IN THE HIGH COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT JUDICIAL DIVISION
HOLDEN AT PORT HARCOURT

SUIT NO. PHC/320/ MC/2022

BETWEEN:

MRS. BOLAJI SANDRA CHINAKA <<<<>>> PETITIONER

AND

1. MR. DENNING CHINAKA <<<<>>> RESPONDENT
2. MISS OZIOMA ONOGIDE <<<>>>> PARTY CITED

JUDGMENT DELIVERED BY HON. JUSTICE T.S. OJI ON THE 27TH DAY OF JULY, 2024

Coram:

Petitioner present, Respondent absent.

Appearances: V.U. Uzochukwu with O.E. Augustine for the Petitioner. No appearance of Counsel for the Respondent.

The Petitioner filed this suit praying the court for the following reliefs:

1. A decree for the dissolution of the marriage that it has broken down irretrievably.
2. An order granting the Petitioner full custody of the two children of the marriage until they attain the age of majority.
3. An order of court that the Respondent shall provide equal contribution towards the education, feeding, shelter, medical and clothing of the 2 (two) children of the marriage.

The Petitioner's case in a nut shell is that she and the Respondent celebrated their marriage on the 29th of November 2014 at Our Lady seat of Wisdom Cathedral, Port Harcourt. The Respondent's attitude suddenly changed after the birth of the first child of the marriage; he barely provided for the basic needs of the family. The Respondent refused to renew their tenancy after the expiration of same; thereafter the landlord locked the apartment and threw out their properties. The Petitioner who was pregnant with the second child of the marriage was left with no alternative but

to squat with a neighbor until her in laws came to her rescue and gave her money to rent an apartment for 6months.

That sometime in 2017, Respondent informed the Petitioner that he has been transferred to Lagos by his employer; he left the matrimonial home the next day without making any provisions for the upkeep of the family. The Respondent informed the Petitioner that his inability to provide for the needs of the family was because his employer Intels (Nig) Ltd had not paid his salary for several months. However, in 2018 when the Petitioner visited the office, she was informed by the Respondent's supervisor that the company had been paying the Respondent his salaries and benefits since 2014. When Respondent discovered Petitioner went to his office, he admitted receiving his salaries but that he used it for a project.

The Petitioner stated that the Respondent has abandoned the Petitioner and the two children of the marriage since 2017. The particulars of the children of the marriage are as follows:

Sophie Chinaka (female) born on the 27th of March, 2015 and

Stephanie Chinaka (female) born on the 28th of January, 2017

Finally, parties have lived apart for 4 three years before the petition was filed.

The Respondent neglected or refused to file a response to the Petition despite service of the Petition via his email address. On the 27th day of May, 2024 counsel for the Petitioner V.U. Uzochukwu; by way of address asked the court to grant the Petitioner her reliefs based on the evidence led which is uncontroverted. He relied on the case of ONYIORAH V ONYIORAH (2019) 15 NWLR (1695) PG 227. Petitioner gave evidence as PW1 and tendered the certified true copy of the marriage certificate dated 29th day of November, 2014 as exhibit A.

After a calm consideration of the processes filed by the Petitioner and submissions of her Counsel, it is my take that the lone issue for determination is whether the Petitioner is entitled to the reliefs sought.

The law is settled that the only ground upon which a party seeking for dissolution of marriage may base his petition under the Matrimonial Causes Act is that the marriage has broken down irretrievably. See Section 15 (1) of the Matrimonial Causes Act Cap 220 Laws of the Federation of Nigeria which provides as follows: "A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that

the marriage has broken down irretrievably". Section 15 (2) of the Act (supra) provides for situations when the Court shall hold the marriage to have broken down irretrievably. They are:

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 three 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 or restitution of conjugal rights made under this Act.
h) That the other party to the marriage has been absent from the Petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead." Per OJO ,J.C.A in OGUNJOBI V. OGUNJOBI (2021) LPELR-52894(CA) (Pp. 20-21 paras. B).

The Petitioner in her evidence before this court stated that the Respondent abandoned the matrimonial home in 2017, which means parties have lived apart for more than 3 years immediately preceding the presentation of the petition.

The question which arises is whether the Matrimonial Causes Act allows for admission whereupon the Petitioner can obtain judgment without calling evidence in support of her case before the Court. Section 15(2)(f) of the Matrimonial Cause Act states that 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:-

(f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition."

