

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

**BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE, FICMC**

**ON MONDAY THE 9<sup>TH</sup> DAY OF MARCH, 2020**

**SUIT NO: FCT/HC/PET/118/2018**

**BETWEEN:**

MR. NNANNA SHADRACK NWEKE.....PETITIONER

**AND**

MRS. IFEOMA ETHEL OKPALA-NWEKE.....RESPONDENT

**JUDGMENT**

By a Petition for a decree of dissolution of marriage filed on 13<sup>th</sup> February 2018, the Petitioner seeks for a decree of dissolution of marriage against the Respondent on the ground that the marriage has broken down irretrievably in that: -

- “(a). *The Respondent since the marriage had behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent; and*
- “(b). *The Respondent has willfully deserted the Petitioner without just cause or excuse.*
- “(c). *That the Petitioner and the Respondent have lived apart for a continuous period of at least one year immediately preceding the presentation of this petition.*
- “(d). *And any or such further or other orders as this Honourable Court may deem fit to make in the circumstances”.*

A Verifying Affidavit of 36-paragraph deposed to by the Petitioner was endorsed on the petition.

The Petition was filed along with a Certificate Relating to Reconciliation.

In response to the Petition, the Respondent on 13<sup>th</sup> December 2018 with leave of Court filed an Answer in which a Cross Petition was incorporated out of time. In the Cross Petition, she claims as follows against the Petitioner: -

- “(i). AN ORDER of this Honourable Court dissolving the marriage between the parties, because the Petitioner behaved in such a way that the Respondent cannot reasonably be expected to live with the petitioner.*
- (ii). AN ORDER of the Honourable Court directing the Petitioner to pay to the Respondent, the sum of three million Naira (N3, 000, 000.00) being special damages incurred by the Respondent in arranging the marriage between the parties which the Petitioner promised to refund and has till date, failed to do so.*
- (iii). AN ORDER of this Honourable Court directing the Petitioner to pay to the Respondent, the sum of Two Million Naira (N2, 000, 000.00) being special damages incurred by the Respondent in making the Petitioner’s travel arrangements to UK.*
- (iv). AN ORDER of this Honourable Court directing the Respondent to pay the sum of Five Million Naira (N5, 000, 000.00) for emotional torture, psychological breakdown and suffering caused to the Respondent by the Petitioner’s conduct.*
- (v). AN ORDER of this Honourable Court directing the Petitioner to pay to the Respondent the sum of Five Million Naira (N5, 000, 000.00) as damages for the Petitioner’s willful and unlawful act of remarrying even while he still had a valid and subsisting marriage with the Respondent.*

- (vi). *AN ORDER of this Honourable Court directing the relevant “Agency government agency” sic to prosecute the Petitioner for conducting another marriage under the Marriage Act while still under a valid and subsisting marriage under the same marriage Act with the Respondent.*
- (vii). *Such further Orders as the Court may deem fit to make in the circumstances of this case”.*

Trial commenced in the Petition on 26<sup>th</sup> September 2018 with the Petitioner testifying for himself as Pw1 by adopting his Witness Statement on Oath deposed to on 14<sup>th</sup> February 2018 as his evidence in chief.

He testified, inter alia, that he was legally married to the Respondent on 13<sup>th</sup> April 2016 at the Ikoyi Federal Marriage Registry Lagos in accordance with the Marriage Act. Days after the marriage the Respondent returned to the United Kingdom on 16<sup>th</sup> April 2016. During the course of the marriage, the Respondent was intolerant, rude, arrogant and domineering. She refused to understand, obey or follow any directive as it concerns their young marriage. This shocked him and all his plea to save the marriage failed.

The Respondent insisted that he displayed all their marriage pictures on facebook within 24 hours else, the marriage was over. He pleaded for time to do so as his business partners whom he was indebted to would descend on him for organizing such a big traditional marriage but she refused and told him that the next time he would see her in Nigeria she would be coming for divorce.

She told him to go look for dirty and poor Nigerian woman to marry as she was off and that he should never call her or any of her relations as an in-law. She continued to abuse him telling him that she married him out of pity.

All efforts he made to salvage the marriage were rebuffed by the Respondent. She asked him to go and collect the bride price he paid as dowry from her people.

