**DR. O. O. HUNPONU-WUSU**

**V.**

**ABIMBOLA HUNPONU-WUSU**

SUPREME COURT OF NIGERIA

7TH FEBRUARY, 1969

SUIT NO. S.C. 66/68

**LEX (1969) - S.C. 66/68**

**OTHER CITATIONS**

2PLR/1969/90 (SC)

**BEFORE THEIR LORDSHIPS:**

ADETOKUNBO ADEMOLA, C.J.N

GEORGE BAPTIST A. COKER, J.S.C.

CHARLES OLUSOKI MADARIKAN, J.S.C.

**BETWEEN:**

DR. O. O. HUNPONU-WUSU

AND

ABIMBOLA HUNPONU-WUSU

**ORIGINATING COURT**

HIGH COURT OF LAGOS STATE

**REPRESENTATION**

Chief WILLIAMS (with him CAREW) - for the Petitioner/Appellant

BICKERSTETH (with him ADENIYI) - for the Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

FAMILY LAW – MATRIMONIAL CAUSES: - Petition for nullification of marriage on ground of recurrent attack of insanity - Sec. 7(1) (b) of The Matrimonial Causes Act 1937 and Section 9(1) Matrimonial Causes Act 1965 – Conditions precedent for the grant of the Order – Relevant considerations

FAMILY LAW – MATRIMONIAL PROCEEDINGS: - Petition for nullification of marriage – Woman who had been admitted before to mental hospitals before marriage – Where fact was not made known to husband – Relevant considerations – Need to consider the reports or evidence of doctors who treated respondent when she suffered a breakdown in her health

FAMILY LAW - MATRIMONIAL CAUSES: - Sec. 9(1) (b) (iii) of the Act of the Matrimonial Causes Act, 1961 - Petition for nullification of marriage on ground of recurrent attacks or fits of insanity or epilepsy – Distinction between lack of capacity to enter into a contract of marriage and legal effect arising from this: that on the day of the marriage the respondent was capable or not capable to enter into a contract of marriage

CHILDREN AND WOMEN LAW - WOMEN AND HEALTHCARE: - Motherhood and mental illness - Schizophrenic illness – Medical report that childbearing is known to be one of the precipitants of relapse – Medical report that woman’s breakdown was precipitated by her abortion/miscarriage – Implications for marriage, motherhood, health and justice administration – How treated by court

EDUCATION AND LAW: - Undergraduate students and access to treatment for nervous/mental diseases - Severe depressive illness - Personality inventory testing showcasing extremely anxious introvert, atypical but extreme depression and possibly, schizophrenic disturbance – Implication for validity of marriage contracted subsequently without notice to the other party

HEALTHCARE AND LAW:- Mental health treatment in Nigerian – Recourse to Native doctor when improvement is not seen – Mental health reporting and analysis practices in Nigeria - Whether suffering abortion is connected to severe break-down in mental health – How treated

HEALTHCARE AND LAW: - Mental illness – Distinction between one who is continuously insane with lucid moments and one who suffers from recurrent attacks of insanity or unsound mind – Legal effect of distinction

WORDS AND PHRASES:- “unsound mind” -Whether bears the same meaning as “mental illness” “mental disorder”, “mental disease”, “insanity”

**PRACTICE AND PROCEDURE ISSUES**

INTERPRETATION OF STATUTE: - Sec. 9 of the Act - “unsound mind” - Whether bears the same meaning as “mental illness” “mental disorder”, “mental disease”, “insanity” - Whether finding that suffered from fits of unsoundness before marriage and thereafter does not mean that the respondent at the time of the marriage or presently was or is insane – Whether enough to satisfy the provision

**MAIN JUDGEMENT**

**ADEMOLA, C.J.N**.:

The husband petitioner who is the appellant in this matter is a medical practitioner. He complained that his petition before the learned Chief Justice of the High Court of Lagos State seeking a declaration that the marriage between him and the respondent be declared null and void was wrongly dismissed. The petition was based on the grounds that at the time of the marriage, the respondent, was

(i) of unsound mind or

(ii) suffering from mental disorder within the meaning of the Mental Health Act 1959 in force in the United Kingdom of such a kind or to such an extent as to be unfitted for marriage and the procreation of children or

(iii) subject to recurrent attacks of insanity;

and that at the time of the marriage, he (the petitioner) was ignorant of the state of the respondent.

