

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**DELIVERED THE 2<sup>ND</sup> JULY, 2021**

**BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF**

**FCT/HC/PET/067/19**

**BETWEEN**

**MR. AYENI ADESOJI GOLD            ... .. PETITIONER**

**AND**

**MRS. AYENI-GOLD TINA OKE            ... .. RESPONDENT**

**JUDGMENT**

By a Notice of Petition filed on the 14/11/19, the Petitioner seeks for the following reliefs:

- a). A Decree of dissolution of marriage between the Petitioner and the Respondent on the ground that the Marriage has broken down irretrievably and that the Respondent has deserted the Petitioner for a continuous period of (3) three years immediately preceding the presentation of this petition.

b). An Order directing the Respondent to pay cost of this petition including the Petitioner's legal expenses.

**THE FACTS IN SUPPORT OF THE PETITION ARE AS FOLLOWS:**

A. That in the course of the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to be married to or live with the Respondent.

1. That the Respondent has deserted the petitioner for a period of three (3) years proceeding to the Petitioner's complaint since May 2016.

2. That the Respondent has the intention to withdraw cohabitation permanently following the intolerable behavior of the Respondent.

3. That there is no consent on the part of the Petitioner to be so deserted hence all effort to get the Respondent to return home has proved abortive.

4. That the Petitioner and Respondent have lived apart for a continuous period of three years immediately preceding the presentation of this petition.

5. That the marriage has broken irretrievably.

The Petition and other processes of this court were served on the Respondent via substituted means at her last known address *House A6, Good Homes Estate Kuje-Abuja*. The Respondent despite being served with the processes of this court failed and/or neglected to respond either by filing an Answer, Cross petition or appear before the court.

The Petitioner Ayeni Adesoji Gold testified as PW1. It is the evidence of the Petitioner that he works with Artco Industries Ltd in Idu Road; that the Respondent is his wife; that they got married at the FCT Kuje Town Hall Marriage Registry on September 16<sup>th</sup> 2014. The Pw1 states that the original Marriage Certificate isn't with him, that it was given to the Respondent by the Registrar. That he applied for the CTC and will make it available to the court on the next adjourned date. He testified that they both lived in Kuje, House D9 Good Homes after the marriage.

The Pw1 testified that between 2014 - 2016 many negative and marriage threatening issues happened; that the Respondent is a very active social media user; that this makes her reach out to her

exes to the extent of collecting money, phone and other materials from them. He testified that the Respondent was always going out any time he goes to work. He also said that the Pw1 is capable of being violent; that she had one time given him a scar on his body. He further said that sometime in January 2016 the Respondent told him several times that they should relocate to Dubai; that the idea turned him off, because the person who gave her the phone lives in Dubai; that sometimes in May 2016, when he came back from work, he didn't meet her at home. He said he initially thought she had gone to church; that at about 8pm on that same day, he eventually found out from the Respondent's father that she had absconded to Dubai and has started working there, that the Respondent has been sending money to her parents; that the Respondent's father did not bother to settle the issues between them. He further said that sometimes in January this year the Respondent's family came to pack her properties from his house.

The certified true copy of the marriage certificate was admitted in evidence as exhibit A on the 16/2/2021.

Above is the case of the Petitioner.

The Respondent was given the opportunity at various times via the service of hearing notices to cross examine and or defend the matter; he however failed or neglected to appear in court.

Section 15(1)(2)(a)(b)(c)(d)(e)(h) of the Matrimonial Causes Act states thus;

(1). 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.

(2) 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:

(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.

Based on the evidence before the court, it appears the Petitioner relies on the facts contained in section 15 (2) (c) (d) of the Matrimonial Causes Act as grounds for the court to hold that the marriage has broken down irretrievably.

The Petitioner in proof of these grounds stated that the Respondent deserted their matrimonial home since May 2016. According to the Petitioner in his evidence before the court on the 4/2/2021, he stated thus;

***“...sometime in January 2016, she started ringing it in my head that she will like us to leave the country, while I told her that I have lived abroad before, that I don’t fancy abroad right now but I asked her where she would have loved to go in case she wants us to relocate, she said Dubai, that turned me off instantly because the person that gave her the phone lives in Dubai. It was this back and forth we were having till sometime in May 2016 that I went to work, came back and I couldn’t find her at home. I***

***thought she went to church so I started making phone calls after 8pm because I didn't want to involve our parents initially. I was really disturbed. Eventually I found out that she had absconded to Dubai. I learnt this information from her father when I was making enquiries.***

As stated earlier, hearing notices were issued and served on the Respondent, but she never deemed it fit to appear before the court to rebut or confirm the entire evidence of the Petitioner.

