

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 16TH NOVEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: PET/374/2020

BETWEEN:

HELEN ABIMBOLA OLADELE ----- PETITIONER

AND

BANJI OLADELE ----- RESPONDENT

JUDGMENT

The Petitioner Helen Abimbola Oladele is a civil servant working with the University of Ado Ekiti, Ekiti State while the Respondent Banji Oladele is also a civil servant working with the Federal Medical Centre Ido, Ekiti State. Both parties got married on the 17/8/2013 at the Holy Family Catholic Church, GAA, Akanbi, Ilorin and were issued with a marriage certificate. After the marriage parties cohabited at Balemo Quarters, Ado town, Ekiti State. According to the Petitioner, sometime in August, 2018 the Respondent gave her ultimatum to pack

out of the matrimonial home or stay on and face the consequence. Fearing what may be the consequence, the Petitioner ran to the Respondent's family house to seek refuge but was ordered to return to the Respondent after a few days of staying in the Respondent's family house.

She said the Respondent was aggressive and angry without a cause. Due to continued violent attitude of the Respondent and to safeguard her life, she had to abandon the matrimonial home on the 22/12/2018. She said throughout the period of the marriage, the Respondent persistently refused to consummate the marriage which has denied the Petitioner the opportunity of bearing a child. She said the Respondent has the habit of hiding crucial information concerning his health, finances and travel information from the Petitioner and he has refused to seek medical help regarding the above information. One document was tendered being the certificate of marriage and marked as Exhibit A.

The facts relied upon by the Petitioner in seeking for dissolution are desertion and unreasonable behaviour pursuant to Sections 15(2)(d) and (c) of the Matrimonial Causes Act.

The Notice of Petition was duly served on the Respondent, followed by subsequent hearing notices. However, the Respondent did not file any process nor caused an appearance to be entered on his behalf. The Petitioner testified as PW1 on the 22/9/2021 and the case was adjourned for cross examination of the witness and defence. On that date (2/11/2021) the Respondent chose not to be in Court and was not represented. Upon the application of counsel for the Petitioner, the Respondent was foreclosed from cross examination. And as there was no defence on record, **Patricia Ukaegbu Esq** waived his right to address the Court and the Petition was adjourned for judgment.

By Section 15(2)(d) of the Matrimonial Causes Act, 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 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.”

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 spouse 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. See Nwosu vs. Nwosu (2011) LPELR - 465 (CA), Anioke vs. Anioke (2011) LPELR - 3774 (CA).

In the instant case the type of desertion complained of appears to be constructive desertion. The testimony of the Petitioner is that the Respondent gave her ultimatum to leave the matrimonial home or face the consequence.

She had to seek refuge in the Respondent's family home. Due to continued violent attitude of the Respondent she had to abandon the matrimonial home on the 22/12/2018. The Respondent did not make any effort to get her to return to the matrimonial home and he has refused all efforts at reconciliation.

It is not enough for the Petitioner to allege that the Respondent has ceased cohabitation or has physically left the matrimonial home. The Petitioner must proceed to prove that the Respondent has evinced the necessary intention to withdraw cohabitation 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 0 24396 (CA).

The evidence herein revealed that the parties have been separated since the 22/12/2018. The Respondent has not provided any reason why he asked the Petitioner

to leave the matrimonial home. And even after she left, he did not make any effort at reconciliation. The evidence of the Petitioner before this Court remained unchallenged and uncontroverted and it is capable of belief. The desertion by the Respondent lasted for a continuous period of at least one year immediately preceding the presentation of this petition on the 27/7/2020. The Respondent having not led any evidence has not shown the conduct of the Petitioner which made him to desert the matrimonial home/state of affairs. I hold the Respondent guilty of constructive desertion having not shown any mitigating element for his action. See Ugbotor vs. Ugbotor (2006) LPELR – 7612 (CA).

Accordingly, the Petition succeeds pursuant to Section 15(2)(d) of the Matrimonial Causes Act. I order that a Decree Nisi shall issue, and as there are no children of the marriage, it shall become absolute upon the expiration of three months from today.

Hon. Justice M.A. Nasir

Appearances:

Charity C. Ibezim Esq with her Patricia Ikpegbu Esq and
Ahmed Abdullahi Esq – for the Petitioner

Respondent absent and not represented