In the court below ground (ii) was abandoned and the arguments centred around grounds (i) and (iii). Before us, however, ground (i) was not canvassed and it can reasonably be assumed that counsel is not quarrelling with the conclusions arrived at by the learned Chief Justice on this ground. The only ground which counsel argued before us was that the declaration sought should have been granted was ground (iii); namely, recurrent attack of insanity. Provisions for nullity of marriage on these grounds are to be found in sec. 7(1)(b) of The Matrimonial Causes Act 1937 and amplified in the Matrimonial Causes Act 1965 of which section 9 is relevant. Section 9(1)(b) of that Act is as follows:-

“9(l) In addition to any other grounds on which a marriage is by law void or voidable a marriage shall, subject to the next following subsection, be voidable on the ground

(b) that at the time of the marriage, either party to the marriage:

(i) was of unsound mind, or

(ii) was suffering from mental disorder within the meaning of the Mental Health Act 1959 of such a kind or to such an extent as to be unfitted for marriage and the procreation of children, or

(iii) was subject to recurrent attacks of insanity or epilepsy;”

For the purpose of this appeal, however, we are concerned with sub-section (1)(b)(iii) above.

The first decision of nullity of marriage on the ground that one party to a marriage was subject to recurrent attacks of insanity appears to be the case of Smith v. Smith [1940] P. 179 or [1940] 2 All E.L.R. 595 to which we will refer later in this judgment.

The facts which led to the filing of the petition in the instant case are briefly as follows: Parties were married on 9th October, 1965 and lived happily together for a few weeks. On 27th November, 1965 about 8 p.m. the wife respondent engaged in a conversation with her husband, which went on non-stop till the early hours of the morning. When the husband thought there was something wrong and tried to stop her, she got wild and threw him across the room. About I a.m. she packed some clothes which she made into a bundle, carried the bundle on her head and ran out of the house with the husband in pursuit. She ran into her parents-in-law’s house, apparently next door and woke up everybody. She threw herself naked into the parents room and started gesticulating to herself. After making use of some unfamiliar language to the surprise of the husband, she threw her wedding ring and the engagement ring at him saying she was not marrying him anymore. Later, her father was sent for; he came and insisted on taking her home, despite the resistance of the husband.

The husband visited her regularly at her father’s house where she was receiving treatment in the hands of a psychiatrist, Dr. Marinho. It would appear that she had an abortion on 1st January, 1966 and was taken to and treated at the Island Maternity Hospital where she stayed for a few days. She later returned to her father’s house and continued to receive treatment from Dr. Marinho. When apparently she got worse, it would appear she was taken to a native doctor at which the husband protested and she was in February admitted to the Hospital for Nervous Diseases at Aro (Abeokuta) where she received treatment for 3 months. It is not quite clear whether there was a breakdown in the wife’s health twice after the marriage - one on the 27th November, 1965, and secondly immediately after suffering abortion on 1st January, 1966. It is evident however that she suffered a severe break-down in her health and it is clear from the proceedings that all are agreed that she had an attack. The contention appeared to be that the respondent was not subject to recurrent attacks of insanity and that what happened after her marriage was an isolated case.

As the learned Chief Justice appeared to have taken the view that on the day of the marriage the respondent was capable of entering into a contract of marriage and that it is therefore not now possible to avoid the marriage, it will be necessary to give a resume of the respondent’s state of mind before the marriage. But before doing so, we would, with respect, say that we are unable to agree with the learned Chief Justice on the view he has taken of the case. The case is not that on the day of the marriage the respondent was capable or not capable to enter into a contract of marriage. This is not material for the purpose of Sec. 9(1)(b)(iii) of the Act. This provision of the Act does not depend upon capability to contract. It is simply this - that at the time of the marriage the respondent was or was not subject to recurrent attacks or fits of insanity or epilepsy. The learned Chief Justice however appeared to have found that before her marriage the respondent suffered no breakdown or attack.

