

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA  
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO—JUDGE**

**SUIT NO: FCT/HC/PET/253/16**

**BETWEEN:**

**AMARACHUKWU NWANKPA.....PETITIONER**

**AND**

**HANNAH KABIR NWANKPA.....RESPONDENT**

**S.A. TSOKWA FOR THE PETITIONER**

**OLUFEMI M. BALOGUN FOR THE RESPONDENT**

**JUDGMENT**

By way of a Notice of Petition dated and filed on the 15<sup>th</sup> of August 2016, the Petitioner is seeking the dissolution of the marriage conducted between him and the Respondent at the Abuja Municipal Area Council Marriage Registry on the 22<sup>nd</sup> day of May 2014. The Grounds upon which this Application is premised are that: -

- 1) Since the Marriage on the 22<sup>nd</sup> day of May 2014 the longest period Petitioner and Respondent have stayed together is a period of Two (2) weeks before the Respondent abandoned the Petitioner and deserted her Matrimonial Home and Matrimonial Responsibilities.
- 2) As a result of the Desertion and Abandonment of the Petitioner since about the 5<sup>th</sup> of June 2014, the Petitioner has been denied any form of Conjugal Rights by the Respondent.
- 3) As a result of the Respondent's sudden disappearance from the Matrimonial home, the Respondent has been subjected to both Mental and

Psychological Cruelty and Torture, which has greatly affected his health and wellbeing.

4) Since their Marriage, the Respondent had continually denied and starved the Petitioner from engaging in Sexual Intercourse, as the Marriage was never consummated.

5) The Petitioner has been refused Sexual Intercourse by the Respondent all through their Marriage until the Respondent finally moved out of the Matrimonial home physically deserting the Petitioner.

Attached in support of this Petition are Three Documentary Exhibits, which are AMAC Registry Certificate, and Two FCT High Court Affidavits.

The Respondent acknowledged Service of the Petition on the 27<sup>th</sup> of January 2017 and even though she filed a Memorandum of Appearance she failed to file a Response to the Petition.

On the 15<sup>th</sup> of February 2017, the Plaintiff as the Sole Witness was sworn to on the Holy Bible. The facts supporting the Petition are that after their Wedding on the 22<sup>nd</sup> day of May 2014, he and the Respondent stayed together at No. 2 S. O. Williams Crescent Utako in Abuja, until the 5<sup>th</sup> of June when the Respondent moved out of her Matrimonial Home. Mr. Amarachukwu testified that after their wedding and before the Respondent left their Matrimonial home, there was no form of Sexual Intimacy. According to the Plaintiff, he decided to give the Respondent sometime to get over whatever the matter was but to his surprise, she never did. As a result, there was a bit of friction in the house until the 5<sup>th</sup> of June 2014 when the Respondent left the House and refused to return. All attempts made by him and family members to talk and find out the exact reason for her desertion and refusal to engage in any form of Sexual Intercourse proved Abortive.

The Longest period he has stayed with the Respondent since the Marriage was for a period of Two (2) weeks and he stated that the Respondent had denied him any form of Matrimonial/Conjugal Rights.

Based on the above facts, he has been a subject of both Mental and Psychological Cruelty and Torture, which greatly affected his Health and Wellbeing. Therefore, he is also no longer interested in the Marriage as the Respondent.

He urged the Court to grant all his relieves, dissolve the Marriage, as the Marriage has broken down irretrievably and he can no longer continue with the Marriage, more so that the Respondent has shown clearly that she is also not interested in the Marriage.

The case was adjourned for Cross-Examination and Defence, but the Respondent never Cross-Examined nor Prosecuted her Case.

As earlier noted, despite the fact that the Respondent was severally served with Notices of the pending Action at each Stage of the Proceedings, she failed to respond, leaving the averments of the Petitioner wholly unchallenged and uncontroverted.

Learned Counsel for the Petitioner's Written Address, is dated and filed on the 5<sup>th</sup> of April 2017, and in it, a Sole Issue was raised for the Court's determination, namely: -

**“Whether the Petitioner has proved her Case to be entitled to the Reliefs being sought”.**

All Arguments of Learned Counsel to the Petitioner are on the Records of the Court.

The Court, after a careful consideration of the Evidence adduced during Trial would settle the issues on the following questions: -

- 1)What is the effect of unchallenged and uncontroverted evidence before the Court after due service of the Processes on the Respondent.
- 2)Whether the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, evidencing an irretrievable breakdown of the Marriage.

On the First Issue raised on unchallenged evidence, it is trite as held in the cases of **A.G OYO STATE VS FAIR LAKES HOTELS NO. 2 (1989) 5 NWLR PT 121 AT 255; FELIX NWOYE ADIM VS NIGERIAN BOTTLING LTD & 1 OR (2010) NSCQR VOLUME 42 AT PAGE 851** that unchallenged evidence ought to be accepted by the Court as proof of the facts stated therein, and is deemed to have been admitted.

