

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT HIGH COURT 20 GUDU - ABUJA**  
**DELIVERED ON THURSDAY THE 20<sup>TH</sup> DAY OF APRIL 2023**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE.R. OSHO-ADEBIYI**

**SUIT NO.FCT/HC/PET/329/2019**

**BETWEEN:**

**OLUWAKEMI OLAWUMI AJIBAWO ----- PETITIONER**

**AND**

**BOLARINWA SAMSON OGUNLEYE ----- RESPONDENT**

**JUDGMENT**

The Petitioner on the 22<sup>nd</sup> of July 2019 filed this petition against the Respondent claiming for the following:

1. A DECREE of dissolution of the marriage between the Petitioner and Respondent on the ground that the marriage has broken down irretrievably on grounds of desertion for a period of more than two years; and that since the marriage, the Respondent has behaved in such a manner that the Petitioner cannot be reasonably expected to continue to live with the Respondent.
2. An order granting custody of the child of the marriage: Oluwadarasimi Ogunleye to the Petitioner.
3. AN ORDER directing the Respondent to be paying the Petitioner the sum of N30, 000. 00 (Thirty Thousand Naira) per month as Maintenance pending when the Petitioner remarries or the child attains 25 years, whichever one that happens first.
4. AN ORDER of this honourable Court directing the Respondent to stay away from the Petitioner's work place and dwelling place and more specifically, an order mandating the Respondent, his agents, privies or assigns by whatsoever name called, to cease and desist from harassing the Petitioner or any of her family members in any manner whatsoever.

Also filed along with the petition is a verifying affidavit and certificate relating to reconciliation. The Respondent was served with the petition via substituted means to wit by serving it to any resident at the Respondent family house at No. 2 Okebola Street, Omuo-Oke Ekiti State through the court special bailiff, Nigeria Postal Services (NIPOST). Petitioner opened her case on the 2/2/2023 and adopted

her witness statement on oath and testified to the facts; summarily that the Respondent and the Petitioner statutorily and lawfully got married at the Ibadan South — West Local Government Marriage Registry, Ibadan, Oyo State on the 19<sup>th</sup> day of November, 2015. That the marriage is blessed with a Child, Oluwadarasimi Ogunleye, aged 3 years. That her surname immediately before the marriage was Ajibawo. That she did not change her surname after her marriage to the Respondent. That during the period the Respondent briefly cohabited with her, he offered no support or empathy whatsoever be it financial or emotional to her and she had solely been responsible for her own care throughout the pregnancy and for her baby after delivery, till date. That a week after she delivered the child of the Marriage on May 2016, the Respondent deserted her for the first time under the pretext of going for a business trip and she had to foot his bill for the trip as the Respondent claimed that he had financial challenges. That the Respondent did not return until December, 31, 2016 and left on the 3/01/2017. That cohabitation between them ceased since 3/01/2017 and there has been no form of communication between them. That the Respondent has deserted her for a continuous period of more than two years immediately preceding the presentation of this Petition. That since this marriage, the Respondent has behaved in such a way that she cannot reasonably be expected to live with him anymore. That she has also been responsible for the child's medical expenses, feeding and general maintenance since the Respondent deserted her. That the cruel acts, conducts and unreasonable behaviors of the Respondent have caused her great shock, psychological trauma, public embarrassment and as a result of which she had sleepless nights and disillusioned. In proof, the Petitioner tendered the “Certificate of marriage No. 4768118 celebrated between the parties on 19<sup>th</sup> November, 2015” in evidence and marked was Exhibit A.

Upon conclusion of the examination in chief of the Petitioner, the Court adjourned for cross-examination and for the Respondent to open his case. The Respondent was served with all processes and hearing notices via substituted means as ordered by the court but failed to appear in court to cross examine the Petitioner and open his defence. The Respondent was served but did not file an answer to the Petition neither was the Respondent represented by a counsel. The Court on application of the Petitioner's Counsel, foreclosed the Respondent.

The Petitioner's Counsel filed the written address and raised two (2) issues for determination which are;

- (1) Whether the marriage contracted between the parties to this proceeding has broken down irretrievably.
- (2) Whether the Petitioner is entitled to the award of custody of the Child of the marriage as sought vide her Petition.

Summarily, counsel submitted that based on the evidence adduced by the Petitioner, she has shown the court that the Respondent indeed deserted her since the 3<sup>rd</sup> of January 2017. That before the Respondent finally deserted the Petitioner, he had been an absentee and occasional husband since the marriage was contracted, coming and leaving the Petitioner at will, and absconding for extended periods of time. That **Section 15(2) (d) of the Matrimonial Causes Act**, the marriage is deemed to have broken irretrievably since the Respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition. That the Petitioner in her evidence in chief, which was not controverted by the Respondent, enumerated the Respondent's behaviors which she cannot reasonably be expected to continue to live with. Citing **WILLIAMS V WILLIAMS (1966) 1 ALL NLR 36** where the Supreme Court held that the conduct of the Respondent must be of such that will likely cause or produce reasonable apprehension of danger to life, or health (body or mental) on the part of the Petitioner and urged the court to dissolve the marriage in accordance with **Sections 15 and 16 of the Matrimonial Causes Act**. Relying on **ANOLIEFO v. ANOLIEFO (2019) LPELR-47238(CA)**; **IGWEMOH v. IGWEMOH (2014) LPELR-46807(CA)** and **Sections 70 & 72 of the Matrimonial Causes Act** counsel prayed that the orders sought vide the Petition for dissolution of marriage be granted as the Petitioner has fulfilled the conditions for the grant of same.