The evidence revealed that the wife respondent was an undergraduate at Cambridge University and during her student days she was on two occasions admitted into nervous diseases hospitals. In May, 1962 she was admitted into Addenbrookes Hospital in Cambridge and treated by a Doctor Young. She said in her evidence that she suffered then from insomnia for which she received treatment but one gathered from Dr. Young’s report (exh. ‘B’) that “she was suffering from a very severe depressive illness.” The report further states as follows:-

“The only thing that bothered me at the time was that she fears that a former friend in Nigeria had given her some slow poison and that this was why things were going badly with her in England. It appeared that this friend had seemed jealous when she was chosen to go to Student Conference in America in 1961, and she felt guilty, about her suspicions about this friend.”

Later in the report, Dr. Young said:-

“The personality inventory testing showed her to be an extremely anxious introvert. Her Rorschach record was not typical of extreme depression, and did indicate that there might possibly be a schizophrenic disturbance. On the whole, while I was seeing her, she responded well to anti-depressant treatment, supportive psychotherapy, and, just before her examination, Fentazin in doses of 4 mg. three times a day.”

Again, in 1964, she was admitted to Bamstead Hospital in Surrey. The report by doctor Baker reads:-

“Miss Okenla was admitted to this hospital on 7th July, 1964 “suffering from an acute schizophrenic illness.

As you know there is always a risk of relapse “with a schizophrenic illness and childbearing is known to be one of the precipitants of relapse.”

As we stated earlier there was no dispute about the break-down after her marriage and the admission to the Aro Hospital where she was treated by Dr. Asuni. This doctor, apparently available, was not called to give evidence, but a report made by him was put in evidence. The picture painted by this report is somewhat reassuring; but unlike the learned Chief Justice who heard this case, we are not particularly impressed with Dr. Asuni’s report and we do not think in the absence of the doctor to explain some points in his report it was worth attaching all that importance to it as did the learned Chief Justice. Portion of the report reads:-

“Her breakdown in Nigeria was precipitated by her miscarriage in January.”

This cannot be correct because the patient did breakdown in November as we have seen, when there was no threatening abortion. Again, he stated:-

“The diagnosis of acute schizophrenic illness made in Bamstead Hospital, Surrey, does not fit into this picture .......

We think these are rather unfortunate words to use; we observe that the treatment at Bamstead which consist of Largacti1200 mgms. t.d.s. is indicative of the diagnosis of Dr. Baker whose qualification as a psychiatrist, from the record before us, appears to be of the highest distinction, Dr. Asuni in his report referred to the meagre report of Dr. Baker, but we observe that Dr. Saeger of Bamstead Hospital, Surrey, in his letter to the psychiatrist in Lagos said he would be glad to send a full report of the patient’s condition if requested; it was never asked for.

In her own letter (exh. ‘L’) dated 25th April, 1966, to the husband, the wife respondent in an attempt to come back to him, made a clean breast of her condition before marriage. She stated that she had been admitted before to mental hospitals and that she was afraid that if she told him he would not have married her. “That simply is the plain truth”, she said.

Now, in deciding whether or not the respondent was subject to recurrent attacks of insanity before marriage, the learned Chief Justice considered the reports of the various doctors and came to the conclusion that “the medical evidence such as it is tips the scales substantially in the respondent’s favour.” He continued “at the worst, the most I can say for the petitioner is that the evidence leaves the scales evenly balanced which in any case would have the same result - that the petitioner on whom the onus is cast has failed to prove his case.” When putting the case of either side in the scales, the learned Chief Justice said as follows:-

“In the case before me the medical evidence available of the state of mind of the respondent before the marriage is confusing and contradictory and in one instance in exh. `B’ it is neither one way nor the other where for example it is stated that `there might possibly be a schizophrenic disturbance’. On the one hand we have the evidence of Dr. Marinho and Dr. Boroffka as against the content of exh. `D’ writ-ten by a Dr. Baker. In the middle, neither positively supporting one view nor the other, we have exh. ‘D’ (mistake for exhibit `B’] written by a Doctor Young. Placed on the scale, in the respondent’s favour we have parts of the evidence of the petitioner who had known the respondent “since she was ten years of age though he became friendly with her only in October, 1964, and he was unable to give evidence of any defect in her mental make-up. To add to all this contradiction we have exh. `C’ written by a Dr. Asuni, Medical Superintendent in charge of Aro Hospital into which the respondent was admitted. He seems to disagree with the diagnosis of Dr. Baker as contained in exh. `D ........