The law is that evidence neither challenged nor contradicted shall be deemed as admitted, true and correct. I find as a fact that the Respondent deserted the Petitioner for a continuous period of three years before the presentation of this petition.

On what may constitute desertion, I place reliance in the case of ***NWANKWO v. NWANKWO (2014) LPELR-24396(CA) PER HARUNA SIMON TSAMMANI, J.C.A (PP. 24-26, PARA B-E)*** wherein he stated thus;

***"Now, the fact of desertion as ground for dissolution of marriage has been stipulated by Section 15(2)(d) of the Act, which provides that: "15(2) 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: (a) ... (b)... (c)... (d) That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition." I find it necessary to point out that desertion has been defined as the separation of one spouse from the other with an intention on the part of the deserting spouse of permanently bringing cohabitation to an end without reasonable cause and without the consent of the other spouse. To constitute desertion therefore, the petitioner must plead and lead credible evidence to prove the following facts: (a) defacto or physical separation; (b) the manifest intention to remain permanently separated; (c) lack of just cause for withdrawal from cohabitation; and (d) absence of consent of the deserted spouse. A defacto or physical separation of the spouses does not necessarily mean living apart from each other. In law, there are two types of desertion to wit: simple desertion and constructive desertion. Simple desertion occurs where the deserting party abandons the matrimonial home while in constructive desertion, the spouse remains in the home but has*

*abdicated all matrimonial responsibility and has thus by his conduct expelled the other spouse. In that respect, desertion remains a matter of fact and law to be determined by the Court hearing the matter. See Mrs. Helen Nwosu v. Hon. Dr. Chima Nwosu (2011) LPELR - 465 (CA); Mrs. Helen Anioke v. Mr. Ben Anioke (2011) LPELR - 3774 (CA). In the instant case, the type of desertion complained of is a simple desertion, as the Appellant had alleged that the Respondent had left the matrimonial home since the 15th day of July, 2011 and now lives with her parents. The Respondent did not deny that fact. It therefore remains proved that the Respondent had left the matrimonial home and no longer co-habits with the Appellant and which cessation of co-habitation had been for a continuous period of more than one year immediately preceding the presentation of the petition. It is not enough for the petitioner to allege that the Respondent has ceased co-habitation or has physically left the matrimonial home. He must proceed to prove that the Respondent has evinced the necessary intention to withdraw cohabitation with him permanently. This is because, unless the guilty spouse has the intention to remain permanently separated from the other spouse,*

*desertion has not been proved. In other words, there must exist the necessary animus deserendi."*

The Petitioner alleged that the Respondent left their matrimonial home sometimes in May 2016, whilst he was at work. In his words, he said;

***"...the father didn't bother for us to settle. At around January this year, they came to pack all her property in my house".***

It can be deduced from the above that the Respondent is not willing to continue with the marriage and also having failed to rebut the evidence before this court, I am left with no other choice than to dissolve the marriage on the ground that the Respondent deserted her matrimonial home for more than one year before the presentation of this petition and also from the evidence before the court, it seem the Respondent has no desire to continue with the marriage; See section 82 (1) of the MCA and section 15(1) (2) (d) of the Act. I therefore hold that the marriage between the parties has broken down irretrievably.

Consequently, I hold that the marriage celebrated between the Petitioner Ayeni Adesoji Gold and the Respondent Ayeni-Gold,

Tina Oke at FCT Kuje Registry KAC has broken down irretrievably and I hereby pronounce a Decree Nisi dissolving the marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably in that there has been desertion by the Respondent having lived apart for a period of 3 years preceding the filing of this petition. The Order Nisi shall become absolute after a period of three months from today.

ASMAU AKANBI-YUSUF

(HON. JUDGE)

APPEARANCES:

J.A Ameh Esq. for the Petitioner

