

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 4TH DAY OF MARCH, 2024

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

SUIT NO. FCT/HC/PET/291/2021

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

MR. DOU-EBI AYABA PETITIONER

AND

MRS. ERUCHI AYABA RESPONDENT

J U D G M E N T

The Petitioner's Notice of Petition dated 10/08/2021
against the Respondent is for:

A Decree of Dissolution of Marriage on the ground that the marriage has broken down irretrievably.

The Respondent was served with the Petition and all other accompanying processes on the 31st day of May 2022 by an Order of substituted service. The Respondent failed to respond.

The Petitioner opened his case on the 16/02/2023. He remembered deposing to a Witness Statement on Oath in this Court on the 7/02/2023. He adopted same as his oral testimony.

In the said Witness Statement on Oath, he deposed that he lawfully married the Respondent at the Marriage Registry, Port Harcourt, River State on 13/03/2010.

That he cohabited with the Respondent at Flat A8, Lake View Estate, Phase 2, Kado District, FCT, Abuja for the period of the marriage between 13th March 2010 to 3rd March 2018.

That cohabitation ceased on 3/03/2018 when the Respondent deserted the matrimonial home without his knowledge.

That the marriage produced no children. That the Respondent without any justification deserted him on 3rd March 2018.

He did not consent to the desertion. That he has not exercised his conjugal rights since 3/03/2018.

That he made several attempts at reconciliation but to no avail.

That he has lived apart with the Respondent for a continuous period of three (3) years immediately preceding the presentation of the Petition.

That he informed his father in-law about the desertion of his daughter and his reply was to ask when he will come to pick up his bride price.

That the Respondent's father returned the traditional bride price via DHL Courier Service with Waybill No. 2738160994.

That notwithstanding the above, he made several calls to the Respondent's mother, Mrs. Boma Emeji to mediate but she did not respond to calls.

He also contacted his brother in-law being the elder brother of his wife but to no avail. He made attempts to reach his sister in-law, Mrs. Enefaru but his attempts were rebuffed.

He also sought help from the family Church but the Pastor informed him that the Respondent's family has directed her not to have any conversation with him. All efforts at reconciliation failed.

The Petitioner went ahead to give evidence of the character of the Respondent.

That she developed the habit of stealing from him. That she is an habitual liar. That she abandoned her responsibilities as a housewife.

That the Respondent no longer listens to him. That he is no more safe in her company.

The Respondent leaves the matrimonial home at every slightest opportunity. In 2017 alone, she left about three times.

He can no longer put up with her attitude. The marriage has become a source of misery, hurt and psychological torture on him.

He has not connived or colluded in a strange and intolerable manner.

The witness tendered the Certificate of Marriage as Exhibit A.

The letter and the returned bride price of N1,000 are Exhibits B & B1.

The letter of Respondent's Solicitor seeking for amicable dissolution of marriage is Exhibit C. His Solicitor's response is Exhibit D.

The Respondent failed to cross-examine the Petitioner (PW1) and or enter her defence.

The Petitioner's Counsel adopted his Final Written Address dated and filed on the 26/05/2023.

I have read and considered the issue for determination as same could be gleaned from the Petitioner's Final Written Argument, which is:

Whether from the testimony of the Petitioner and Exhibits tendered in Court, the marriage between the Petitioner and the Respondent has broken down irretrievably.

By virtue of Section 15 (2) of the Matrimonial Causes Act, 1970, a Court upon hearing a Petition such as this 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:

- (1) That the Respondent has wilfully and persistently refused to consummate the marriage.

- (2) That since the marriage, the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.
- (3) That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- (4) That the Respondent has deserted the Petitioner for a continuous period of at least one (1) year preceding the presentation of the Petition.
- (5) That parties have lived apart for a continuous period of at least two (2) years immediately preceding the presentation of the Petition, etc.

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

HARIMAN vs. HARIMAN (1989) 5 NWLR (PT. 119) 6.

The only evidence available to the Court is that of the Petitioner.

The marriage was contracted on 13/03/2010. The Respondent deserted the matrimonial home on 3/03/2018. This Petition for dissolution of marriage was filed on 10/08/2021 more than 2 years.

That Respondent deserted the matrimonial home without his knowledge. That all efforts to bring her back proved abortive.

That his father in-law returned the bride price back to him through DHL. Exhibits B & B1 is the letter posted vide DHL and the bride price.

Desertion is the withdrawal from cohabitation without the consent of the other spouse and with the intention of remaining separated for ever. It is voluntary withdrawal by a married person from the obligation of marital life without any just cause.

From the evidence before me, the Petitioner has proved:

(1) Physical separation

(2) Intention to remain permanently separated (3) Absence of consent by the Petitioner, and (4) Absence of justification.

In the circumstance of this case, it is my view and I so hold that desertion has been proved.

The Petitioner has also adduced evidence of the attitude, behaviour and character of the Respondent to show that she has behaved in such a way that the he cannot reasonably be expected to live with the Respondent.

It is inconsistent with all the efforts he said he made to ensure that the Respondent comes back to the matrimonial home.

The test of intolerable behaviour is always objective in the sense that it is not sufficient for the Petitioner to allege that she cannot live with the Respondent because of his

behaviour. The behaviour must be such that a reasonable man cannot endure.

The Petitioner endured the Respondent and made all frantic efforts to have her back. The ground of intolerable behaviour therefore fails.

The law is that proof of one of the grounds contained in Section 15 (2) of the Matrimonial Causes Act is a conclusive proof of irretrievable breakdown of the marriage.

The Petitioner has proved desertion, i.e. Section 15 (2) (d) of the Matrimonial Causes Act, 1970.

Consequently the marriage between the Petitioner, Mr. Dou-Ebi Ayafa and Respondent, Mrs. Eruchi Ayafa has broken down irretrievably.

A Decree Nisi is hereby issued dissolving the aforesaid marriage celebrated on the 13/03/2010.

The Decree Nisi herein made shall become absolute after three (3) months.

The bride price, Exhibit C1 shall be returned to the Petitioner.

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

04/03/2024

Parties absent.

Jude Otakpor, Esq. for the Petitioner.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

04/03/2024