With respect, we feel bound to say that there was a confusion of thought here and we are clearly of the view that the evidence before the learned Chief Justice called for more detailed examination. The pith of this case is the evidence of the condition of the respondent before marriage - whether she had had a break-down or not. In the first place, the report of Dr. Asuni, with which we have dealt earlier, must be confined to events after the marriage. This cannot be brought to the scale. The evidence of Dr. Marinho also, in our view, can find no room in the scale. The material part of his evidence relates to events after the marriage; with regard to his evidence before the marriage he said nothing favourable to the respondent. This doctor did no more at that time than give the respondent the tablets prescribed by the doctors at Bamstead Hospital. In regard to Dr. Boroffka’s report, important though it appears, since he examined the respondent during his visit to Lagos from England, the evidence in our opinion, is not material to the issue whether or not the respondent did have a breakdown before her marriage. He examined her at a time she had no attack. The reports or evidence which need be considered on this point in our view, are the reports of doctors who treated the respondent when she suffered a breakdown in her health. A report as to the nature of her illness at the time is important. In this connection, if the evidence of Dr. Young was, as put by the learned Chief Justice, “neither positively supporting one view nor the other,” there can be no doubt about the exactitude of the evidence or report of Dr. Baker in regard to the condition of the respondent on her admission to Bamstead Hospital, Surrey.

There is another point to which we must refer. The learned Chief Justice referred to the evidence of the husband petitioner that he had known the respondent since she was ten years of age and that he was unable to give any evidence of any defect in her mental make-up. We cannot read into the evidence of the petitioner, and we certainly see no evidence to justify the assumption, that the petitioner knew the respondent well enough and consistently since she was ten years old, to know about her ailments. For one thing it is clear that he did not know that she was ill when she was studying in Cambridge and that she was admitted into mental hospitals. It appears to us too far-fetched to presume that because he had known her when she was about ten years old, he had followed her life history to the extent of knowing of any defect in her mental make-up. This is not a thing one knows about someone you merely know and did not see frequently.

It seems to us that the learned Chief Justice in his judgment has fallen into the error of thinking that one who is continuously insane with lucid moments is the same as one who suffers from recurrent attacks of insanity or unsound mind. This, to our mind, was a wrong approach to the matter before him.

In our view, the evidence in this case clearly shows that the respondent suffered from recurrent attacks of unsound mind before the marriage for which she was admitted into hospitals where she received treatment. After the marriage, she had an attack on the 27th November, 1965, and it is not clear whether this continued till March, 1966 or she had a second one early in 1966 after she suffered from an abortion.

From the evidence before the Court, we are in no doubt that the prognosis is fair: it shows however, and the medical opinion appears to be agreed on this, that when the respondent is faced with stress, she will have a break-down again or is likely to have a breakdown again.

The case Smith v. Smith [1940] P 179 appears to be the first petition brought under sec. 7(l)(b) of the Matrimonial Causes Act 1937. In that case parties were married on 15th October, 1938. In July 1939 the wife suffered from unsoundness of mind and had to be admitted into a private mental hospital. On 15th October, 1939 the husband petitioned for nullity of marriage on the ground that the respondent was at the time of the marriage subject to recurrent fits of insanity. It was in evidence that she had suffered from unsoundness of mind before the marriage and it had broken out on at least two occasions; namely in 1932 before the marriage when she was admitted in a mental hospital and secondly on the occasion after the marriage which led to the filing of the petition. It was held that as it was shown that the wife was subject to an increase in the acuteness or severity of unsoundness of mind recurring periodically in its course, she was subject to recurrent fits of insanity within the meaning of section 7(1) (b) of the Matrimonial Causes Act.