The standard of proof in matrimonial matters is as embodied in Section 82(1) of the Act which reads that:-

"For the purposes of this Act: a matter shall be taken to be proved if it is established to the reasonable satisfaction of the Court."

In my view, what is reasonable satisfaction of the Court is difficult to define. There is no kind of blanket description for same either - but it must depend on the exercise of judicial powers and discretion of an individual Judge. It however entails adducing all available evidence in support of an assertion before the Court. By Section 15(2)(1) of the Act: a Court hearing a petition for the dissolution of a marriage shall hold the marriage to have broken down irretrievably if the parties to the marriage lived apart for a continuous period of three years immediately preceding the presentation of the petition. The law is that the provision is mandatory and the Court has no discretion to exercise.

The section has the factor of absence of fault element characteristic of other matrimonial offences -the law behind the Section that is 15(f) as far as the living apart is concerned is not interested in right or wrong or guilt or innocence of the parties. Once the parties have lived apart, the Court is bound to grant a Decree. Per ADEKEYE ,J.C.A in OMOTUNDE v. OMOTUNDE (2000) LPELR-10194(CA) (Pp. 48-52 paras. C)

Since there is no contrary evidence negating the fact that parties have lived apart for more than 3 years, I resolve this issue in favour of the Petitioner.

On the issue of custody of the children, the evidence before this court is that Respondent abandoned the matrimonial home and the children of the marriage since 2017.

"Section 71 Matrimonial Causes Act provides that:

(1) "In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the Court shall regard the interests of those children as the paramount consideration; and subject thereto, the Court may make such order in respect of those matters as it thinks proper.

(2) The Court may adjourn any proceedings within Subsection (1) of this section until a report has been obtained from a welfare officer on such matters relevant to

the proceedings as the Court consider desirable, and any such report may thereafter be received in evidence.

(3) In proceedings with respect to the custody of children of a marriage, the Court may, if it is satisfied that it is desirable to do so, make an order placing the children, or such of them as it thinks fit, in the custody of a person other than a party to the marriage.

(4)"Where the Court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by the other party to the marriage, or by the parties or a party to the marriage, as the case may be."

The above provision of MCA has been considered in several cases. See WILLIAMS V. WILLIAMS (SUPRA), FALOBI V. FALOBI (1976) 9-10 SC (REPRINT) 1, NANNA V. NANNA (SUPRA), ELUWA V. ELUWA (SUPRA). The settled position of the Court is that in the consideration of who should get custody of the children of the marriage, the welfare and best interest of the children are paramount considerations. It is not the law that custody of a child of tender age must in all cases be awarded to the mother…Per BOLAJI-YUSUFF ,J.C.A in ANOLIEFO V. ANOLIEFO (2019) LPELR-47238(CA) (Pp. 13-17 paras. D).

As earlier stated the Respondent did not file any process in response to this Petition neither was he represented by Counsel nor did he appear before this court to tell us his own version of the story. This court is left with no alternative but to deem Petitioner's evidence as admitted by the Respondent and further, to believe the story put forward by the Petitioner that the Respondent abandoned the Petitioner and the children of the marriage since 2017.

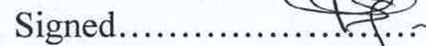
Accordingly, it is my view that this case has merit, and so I hereby enter judgment for the Petitioner and further declare and order as follows:

1. A decree for the dissolution of the marriage between the Petitioner Mrs. Bolaji Sandra Chinaka and Mr. Denning Chinaka contracted on the 29th day of November, 2014 at Our Lady of Wisdom Catholic Chaplaincy Port Harcourt, Rivers State.
2. The Petitioner shall have custody of the children of the marriage being:
   a. Sophie Chinaka (female) born on the 27th day of March, 2015 and

b. Stephanie Chinaka (female) born on the 28th day of January, 2017 until they attain the age of majority

3. The Respondent shall have access to the children and visit them when he so desires once a month upon giving the Petitioner at least 72 hours' notice of same.
4. The Petitioner and the Respondent shall provide equal amounts for the education, feeding, medicals and clothing for the two children of the marriage as shall be agreed by both of them.
5. This decree Nisi shall become absolute within 3 months from today if the parties hereto make no move to the contrary.

Signed......................



Hon. Justice T.S. Oji

High Court 6

Port Harcourt

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