

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 24TH DAY OF NOVEMBER, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: PET/121/2019

BETWEEN:

MRS. DEBORAH ELOM ----- PETITIONER

AND

MR. CHRISTIAN ELOM ----- RESPONDENT

JUDGMENT

The Petitioner Mrs. Deborah Elom, a Public Servant filed this petition on the 6/2/2019 praying this Court for decree of dissolution of her marriage to the Respondent Mr. Christian Elom, celebrated on the 13/2/2015 at the Abuja Municipal Area Council (AMAC) Marriage Registry, on the grounds that the marriage has broken down irretrievably. The fact of the Petition is desertion pursuant to Section 15(2)(d) of the Matrimonial Causes Act.

The Notice of Petition was served on the Respondent on the 3/4/2019 by substituted means to wit: pasting same at the entrance to the family house of the Respondent at Alankel Village, Bansara Ogoja LGA Cross River State. The Respondent did not file any Answer in response to the Petition and there was no appearance entered on his behalf.

The Petitioner testified as PW1 on the 10/3/2020. Her evidence is that immediately after the marriage parties cohabited at Plot 691, Durumi, Abuja. However, in October, 2015, the Respondent left the Petitioner and returned to his base in Port Harcourt. The Petitioner visited him within that period and a quarrel ensued between the parties. The reason for the quarrel was that the Respondent wanted her to resign her employment and move in with him in Port Harcourt. The Petitioner refused because there was no prospect of her securing an immediate employment in Port Harcourt.

Parties however agreed on exchange visits between Port Harcourt and Abuja on a monthly basis pending when the Petitioner would secure a job in Port Harcourt. The last time the Petitioner visited the Respondent was in October, 2015 and since then she has not set her eyes on the Respondent as he began to evade her. All efforts to see him proved abortive as he refused to pick her calls. The Petitioner made enquiries and she was informed that the Respondent has moved out of his residence to an undisclosed location. Her persistence however paid off when she got in touch with him sometime in January, 2016 and the Respondent told her that he was no longer interested in the marriage advising the Petitioner to move on with her life. According to her, the Respondent informed both parents that he was not interested in the marriage. All efforts at reconciliation by both parties proved abortive. She tendered the marriage certificate as Exhibit A.

At the conclusion of her evidence, the Petition was adjourned for cross examination by the Respondent and defence. Despite serving the Respondent with hearing notice, he failed to cross examine PW1 and did not put up any defence. The Court therefore had no option but to foreclose his right to cross examination and defence. Lydia Izan Esq of counsel for the Petitioner then waived her right to address the Court. Learned counsel urged the Court to enter judgment for the Petitioner in line with the unchallenged evidence.

This Petition is premised on desertion. Now, the fact of desertion as ground for dissolution of marriage has been stipulated by Section 15(2)(d) of the Act, which provides that:

"15(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:

(a)

(b)

(c)

(d) That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition."

Desertion has been defined as the separation of one spouse from the other with an intention on the part of the deserting spouse of permanently bringing cohabitation to an end without reasonable cause and without the consent of the other spouse. To constitute desertion therefore, the petitioner must plead and lead credible evidence to prove the following facts:

(a) defacto or physical separation;

- (b) the manifest intention to remain permanently separated;
- (c) lack of just cause for withdrawal from cohabitation; and
- (d) absence of consent of the deserted spouse.

A defacto or physical separation of the spouses does not necessarily mean living apart from each other. In law, there are two types of desertion to wit: simple desertion and constructive desertion. Simple desertion occurs where the deserting party abandons the matrimonial home while in constructive desertion, the spouse remains in the home but has abdicated all matrimonial responsibility and has thus by his conduct expelled the other spouse. In that respect, desertion remains a matter of fact and law to be determined by the Court hearing the matter. See Mrs. Helen Nwosu v. Hon. Dr. Chima Nwosu (2011) LPELR – 465 (CA); Mrs. Helen Anioke v. Mr. Ben Anioke (2011) LPELR – 3774 (CA).

In this instant case, the type of desertion complained of is a simple desertion, as the Petitioner had alleged that the Respondent had left the matrimonial home since October, 2015 to his base in Port Harcourt. After her visit within that period, the Respondent left his base to an undisclosed location and all efforts to locate him proved abortive. The Respondent did not deny that fact. It therefore remains proved that the Respondent had left the matrimonial home and no longer co-habits with the Petitioner. Cessation of co-habitation had been for a continuous period of more than one year immediately preceding the presentation of the petition.

To prove desertion, it is not enough for the petitioner to allege that the Respondent has ceased co-habitation or has physically left the matrimonial home. She must proceed to prove that the Respondent has evinced the necessary intention to withdraw cohabitation with her permanently. This is because, unless the guilty spouse has the intention

to remain permanently separated from the other spouse, desertion has not been proved. In other words, there must exist the necessary animus deserendi. See Nwankwo vs. Nwankwo (2014) LPELR – 24396 (CA).

The Petitioner has testified that she spoke to the Respondent in January, 2016 and he informed her that he was no longer interested in the marriage and she should move on with her life. It appears the Respondent has moved on with his life. His intention is to remain permanently separated from the Petitioner without any just cause or consent of the Petitioner.

It will be in the interest of society, that divorce is not granted unless the Court is fully satisfied upon unassailable facts that its grant is the only remedy to the marriage. In other words, the jurisdiction of the Court to dissolve a marriage is one which should not be readily applied, because such jurisdiction involves the status of the parties. Accordingly, public interest demands that the marriage

bond should not be set aside without strict proof of the grounds alleged or without painstaking and strict judicial enquiry. See Oguntoyinbo vs. Oguntoyinbo (2017) LPELR – 42174 (CA).

The conditions precedent for the Court to hold in favour of the Petitioner, in proof of desertion are manifestly present in this instance. Furthermore, the testimony of the Petitioner showed that parties have lived apart since 2015 and this Petition was filed in 2019 a period of more than 3 years immediately preceding the presentation of this petition.

One of the best ways to prove the breakdown of a marriage is with the passage of time apart. For more than 3 years, parties have lived apart. This is another ground for dissolution under Section 15(2)(f) of the Matrimonial Causes Act. See Sowande vs. Sowande (1969) 1 All NLR 486 – 487.

The Petitioner having successfully satisfied this Court pursuant to Section 15(2)(d) and (f) of the Matrimonial Causes Act, I hold that the marriage has broken down irretrievably. I order that a Decree Nisi shall issue dissolving the marriage between the Petitioner and the Respondent contracted at the Abuja Municipal Area Council (AMAC) Marriage Registry on the 13/02/2015. As there are no children of the marriage, it shall become absolute upon the expiration of three months from today.

Signed

Honourable Judge

Appearances:

Lydia Izan Esq – for the Petitioner

Respondent absent and not represented