It appears that this is the only reported case of unsoundness of mind under both section 7(1)(b) of the Matrimonial Causes Act 1937 and section 9(1)(b) of the Act of 1965. We are nevertheless not unmindful of our responsibility in this matter which has caused us very grave anxiety. The question which arises is, whether it is the duty of the court to consider the degree of unsoundness of mind necessary. It is extremely difficult for any court to lay down any test of degree of unsoundness of mind, and the court has, in another context when considering secs. 2 & 3 of the Matrimonial Causes Act 1937, laid it down that it is not concerned with the degree of insanity - see Shipman v. Shipman [1939] P. 147 and Randall v. Randall [1939] P. 131. In the later case, at p. 138 of the report, Sir Boyd Merriman, President of the Divorce Court, considering the case of a husband respondent who suffered from a mild type of unsoundness of mind said:

“The respondent himself has admitted to everybody with whom he discussed this matter, in a perfectly sensible way, that at the time he was certified he was undoubtedly suffering from a very definite derangement of mind, but equally it is unquestionable in this case that the care and treatment which he has received continuously at Mr. Heywood’s Home-and it is all the more credit to Mr. Heywood that it is so-has had a most beneficial effect, and has got him into a state in which, to put it at its very lowest, it is at least doubtful whether any responsible medical man would certify him afresh at this moment.

But it does not follow from that that he is not of unsound mind within the meaning of the Matrimonial Causes Act.”

In the instant case, as we stated earlier, it is easy to assume from evidence that the prognosis for the respondent appears to be good but it clearly shows - and it appears all the doctors are agreed on this - that when she is faced with stress, she’s more likely to have a breakdown again. So that, in effect, it is difficult to consider any degree of unsoundness of mind or how often it is likely to recur.

It remains for us to consider three questions on which the learned Chief Justice did not think it worthwhile to make any findings. These relate to the provisos which are set out in the latter half of sec. 9 of the Act, and without which the petitioner cannot succeed. They are:

(i) that at time of the marriage he was ignorant of the facts on which he based his petition,

(ii) that proceedings were instituted within a year from the date of the marriage, and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds on which he is relying.

There is uncontradicted evidence of the petitioner that he had no knowledge of the state of mind of the respondent that she was subject to recurrent fits of unsoundness of mind before they were married.

It is quite plain that the proceedings were instituted within a year of the marriage; the evidence of the petitioner that there has been no marital inter-course since the discovery of the facts stands unchallenged. There can be no doubt that the learned Chief Justice would have found in favour of the petitioner on these three provisos.

In view of all the foregoing, we now have to decide whether on the date of the marriage of the parties to this appeal the wife respondent was subject to recurrent fits of unsoundness of mind. It is not possible in our view, on the whole case, to hold otherwise. Undoubtedly there were two fits of unsoundness of mind before the marriage, at a time when the respondent was a student studying in England; and also two fits have occurred since the marriage. We have used the words “unsound mind” bearing in mind that it bears the same meaning as “mental illness” “mental disorder”, “mental disease”, “insanity” etc. in the sub-section of the Act - see Smith v. Smith (supra). This does not mean that the respondent at the time of the marriage or presently was or is insane; but we are satisfied that she suffers from a fit of unsoundness of mind to which she is subjected to recurrence from time to time and that this is enough to satisfy sec. 9 of the Act.

The husband has therefore, in our view, proved his case beyond any shadow of doubt. This appeal will, therefore, be allowed. The judgment in the High Court is hereby set aside, and the petition of the husband is hereby granted and he is entitled to a decree of nullity of the marriage.

We make no order as to costs.

Petition granted: Appeal allowed.

Judgment of High Court set aside.

CASES CITED:-

Smith v. Smith [1940] P 179; [1940] 2 All E.L.R. 595

Shipman v. Shipman [1939] P. 147 and Randall v. Randall [1939] P. 131.