He noticed that the Respondent is cantankerous and it is either her way or nothing.

She continued to make frivolous allegations against him including accusing him of being a fraudster, cheat, gold digger. She also insisted that she accepted to marry him to make him rich but he must not refuse to do what she asked him to and he must not use African man mentality for her because it is not going to work.

When he stood his ground, the Respondent insisted that he was an embarrassment to her and that he was using her friends and asking them out.

She stated that she financed their traditional wedding and called him a pauper though she was the one who took their marriage budget beyond his reach despite his protestation.

She demanded for return of all clothes and gifts she bought for him or she would fight him with her last blood. He returned them through her brother as she commanded.

She also asked him to return their wedding ring as the marriage was over. She sent many text and voice messages to his phone through whatsapp and other social media apps and they caused him emotional, psychological and mental breakdown.

Her behaviours, threats and attitudes scare and continue to scare life out of him. She has behaved in such a way that he cannot reasonably be expected to live with her as the marriage has broken down irretrievably.

He was devastated and almost lost the will to live but went to the Respondent's kinsmen in her village and they gave him a date of their general meeting to address them.

He did so and the dissolution of the traditional marriage was accepted to them.

The marriage between them was not blessed with a child. They met on social media and after marriage, they did not spend a week together as husband and wife. They have no joint property or account to share.

All he wants is a legal dissolution of the marriage so that he Respondent can live her life as she wants to.

It is in the interest of justice and safety of their lives to grant this Petition. The Respondent abandoned the marriage and deserted him since 16<sup>th</sup> April 2016. He obtained leave of FCT High Court to file this Petition.

The witness tendered the following documents in evidence: -

- (1). Certified true copy of Marriage Certificate dated 13<sup>th</sup> April 2016 – EXHIBIT A.
- (2). Original copy of enrolled order made on 14<sup>th</sup> December 2017 by Hon. Justice O. Goodluck – EXHIBIT B.

Despite the opportunities availed the Respondent and her Counsel on 31<sup>st</sup> October 2018, 13<sup>th</sup> December 2018, 12<sup>th</sup> February 2019 and 3<sup>rd</sup> June 2019, neither the Respondent nor her Counsel appeared in Court to cross examine the Petitioner who was available in Court on those days. The Respondent's right to cross examine the Petitioner was in the circumstances foreclosed and the Pw1 discharged.

The case was also scheduled for defence by the Respondent on 23<sup>rd</sup> September 2019 and 13<sup>th</sup> November 2019. She failed to appear in Court to conduct her defence. Her right in that regard was accordingly foreclosed.

The Petitioner next waived his right to a Final Written Address. The Respondent was given 21 days to file hers'. She did not file any despite the opportunity given to her. Her right in that regard was foreclosed on 22<sup>nd</sup> January 2020. Judgment was then reserved for today 9<sup>th</sup> March 2020.

I have given due consideration to the evidence of the Petitioner in support of the Petition. The cardinal issue that calls for determination is whether or not the Petitioner has made out a case to justify a grant of the relief sought in the Petition.

The Matrimonial Causes Act has made provisions in Sections 15(1) to 3 guiding dissolution of a marriage contracted under the Marriage Act. Under Section 15(1), it is provided that either party to a marriage under the Act may by a Petition to the Court seek for a decree of dissolution of the marriage upon the ground that the marriage has broken down irretrievably. Section 15(2) provides that, the Court hearing the Petition will hold that the marriage has broken down irretrievably if the Petitioner by evidence satisfies the Court of the existence of one or more of the grounds/facts set out in Section 15(2)(a) to (h). The facts/grounds include: -

- “(a). That since the marriage the Respondent has willfully and persistently 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 such a way that the Petitioner cannot reasonably be 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 have lived apart for 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). ....*
- (g). ....*
- (h). ....”*

In Section 15(3), the Act provides that: -

*“For the purpose of subsection (2)(e) and (f) of this Section the parties to a marriage shall be treated as living apart unless they are living with each other in the same household”.*

