

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/PET/189/2015

BETWEEN:

OLUSEGUN HARRISON OLAREWAJU.....PETITIONER

VS

CHINWEUME THEODORA OLAREWAJU.....RESPONDENT

JUDGMENT

This Petition was filed on 4/3/2015 by the Petitioner - Olusegun Harrison Olarewaju for the following orders;

- (a) A Decree Nisi for the dissolution of the marriage on the grounds that the Respondent has deserted the Petitioner and her matrimonial home and has been living apart for a continuous period of over four (4) years now and that the marriage has broken down irretrievably.
- (b) An order restraining the Respondent, her privies assigns agents and howsoever called from disposing off or meddling with the moveable and immovable properties of the marriage except as may be directed by this Honourable Court to wit:

- (1) No 30 Olushola Akintayo GRA Ekiti – State.
- (2) G 1, Obasanjo Estate Ado Ekiti, Ekiti – State.
- (3) No. 46 Road 6922 Abuja Model City Gwarimpa Abuja.
- (4) Iworoko Estate Ado Ekiti.
- (5) No. 2 Elemu Estate, Ado Ekiti.
- (6) Doctor’s Quarters off Iworoko Road Ado Ekiti, Ekiti – State.

(c) And the omnibus relief.

The Petitioner relies on ground of desertion by the Respondent as ground for court to dissolve the marriage as gleaned from the Petition.

The Petition was served on the Respondent by substituted means by pasting on her last known place of abode being No.1 Monu-Olarenwaju Street, Asaba Delta State vide an order of court made on 1/7/2015.

By leave of court, Respondent filed her Answer and Cross-Petition on 7/3/2016 and sought the following reliefs in Paragraph 32.

- (a) The marriage has broken down irretrievably on the following grounds.
 - i. Desertion
 - ii. Living apart
 - iii. Adultery
 - iv. The Petitioner has behaved in such a way that the Respondent/Cross Petitioner cannot be expected to live with him any further.

- (b) A declaration that the house mentioned in Paragraph 27 of the instant Answer and Cross-Petition belong to the Respondent/Cross Petitioner.
- (c) An Order directing the Petitioner to vacate and surrender possession or any claim of ownership to any of the houses mentioned in Paragraph 27 of the instant Answer and Cross-Petition belonging to the Respondent/Cross Petitioner.
- (d) An order of maintenance of the only child of the marriage by the Petitioner till his graduation at the university.
- (e) An order of Alimony involve (sic) of the Respondent/Cross Petitioner.
- (f) Damages in sum of ₦50,000,000.00 (Fifty Million Naira only) against the Petitioner.

After taking some interlocutory applications and the matter set down for hearing, Petitioner opened his case and testified as PW1 and adopted the deposition in his witness statement filed on 1/2/2021 as his oral testimony in proof of the Petition and by leave of court withdraw the witness statement filed earlier on 4/5/2015.

And also prayed the court to dissolve the marriage. In the course of his evidence the following document was tendered and received in evidence.

A certified copy of an entry of marriage evidencing marriage celebrated at Lewisham District, Marriage Registry, in the London Borough of Lewisham

on 7/11/1997, between the Petitioner and the Respondent admitted as Exhibit "A".

During Cross-examination, PW1 – Petitioner informed court that the parties have lived apart for Eleven (11) years.

There was no Re-examination of PW1.

At the close of the evidence of PW1 and after his cross-examination, it was now the turn of the Respondent/Cross-Petitioner to open her Defence, but Respondent's Counsel informed the court that the Respondent does not intend to call any evidence and rest their case on the evidence of the Petitioner. The court struck out the witness deposition of the Respondent sworn to on 19/4/2016, upon the application of Respondent's Counsel and adjourned for Judgment.

