremwanarue Esq.Petitioner*
- 2. Unrepresented.....Respondent*

