

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

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: PET/041/2019

BETWEEN:

MR. TOLULOPE ADEDEJIPETITIONER

AND

MRS. WEMIMO ADEDEJI RESPONDENT

JUDGMENT

The petitioner filed this action for dissolution of marriage on the following grounds:

- a. That the marriage has broken down irretrievably in that since the marriage, the respondent had eloped to an unknown destination in the United States and behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
- b. That the respondent has constructively deserted the marriage and refused to consummate the marriage.
- c. That the petitioner and the respondent have lived apart for over two (2) years.

The petition which is dated the 5th of November, 2019 was duly served on the respondent, and in response, the

respondent filed an answer to the petitioner's petition which is dated the 23rd day of March, 2021.

The petitioner averred that he was then a bachelor was lawfully married to the respondent, who then was a spinster under the marriage Act at Abuja Municipal Area Council on the 10th of January, 2017, and a Marriage Certificate was issued.

It is averred by the petitioner that the surname of the respondent before the marriage was Adesemoye, and that the petitioner was born on the 22nd May, 1984 in Osun State, while the respondent was born on 15th October, 1985. That the petitioner is domiciled in Nigeria and works as a construction engineer with Krafor Projects Limited situated at House 2 Custom's Quarters, Old Karmo, Life Camp, Abuja and is resident at Plot 571, Zuba Garki Road, Life Camp, Abuja.

It is averred that the particulars of places of cohabitation are that in January, 2017, they got married and stayed in House 2, Custom Quarters, Old Karmo, Life Camp, Abuja for three days after which the respondent left for the United States of America and has been resident in the USA since then, and that they have never cohabited during the period of marriage beyond the three (3) days in the above mentioned immediately after the marriage, and the marriage is not blessed with any children.

It is averred that since the marriage, there has not been any proceeding in a law court between the petitioner and the respondent, and that the petitioner has not condoned or connived at any of the ground specified above and seeking this petition.

The petitioner therefore sought for the following orders:

1. A decree of the dissolution of the marriage celebrated on the 10th day of January, 2017, at

the Abuja Municipal Area Council (AMAC) Marriage Registry, Abuja on the ground stated above.

2. Any such order or other orders as the court may deem fit to make in the circumstances.

The respondent filed an answer to the petition and in it, the respondent stated that without joining issues with the petitioner, she admits paragraphs 1 – 22 of the petitioner's facts in support of the petition and states further that she has known the petitioner since 2004 as a spinster and student of Olasisi Onabanjo University, Ago Iwoye in Ogun State, and that after her education she relocated to United States of America, and she then lost contact with the petitioner, but that they were able to re-established contact sometime in 2013, and they subsequently began arrangements towards the marriage, and on the 10th January, 2017 they got married at Abuja Municipal Area Council, Abuja.

It is averred that due to her already established life pursuits and career in the United States of America, she returned to the US after the marriage, and since 2017 she continued to live in USA, and not being able to consummate the marriage with the petitioner by reason of the circumstances of distance, and by reason of the distance, she has moved on with her life.

The petitioner adopted her evidence in form of an affidavit on the 15th day of October, 2020, and also tendered the Certificate of Marriage in evidence, and in which the court admitted same and was marked as EXH. "A1".

All efforts were made to secure the attendance of the respondent before the court with a view to cross examine the petitioner failed, and on 7th of October, 2021, the

counsel to the respondent appeared before the court and indicated their unwillingness to cross-examine the petitioner.

According to the petitioner's affidavit in support of this petition, the petitioner stated that he has been resident in Nigeria all his life and has been a friend to the respondent since 2004 when he met her at Ago Iwoye and that was when he was working with a construction firm from Lagos where the student was a student resident in Ogun State.

It is stated that after their initial meeting and friendship, the respondent had relocated to America and so they lost touch but re-connected via face book in 2013 and rekindled their relationship, and they then decided to get married and has a court wedding on the 10th January, 2017 at Abuja Municipal Area Council, Area 10, Abuja.

It is stated that three days after the marriage, the respondent returned back to United States of America but maintained contact via phone and whatsapp messages for about two months, and that right from the proposal and subsequent marriage in Nigeria, the respondent never hide her displeasure about settling down or living in Nigeria.