Having carefully considered the pleadings and evidence of the Petitioner, the court finds that only one (1) issue calls for determination that is;

“Whether the Petitioner has proved the ground alleged in seeking the decree of dissolution of marriage and therefore entitled to the relief sought”

First it is on record that the Respondent filed her Answer to the Petition and was in court to cross-examine the Petitioner but declined to defend the Petition, rather rest her case on the evidence of the Petitioner therefore the evidence of the Petitioner in proof of the Petition remained unchallenged and uncontroverted. The implication of this is that the evidence of the Petitioner is taken as true and correct and the court can on

it act see CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406. In Afribank (Nig) Ltd Vs Moslad Enterprise Ltd (2008) All FWLR (PT. 421) 879 @ 894 Paragraph E – F, Akaans JCA, (as he then was) had this to say;

“Where a Defendant does not produce evidence or testify or call witness in support of his Defence, slight or minimum evidence which can discharge the onus of proof would be required to ground the Plaintiff’s Claim”

I am, however, quick to add that, that minimum evidence must be credible enough to ground the Plaintiff’s relief see Zeneca Ltd Vs Jagal Pharma Ltd (2007) All FWLR (PT. 387) @ 950 Para F – G.

Again, Respondent elected not to call any evidence and rested on the evidence of the Petitioner, Respondent is therefore bound by the evidence called by the Petitioner and the case must be dealt with on the evidence as it stands. See Toriola Vs Williams (1982) 2 All NLR 188 @ 205 See also Abdullahi Vs Military Administration, Kaduna State (2003) 28 WRN 50 @ 67.

In the instant case, Petitioner relies on the facts contained in Section 15(2) (d) of the Matrimonial Causes Act which reads;

“That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition”

In proof of the ground PW1 – Petitioner told the court that cohabitation between the parties ceased in 2010 and since then the parties have lived

apart and that the Petition was instituted on 4/5/2015. The marriage produced a Male Offspring whose name is Emmanuel Olusegun Olarenwaju (27years).

He further told the court that Petitioner has settled properties with the Respondent and terms duly filed, adopted and entered as consent Judgment by the court before the unfortunate demise of his Lordship Honourable Justice Jude Okeke as evidenced by Exhibit "2" attached to the Witness Statement.

PW1 finally told the court that he wants the court to grant his prayers and dissolved the marriage as the Marriage has since broken down irretrievably the parties having lived apart for over 10 years. On what may constitute desertion the court held in the case of Nnana Vs Nnana (2006) 3 NWLR (PT. 960) 1 @ 10 that;

"Desertion within the meaning of Section 15 (2) (d) (e) (f) of the Matrimonial Causes Act must be one where any of the parties abandoned and forsaken, without justification, thus renouncing his or her responsibilities and evading its duties"

The court have also held that desertion is established, where there is clear intention on the part of one or both spouses not to return to the other and the treatment of the marriage as having come to an end. See Famubode Vs Famubode (1997) 1 CCHJ 71 cited in Family Law in Nigeria by E. I Nwogu Pg. 188.

The parties according to PW1 – Petitioner has lived apart since 2010 and this suit was filed on 4/5/2015, thus the parties have lived apart for more

than one year preceding the presentation of the Petition. This evidence remained challenged and controverted and this court finds it credible and supportive of the Petitioner's case and hold that the marriage has indeed broken down irretrievably. It is not expected to hold the Petitioner to a marriage with an absentee wife, it is best to allow the parties to go their separate ways.

From all of these and having proven to the reasonable satisfaction of the court of facts relied upon for the dissolution of the marriage, this Petition succeeds accordingly judgment is entered as follows;

The marriage celebrated at Lewisham District Marriage Registry in the London Borough of Lewisham on 7/11/1997, between Olusegun Harrison Olarewaju – the Petitioner and Chinweume Theodora Olarewaju – the Respondent has broken down irretrievably and I hereby pronounced a Decree Nisi dissolving the marriage between them.

This order shall become absolute after a period of three (3) months from the date of Judgment.

The court will not make pronouncement on the relief (b) of the Petition as same form part of the terms settled as consent Judgment as stated in the Witness Statement.

HON. JUSTICE O. C. AGBAZA
Presiding Judge
15/3/2022

APPEARANCE:

KINGSLEY NNONYE ESQ. FOR THE PETITIONER

C. M. MOLOKWU ESQ. FOR THE RESPONDENT.