The imports of the foregoing provisions of the Matrimonial Causes Act are that either party to a marriage contracted under the Marriage Act may by a Petition approach the Court for a decree of dissolution of the marriage on the omnibus ground that the marriage has broken down irretrievably. The Court seized of the Petition will hold that the marriage has broken down irretrievably and pursuant thereto grant a decree of dissolution of it if the Petitioner satisfies it of the existence of one or more of the said grounds/facts set out in Section 15(2)(a) to (h). In other words, proof vide evidence of one of the grounds/facts may suffice for the Court to hold that the marriage has broken down irretrievably and on that bases grant a decree in dissolution of the marriage. The converse of this is that the Petitioner must establish vide evidence one or more of the said grounds/facts lest his/her Petition will fail. See: **EKEREBE V EKEREBE (1999) 3 NWLR (PT. 569) P. 514 and NANNA V NANNA (2006) 3 NWLR (PT. 966) P. 1.**

With regard to the standard of proof, Sections 82(1) and (2) of the Matrimonial Causes Act prescribe evidence in reasonable satisfaction of the Court in these words: -

*“82(1) For the purpose of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.*

*(2). Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact, or as to that other matter”.*

Construing the import of the requirement of evidence being in reasonable satisfaction of the Court, the Court of Appeal in **OMOTUNDE V OMOTUNDE (1) SMC P. 255** held thus: -

*“In my view, what is reasonably satisfaction of Court is difficult to define. There is no kind of blanket description of same either – but it must depend on the exercise of judicial powers and discretion of an*

*individual Judge. It however entails adducing all available evidence in support of an assertion before the Court”.*

In this Petition, the Petitioner seeks for a decree of dissolution of the marriage he entered into with the Respondent on 13<sup>th</sup> April 2016 at the Ikoyi Federal Mortgage Registry, Lagos on the ground that the marriage has broken down irretrievably for the reasons inter alia, that (1)The Respondent has since the marriage behaved in such a way that he cannot reasonably be expected to live with her, and (2) the Respondent willfully deserted him without just cause or excuse. By these, the Petition is predicated on the grounds provided for in Section 15(2)(c) and (d) of the Matrimonial Causes Act. As aforesaid, proof vide evidence of one of the grounds may suffice for the Court to grant the decree sought.

The Petitioner testified in support of the Petition. Very significant among his testimonies and gravamen to a grant of this Petition is his evidence that they got married at the Ikoyi Federal Marriage Registry Lagos on 13<sup>th</sup> April 2016. A few days after, specifically, on 16<sup>th</sup> April 2016 the Respondent left and returned to the United Kingdom. She requested that he displayed all their marriage pictures on the facebook within 24 hours else the marriage was over. He did not comply for the reason that his creditors would descend on him for organizing such a big traditional wedding. He pleaded for time to comply but the Respondent refused and told him that the next time he would see her in Nigeria would be for her to come for divorce. She asked him to go look for a dirty and poor Nigerian woman to marry as she was off and he should never call her or any of her relations as an in-law.

All the efforts he made to salvage the marriage was rebuffed by the Respondent who asked him to go to her relations and collect the dowry he paid on her. This he did when he met her relations subsequently. She also asked him to return their wedding ring as he was not ripe for her and that the marriage was over. She was brought to his family home in December 2016 to see how the marriage can be saved but she left on 31<sup>st</sup> December 2016. She did take sand from the ground and cursed him by saying “it will never be well for him”.

All he wants is a legal dissolution of the marriage so that the Respondent can live her life as she wants to.



As aforesaid, the Respondent filed an Answer/Cross Petition to the Petition. However, despite the numerous opportunities availed her, she did not appear in Court to lead evidence in support of the Answer/Cross Petition and opposition to the Petitioner's averments.

She also did not cross examine the Petitioner on his above testimony. The implications of the former in the eyes of the law is that her pleading (the Answer/Cross Petition) have been abandoned and liable to be discountenanced and struck out by the Court. The implication of the latter is that the Petitioner's evidence is admitted by the Respondent and unless the Court does not believe it, it is under a duty to accept and act on it being unchallenged and uncontroverted evidence. See: **NANNA V NANNA supra and HAYES V HAYES 1 SMC P. 207.**

I have given due consideration to the said testimony of the Petitioner. The Respondent has not put any piece of evidence in the other side of the scale of balance despite the opportunities she had. By this, there is nothing against which the Petitioner's evidence can be weighed or compared with. In the circumstances, the evidence stands unassailed and undenied. The Court has no option than to accept it and shall accordingly act on them.

