

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 24<sup>TH</sup> DAY OF JUNE, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/PET/181/2021

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

CHINEDU NATHANIEL OLEKAH ..... PETITIONER

AND

CHIDERA SABINA OLEKAH ..... RESPONDENT

**J U D G M E N T**

The Petitioner's prayers before this Court vide his Notice of Petition is the Dissolution of the marriage between him

and the Respondent held on the 16<sup>th</sup> day of October 2015  
at AMAC Marriage Registry on the grounds:

(1) That the Respondent deserted the Petitioner for a  
continuous period of at least one (1) year preceding  
the presentation of the Petition.

(2) That since the marriage, the Respondent has  
behaved in such a way that the Petitioner could not  
reasonably be expected to live with the Respondent.

The Petition and all other processes were served on the  
Respondent. The Respondent filed an Answer and a  
Cross-Petition dated 7/03/2022.

The Petitioner gave evidence for himself. He is Chinedu Olekah. He resides at No. 17, Excel Estate, Apo Dutse. He is a banker. He adopts his Written Statement on Oath as his oral testimony.

He stated that he married the Respondent on the 16/10/2015. That they cohabited at 7 Antananarivo Street, Wuse Zone 2, Abuja and then at 17 Excel Estate, Apo Dutse, Abuja. That presently both parties reside differently.

That the marriage did not produce any child. That the Respondent deserted him for a period not less than one year prior to the presentation of this Petition.

That since the marriage, the Respondent has behaved in such a way that he cannot reasonably be expected to live with her.

That the Respondent cut off all communications with him while exiting all family platforms.

That cohabiting as husband and wife with the Respondent was like a cat and mouse. That it began taking a toll on his health and wellbeing.

That he receives insults and provocation from the Respondent anytime they were together at the slightest spark.

That the Respondent came back to Abuja, collected her personal effects including her two cars in January 2020. She immediately blocked her mobile phone contacts and left the WhatsApp group platform of the Olekah Family and he has since not seen her.

That his bond with his wife has progressively widened and he will not be willing to put his health in jeopardy.

The Marriage Certificate is Exhibit A.  
He finally urges the Court to grant the divorce.

The above is the case of the Petitioner.

The Respondent gave evidence for herself. She is Chidera Olekah Sabina. She lives at Maya S. Hill Estate, Guzape.

She made a Witness Statement on Oath on 8/03/2022.

She adopts same as her oral evidence. She also wants the marriage to be dissolved so that both parties can move on with their lives.

She stated that had been a faithful, obedient and respectful wife. That the Petitioner deserted her when on 3/01/2020 he sent a message to her, copying her father demanding that she stayed back at Enugu where she travelled to and not to return to the matrimonial home at Excel Estate, Gudu.

That on 10/1/2020, the Petitioner without any justifiable cause changed the locks of the matrimonial home and locked her out.

That he keeps malice with her for months, when there is misunderstanding. That the Petitioner treats her in an inhuman and unfriendly ways.

That the Petitioner had locked her out of the matrimonial home overnight, over a slight misunderstanding of where to boil corn whether with charcoal or gas.

That sometime in 2019, she travelled to the East and mistakenly left her car light on. The Petitioner saw the light and failed to put it off for 7 days despite the fact that the keys of the car were in the house.

The marriage could not produce any issue. They tried IVF twice but it did not work. That the Petitioner's family mounted pressure on her which eventually led to the Petitioner deserting her.

That the marriage between the Petitioner and the Respondent has broken down irretrievably.

I have carefully read the evidence adopted as summarised above. I have also considered the Written Addresses of Counsel.

The issue for determination on both Addresses is: *Whether or not the marriage has broken down irretrievably by*

*reason of desertion by either party or that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.*

Either party alleges that the marriage was deserted by the opposite party. The evidence of the Petitioner is that the Respondent deserted the matrimonial home in January 2020.

The Respondent on the other hand said she was locked out of her matrimonial home by the Petitioner who changed the locks of the home in her absence. That she was lured to the East with a view of deserting her.

That she had to collect her properties that were already packed and deposited inside her two cars parked outside the matrimonial home.

By virtue of Section 15 (2) of the Matrimonial Causes Act, 1970, the Court upon hearing a Petitioner for 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) That the Respondent has wilfully 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.

A Court is bound to hold that a marriage has broken down irretrievably if it is established that the Respondent has deserted the Petitioner for a continuous period of one year.

The evidence of both parties is that desertion occurred in January 2020. This Petition was filed on 18/06/2021.

I have perused and examined the evidence of both parties.

I am convinced that it is the Petitioner/Respondent that deserted the matrimonial home constructively.

She was pressured to leave her matrimonial home to visit the East for the purpose of finding solution to her childlessness. The Petitioner locked her out when she eventually returned.

Her properties were removed from the matrimonial home and dumped in her two cars. The law recognises two types of desertion namely: (a) simple desertion and (b) constructive desertion.

In constructive desertion such as in this case, it is the spouse who remains at home who is in desertion, for he has by his conduct expelled the other spouse.

The Petitioner/Respondent could not by evidence prove that the Respondent/Cross-Petitioner deserted the matrimonial home.

It is therefore my view and I so hold that the Petitioner/Cross-Respondent deserted the matrimonial home for about a year and five months.

I have also looked through the other ground relied upon by the Petitioner, which is Section 15 (2) (c) of the Matrimonial Causes Act.

From the evidence before me, has the Petitioner/Respondent been able to show that since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her?

The test of intolerable behaviour is always objective in the sense that it is not sufficient for the Petitioner to allege that he cannot live with the Respondent because of her behaviour. The behaviour must be such that a reasonable man cannot endure.

In considering what is reasonable, the Court must consider in totality the matrimonial history of the parties.

Allowance must be made for the ordinary wear and tear of the marriage and it is not every incident that happened in a matrimonial home as in this case, that may make a woman return to her father's house and come to the conclusion that the wife, the Respondent/ Cross-Petitioner cannot reasonably be expected to live with her husband.

The evidence of the Petitioner is common, everyday misunderstanding and quarrels which the Petitioner is expected to cope with.

See IBRAHIM vs. IBRAHIM (2007) 1 NWLR (PT. 1015) 383

NNANNA vs. NNANNA (2006) 3 NWLR (PT. 966) 1.

The law is that the conduct of a Respondent that a Petitioner will not be reasonably expected to put up with,

must be grave and weighty in nature as to make further cohabitation virtually impossible.

No such matrimonial history was placed before the Court by the Petitioner/Respondent. His evidence in this regard is wishy-washy and unconvincing.

Section 15 (2) (c) of the Matrimonial Causes Act was not proved by the Petitioner.

However, both parties have lived apart for a continuous period of at least one year immediately preceding the presentation of the Petition.

In the circumstance, it is my view and I so hold that the marriage between the Petitioner and the Respondent has broken down irretrievably.

Consequently, the marriage between CHINEDU NATHANIEL OLEKAH and CHIDERA SABINA OLEKAH is hereby dissolved by an Order of a Decree Nisi.

The Order shall become absolute after three (3) months.

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HON. JUSTICE U. P. KEKEMEKE, ACIArb (UK), FICMC

(HON. JUDGE)

24/06/2024

Parties absent.

No legal representation.

**COURT:** Judgment delivered.

(Signed)

**HON. JUDGE**

24/06/2024