As earlier stated the Respondent did not file an answer to the Petition neither was he represented by counsel and the law is trite that where the evidence of the Petitioner is deemed unchallenged the Court is bound to act on it. The Supreme Court in the case of **CAMEROON AIRLINES V. OTUTUIZO (2011) LPELR 82-(SC)** Per **Rhode- Vivour J.S.C** held,

*“it is well settled that where evidence given by a party in proceedings is not challenged by the adverse party*

*who had the opportunity to do so, the Court ought to act positively on the unchallenged evidence before it”*

The evidence of the Petitioner in this case is not challenged or contradicted by the Respondent. The effect therefore is that the evidence of the Petitioner will be taken as accepted or established. However, notwithstanding the above general principle, the Petitioner is still duty bound to prove her case. I find in support of this the case of **Nnamdi Azikiwe University v. Nwafor (1999) 1 NWLR (Pt.585) 116 at 140-141** where the Court of Appeal **per Salami J.C.A.** expounded the point thus:

*“The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence... the mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain whether the facts adduced before it establishes or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant...”*

Therefore, from the above point the burden of proof lies on the plaintiff or petitioner in this case to establish her case on a balance of probability by providing credible evidence to sustain her claim irrespective of the unchallenged evidence.

I have examined the evidence and read the final written address of the Petitioner’s Counsel, the issue for determination in this case is;

**“Whether the Petitioner has proved her case to be entitled to the reliefs sought”**

The fact that a marriage has broken down irretrievably is the sole ground for the presentation of a divorce petition, and the Court cannot make such findings unless one or more facts specified under **Section 15(2) of the Matrimonial Causes Act**, is or are proved. The facts as stated in **Section 15 (2) of the Matrimonial Causes Act**, that can be basis for grounds for dissolution of marriage are as follows:

- a. That the respondent has 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 a way that the petitioner cannot be reasonably 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.*

The evidence of the Petitioner in proof of those facts are succinctly stated in the earlier part of this judgment and I find these unchallenged and uncontroverted evidence of Petitioner satisfactory and are in conformity with the **Section 15 (2) (c) &(d)of Matrimonial Causes Act 2004** in establishing that since the marriage the respondent has behaved in a way that the petitioner cannot be reasonably expected to live with the respondent and that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.

The Petitioner, having discharged the burden placed on her to prove the petition by the fact that parties have lived apart for 6years, the marriage in my view has irretrievably broken down by virtue of the provisions of **Section 15(2) (c) & (d) of the Matrimonial Causes Act 2004** and I so hold, therefore the marriage celebrated between the Petitioner and the Respondent is hereby dissolved.

With respect to the reliefs on custody and maintenance of the child of the marriage sought by the Petitioner, from the provisions of **Section 71(1) of the Matrimonial Causes Act, Cap 220 Laws of the Federation of Nigeria, 1990 and Section 1 of the Child's Right Act 2003**, the Court is bound to have regard to the interest and welfare of the children as the paramount consideration in the grant of custody and maintenance of children. The Petitioner has asked for full custody of the child of the marriage as the child have been living with her from

birth till date. The Respondent having not filed any process or led evidence in challenge of the reliefs sought by the Petitioner implies he is not averse to the Court granting the reliefs. In the circumstance, I will grant full custody of the child of the marriage who is still a minor to the Petitioner.

With respect to the relief relating to the upkeep of the child, by **Section 70 (1) of the Matrimonial Causes Act Cap 220 Laws of the Federation of Nigeria, 1990**, it provides thus:

*“Subject to this Section, the court may in proceedings for an order of maintenance of a party to a marriage, or children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances”*

The welfare of a child is a serious and sensitive matter that is guaranteed under the **Child Rights Act of 2003**. What is best for the child should take precedence over all other considerations in the Court. In this case, the Petitioner has stated in her witness statement on oath and in her reliefs sought that she has been responsible for the payments of the child’s school fees, medical expenses, feeding and other expenses. In the circumstance, therefore, noting the fact that the Respondent has failed to react to this petition the prayer of the Petitioner directing the Respondent to be paying the Petitioner the sum of N30, 000. 00 (Thirty Thousand Naira) per month as Maintenance pending when the Petitioner remarries or the child attains 25 years, whichever one that happens first is hereby granted as prayed.

The Petitioner, having discharged the burden placed on her to prove the petition and the marriage so dissolved between the Petitioner and the Respondent, consequently it is hereby ordered as follows.

1. I hereby pronounce a Decree Nisi dissolving the marriage celebrated between the Petitioner, **OLUWAKEMI OLAWUMI AJIBAWO** and the Respondent **BOLARINWA SAMSON OGUNLEYE** at the Ibadan South West Local Government Marriage Registry, Ibadan, Oyo State on the 19<sup>th</sup> day of November, 2015.
2. I hereby pronounce that the decree nisi shall become absolute upon the expiration of three (3) months from the date of this order, unless sufficient cause is shown to the court why the decree nisi should not be made absolute.

3. That the Petitioner shall have custody of the Child of the marriage **Oluwadarasimi Ogunleye** until he attains the age of majority.
4. That the Respondent shall be paying the Petitioner the sum of N30, 000. 00 (Thirty Thousand Naira) per month for Maintenance pending when the Petitioner remarries or the child attains the age of majority (18years) or whichever that happens first.

**PARTIES:** Petitioner is present. Respondent is absent.

**APPEARANCE:** Aaron John appearing for the Petitioner.  
Respondent is not represented.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**JUDGE**  
**20<sup>TH</sup> APRIL, 2023**