It is the Petitioner's undenied evidence that the Respondent left and returned to the United Kingdom days after the wedding ie on 16<sup>th</sup> April 2016. She was brought home in December 2016 for the parties to see how the marriage can be saved but she last on 31<sup>st</sup> December 2011. There is no evidence she has returned to the matrimonial home since then. Efforts made by the Petitioner to save the marriage were rebuffed by her. She undeniably told him the marriage was over and he should go to her relations in the village and collect back the dowry he paid on her which he did.

By these undenied pieces of evidence, the Court is satisfied that since 31<sup>st</sup> December 2016 when the Respondent returned back to the United Kingdom she has not reunited with the Petitioner. This suit was filed on 13<sup>th</sup> February 2018. Arithmetically, from 31<sup>st</sup> December 2016 to 13<sup>th</sup> February 2018 is over a year. By this, the Respondent has deserted the Petitioner for over a year immediately preceding the presentation of this Petition on 13<sup>th</sup> February 2018.

The Court is also satisfied that the undenied conducts of the Petitioner since she left in December 2016 collectively demonstrate an intention and consummation of desertion of the Petitioner. Desertion is defined in ***OGHENEVEBEDE V OGHENEVEBEDE (1973) 3 UILR P. 104 and NANNA V NANNA supra*** as the separation of one spouse from the other with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. There are four elements which must be present, they are: -

- (i). The defacto separation of the parties.
- (ii). Animus deserendi, that is the intention to withdraw from cohabitation permanently.
- (iii). Lack of just cause for withdrawal from cohabitation, and
- (iv). Absence of the consent of the deserted spouse.

In this case, the Respondent's conduct of physically leaving the Petitioner by returning to the UK with an aim at bringing the marriage to an end after the attempted meeting to save the marriage satisfies the requirement of defacto separation. Her undenied directive to the Petitioner to go to her relations in her village and collect the dowry he paid on her; return their wedding ring and statements to the Petitioner that the marriage was over jointly manifest an intention to withdraw from the marriage permanently. Finally, there is no evidence before the Court that the Petitioner consented to the Respondent leaving the home. If he did, he would not have gone to her relations and collected back the dowry he paid on the Respondent. Also the undenied threat that her return to Nigeria again would be for her to seek for divorce equally point to an intention to bring the marriage to an end.

By these pieces of undenied evidence of the conducts of the Respondent prior to and after 31<sup>st</sup> December 2016, the Court is reasonably satisfied that the Respondent deserted the Petitioner a year immediately preceding the presentation of the Petition. No other meaning or inference can be drawn from her said conducts. The Petitioner has in the circumstances satisfied the ground provided for in Section 15(2)(d) of the Matrimonial Causes Act. Desertion of the Petitioner has been established vide the foregoing

uncontroverted evidence. This is sufficient for this Court to hold that the marriage between the parties has broken down irretrievably. The Court therefore so hold. Accordingly, the sole issue raised above is resolved in favour of the Petitioner against the Respondent. In consequence, this Petition succeeds. It is declared that the marriage the Petitioner entered into with the Respondent on 13<sup>th</sup> April 2016 at the Ikoyi Federal Marriage Registry Lagos has broken down irretrievably for the reason that the Respondent deserted the Petitioner at least one year immediately preceding the presentation of the Petition. In consequence of this, a decree nisi is granted in dissolution of the marriage. The decree nisi shall become absolute after three months from today.

Finally, the Respondent having as earlier stated abandoned her Answer/Cross Petition by reason of her failure to lead evidence in support of them, the said Answer/Petition is struck out for having been abandoned.

The Petitioner having succeeded in this Petition shall be paid a cost assessed and fixed at N100, 000.00 by the Respondent.

**Signed**  
**Hon. Judge**  
**9/3/2020**

**LEGAL REPRESENTATIONS:**

- (1). Nicholas Udeh Esq for the Petitioner.
- (2). Stephen M. Oluebube Esq for the Respondent.