In the cases of **OSAYEMWENRE AMAYO VS OSAYENDE ERINMWINGBOVO (2006) 11 NWLR PT 992 AT 699; ADEPOJU ODUNSI VS MR. AZEEZ BAMGBALA & ORS (1995) 1 NWLR PT 374 AT 641; BROADLINE ENTERPRISES LTD VS MONTEREY MARITIME CORPORATION & ANOR (1995) NWLR PT 417 AT 1; AND ASAFA FOODS FACTORY LTD VS ALTRAINE NIG. LTD & ANOR (2002) NWLR 12 PT 781 AT 353**, where evidence given by one Party to the proceeding was not challenged, attacked, discredited nor debunked by a Party who had the opportunity to do so, and is relevant to the issues joined, it is open to the Court seized of the matter to act on it as established. In this instant case, several opportunities were provided to the Respondent to react to the pleadings as filed by the Petitioner, She even filed a Memo of Appearance through her Legal Practitioner Olufemi M. Balogun on the 22<sup>nd</sup> of October 2018 but failed to file Pleadings, or defend her case. Therefore, the Court will act on the evidence before it.

As regards the Second Issue, **Section 15 of the Matrimonial Causes Act** governs Dissolution of Marriages and specifically under **Sub-Section 2 (a) to (h)**, the Grounds upon which the Court will entertain a Petition for dissolution are set out.

In this present case, the Petitioner is relying on Grounds 2 (a), which states that the Respondent has willfully and persistently refused to consummate the Marriage; 2 (d), The Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the Petition and 2 (e) 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 finally, the fact that the Respondent does not object to a Decree being granted.

The Petitioner has stated clearly in Paragraph 9 of his Statement that before the Respondent moved out of the Matrimonial home she refused any form of Sexual Intimacy with him and she has been away from her Matrimonial home over Two Years before the Petition was filed before this Court. Further, all attempts to talk to the Respondent personally and through his family members to find out precisely why she deserted her home and refuse to engage in any form of Sexual Intercourse with him proved abortive. According to the Petitioner, the Respondent's response to all who tried to intervene was that she is not interested in the Marriage and wants to move on with her life.

In the case of **NWOSU VS HON. DR. CHIMA NWOSU (2011) LPELR-CA/OW/127/2009 PER OGUNWUMIJU J.C.A**, held that the question of desertion is a matter of fact, which the trial Court will decide on. The presentation of the unchallenged evidence before this Court in this case, satisfies the charge of desertion. The Court must still however examine whether there was any expulsive conduct, which, would constitute a just cause to desertion. **ADEREMI JCA (AS HE THEN WAS)**, in the case of **CHARLES OWOLOGBO UGBOTOR VS FLORENCE MAMUROMU UGBOTOR (2006) LPELR-CA/B/100/2004**, cited **LD. DENNING L.J. IN TIMMINS VS TIMMINS (1953) 2 AER 187 AT 191** to state thus:

“In considering whether one party has good cause for leaving the other, much depends on whether the conduct complained of is of a grave and weighty character or not. Conduct, which is a grave and weighty character, may sometimes falls short of cruelty because it lacks the element of injury to health but nevertheless it may give good cause for leaving. On the other hand, conduct, which is not of a grave and weighty character and is for that reason not cruelty, does not give good cause for leaving. The deprivation by the Respondent of the Petitioner's Conjugal Rights can be said to amount to

cruelty, especially after she refused to notify the Respondent of the cause for her refusal.

After carefully examining the totality of evidence led during trial, there was no evidence of the Provoking Conduct by the Petitioner that was shown to be grave and weighty so as to necessitate the Respondent to leave the Matrimonial Home.

From the Evidence on Record, it is clear that the Respondent has persistently and unlawfully refused to consummate the marriage, and it is also clear that she has not returned to her Matrimonial home since 2014. Therefore the Court must of necessity hold that the Respondent left on her own free volition and for no just cause and is found to have deserted the Marriage she contracted with the Petitioner.

In Conclusion, all these allegations were not disproved by contrary evidence and therefore remain founded. The Court finds that the Petitioner has satisfied that the Marriage contracted between him and the Respondent has broken down irretrievably and to this end, a Decree Order Nisi is hereby ordered for the dissolution of the Marriage contracted on the 22<sup>nd</sup> of May 2014 at the Abuja Municipality Area Council Marriage Registry. This Order Nisi will automatically become absolute in three Months' time.

**HON. JUSTICE A.A.I. BANJOKO**

**JUDGE**