It is stated that the agreement between them was that the respondent will file for the petitioner immediately the marriage was contended to that he could join her in the USA, and due to this arrangement, he set plans on motion to relocate to the USA after the marriage, and however, the respondent unilaterally changed her mind to file for him and never initiated the process.

It is stated that shortly after the respondent's return to the USA on the 2nd August, 2017, the respondent announced her intention to formally separate from the petitioner on the ground that they never consummated the marriage and that she had moved on with her life, and all attempts to reach out to her to give their marriage a

chance was to no avail, and that the investigation showed that the respondent was already cohabiting with another man in USA, a fact which the respondent clearly concealed.

It is stated that the respondent never showed any regard to the petitioner, and she has shown her disinterestedness in the marriage as he lived alone since 17th January, 2017.

The counsel to the petitioner filed a final written address and a sole issue was raised:

Whether the marriage between the petitioner and the respondent has broken down irretrievably to warrant the court granting a decree for dissolution of the marriage?

The counsel submitted that the law is clear on the grounds upon which a court can be invited to grant a decree of dissolution of marriage, and he cited section 15 of the Matrimonial Causes Act, and he cited the cases of **Ibrahim V. Ibrahim (2007) 1 NWLR (pt 1015) and Orere V. Orere (2017) LPELR – 42160** where he said it was held that for a petition for the dissolution of marriage to succeed the petitioner must prove one of the ingredients contained in section 15 (2) of the Matrimonial Causes Act failing which the petition will not succeed.

The counsel submitted that it is the evidence of the petitioner before this court that the respondent deserted her marriage since on 17th August, 2017 and that effort to resume cohabitation failed, and that the respondent has deserted and has continued to desert for a continuous period of at least one year immediately preceding the presentation of this petitions, and he urged the court to hold on the basis that the marriage between the parties has

broken down irretrievably and to grant the decree of dissolution of the marriage.

The counsel to the respondent also adopted his written address, and he raised this question:

Whether the respondent has satisfied the provisions of the law in matrimonial causes in admitting the facts alleged in the petitions and is not joining issues with the petitioner?

The counsel argued that the options available to a respondent in a divorce petition are clear as contained in sections 93 and 112 of the Matrimonial Causes Act, and he also cited the provisions of Order VII Rule I of the Matrimonial Causes Rules. He submitted further that the respondent in her answer admitted every material allegation of fact contained in paragraphs 1 – 22 of the petitioner's statement of fact, and he also submitted also that facts admitted need no further proof. He opined that the fact the respondent did not cross-examine the petitioner which is a tacit acceptance of the truth of the evidence of the witness, and he urged the court to grant the petitioner's prayers as there are no conflicting facts.

Let me formulate the following issue for determination, that is to say:

Whether the marriage between the petitioner and the respondent has broken down irretrievable to warrant the court to grant the relief sought?

As I have said earlier that the petitioner after given evidence on oath has not been cross-examined by the counsel to the respondent, and to my mind, the evidence has not been challenged during cross-examination, and the effect therefore is that the evidence of that witness in its entirety is accepted by the other party. See the case of

Digai V. Nungtang (2005) All FWLR (pt 840) p. 45 at 57, para. A.

The respondent in her answer to the petition virtually admitted to all the facts deposed to as the affidavit in support of the petition, and it is the position of the law that facts admitted need no further proof, see section 123 of the Evidence Act. See also the cases of **Digai V. Nunchang (supra)** and **Adebayo V. Adusei (2005) All FWLR (pt 240) p. 158 at 172, paras. D – G.**

In the circumstances, I hold the view that the petitioner has been able to prove the marriage between the petitioner and the respondent has not been consummated as the respondent deserted the marriage and it is that the two parties have lived apart for a period of more than a year, that is from the 17th January, 2017 to the time preceding the filing of this suit, that was the 5th day of November, 2019.

Thus, by the provisions of section 15 (2) paragraphs (a) (d) and (e) of the Matrimonial Causes Act, the marriage between the petitioner and the respondent has broken down irretrievably, and I am inclined to grant the relief sought.

A decree nisi for the dissolution of the marriage between the petitioner and the respondent is hereby granted accordingly.

Hon. Judge
Signed
17/3/2022

Appearances:

K. O. Ude Esq appeared for the petitioner.

E. I. Imoukhuede Esq appeared for the respondent.