

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON TUESDAY, 4<sup>TH</sup> DAY OF OCTOBER, 2022**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJ**

**SUIT NO. FCT/HC/PET/315/2021**

**BETWEEN**

**MARK SIMON KWEDSON**

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**PETITIONER**

**AND**

**OLUBUNMI O. ILEBANI KWEDSON**

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**RESPONDENT**

**JUDGMENT**

The petitioner filed his notice of petition for dissolution of marriage on 27/8/2021. On 27/1/2022, the petitioner sought and obtained the leave of the Court to amend his notice of petition; the amended notice of petition filed on 26/1/2022 was deemed as properly filed and served. In paragraph 15 of his petition, the petitioner seeks the following reliefs:

1. An order of the Court dissolving the marriage between the petitioner and respondent, the respondent having deserted the petitioner for a continuous period of more than one year and the marriage having become irretrievably broken down.

2. That the petitioner should be granted joint custody of the child of the marriage with the respondent.

In proof of the petition, petitioner testified as PW1. His evidence is that he wants the Court to dissolve his marriage with the respondent because in the marriage, there is lack of peace and the relationship was toxic. He tried his best to make peace. The respondent left his house during the COVID-19 period around April 2020 and never came back. Their marriage was on 31/10/2015. The marriage has broken down irretrievably. A certificate was issued to them; it is with the respondent. There is a child of the marriage called Shiloh Simon Mark Kwedson. He wants joint custody of the child; the proposed arrangement for the child is as stated in paragraph 14 of the amended petition.

The respondent did not cross examine the petitioner and did not give any evidence. Learned counsel for the respondent [Y. H. Jonga Esq.] informed the Court that the respondent does not intend to oppose the dissolution of the marriage and adopted the proposed arrangement for the child of the marriage as stated in paragraph 14 of the amended petition.

On 14/7/2022, Joy A. Ukado Esq. filed the petitioner's final address, which was adopted 20/9/2022. The respondent did not file her final address.

Learned counsel for the petitioner submitted that from the uncontroverted evidence of the petitioner, the act of abandonment by the respondent amounts to desertion because she left their matrimonial home in 2020 without any explanation and never returned till date. He referred to section 15[2][d] of the Matrimonial Causes Act and the case of **Tabansi v. Tabansi [2018] 18 NWLR [Pt. 1651] 2791**. He stated that since respondent did not challenge the evidence of the petitioner, the Court will accept the evidence of the petitioner as true.

In respect of the custody of the child of the marriage, learned counsel for the petitioner relied on the proposed arrangement for joint custody of the child as set out in the amended notice of petition. He referred to section 71 of the Matrimonial Causes Act; and the case of **Buwanhot v. Buwanhot [2009] 16 NWLR (Pt. 1166) 22** to support the view that the welfare of the child is the prime consideration in granting custody. He urged the Court to grant the order for joint custody as proposed in the amended notice of petition.

**Decision by the Court:**

Section 15[1] & [2][d] of the Matrimonial Causes Act provide:

- [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:*

*[d] that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.*

As rightly stated by the petitioner's counsel, since the respondent did not file an answer to the petition and did not adduce any evidence, the evidence of the petitioner is taken as true and the Court can act on it. The evidence of the petitioner is that respondent left his house in April 2020 during the COVID-19 period and never came back. To my mind, this is evidence of desertion of the petitioner by the respondent. The petitioner filed the petition on 27/8/2021.

The period from April 2020 to 27/8/2021 is more than one year. I hold that the petitioner has satisfied the Court that his marriage with the respondent has broken down irretrievably in that respondent deserted him for a continuous period of at least one year immediately preceding the presentation of the petition as provided by section 15[2][d] of the Matrimonial Causes Act. Thus, the petitioner is entitled to an order of dissolution of his marriage with the respondent as the marriage has broken down irretrievably.

In respect of relief 2 for joint custody of the child of the marriage, Shiloh Mark Simon Kwedson, the petitioner proposed arrangement for the child in his amended petition, which was adopted by the respondent, thus:

- i. The petitioner and respondent shall have joint custody of the child of the marriage.
- ii. When school is in session, the child will be with the respondent, and the petitioner can always visit and spend time with the child especially on weekends; though he has to give a 48 hours' notice of his intention to the respondent in order to enable her make the necessary arrangements.
- iii. While during vacation, the petitioner will be in custody of the child, as long as his schedules allow him.
- iv. No party is to leave with the child outside their jurisdiction of residence without the consent of the other party.
- v. The petitioner takes it upon himself to pay the sum of forty thousand Naira [N40,000.00] only, monthly to the respondent for the child's upkeep aside the school fees that he pays.

The position of the law is that in deciding which of the parties to the marriage is to have custody of the child or children of the marriage, the interest of the child or children is the paramount consideration. See the case of **Alabi v. Alabi [2007] LPELR-8203 [CA]**. I grant the order for joint custody as prayed.

**Conclusion:**

The Court grants the following orders:

1. A decree *nisi* for the dissolution of the marriage between the petitioner and the respondent celebrated at Redeemed Christian Church of God, Utako, Abuja on 31/10/2015. The decree *nisi* shall become absolute after three [3] months from today.
2. The petitioner and the respondent shall have joint custody of the child of the marriage, Shiloh Mark Simon Kwedson as follows:
  - i. When school is in session, the child will be with the respondent, and the petitioner can always visit and spend time with the child especially on weekends; though he has to give a 48 hours' notice of his intention to the respondent in order to enable her make the necessary arrangements.
  - ii. During vacation, the petitioner will be in custody of the child, as long as his schedules allow him.
  - iii. No party is to leave with the child outside his or her jurisdiction of residence without the consent of the other party.
  - iv. The petitioner takes it upon himself to pay the sum of forty thousand Naira [N40,000.00] only, monthly to the respondent for the child's upkeep aside the school fees that he pays.

The parties shall bear their costs.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Learned Counsel:*

1. Bello Esq. for the petitioner; holding the brief of J. A. Ukado Esq.
2. Y. H. Jonga Esq. for the respondent.

