

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
15TH DAY OF NOVEMBER, 2022

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

SUIT NO. FCT/HC/PET/215/2020

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

EMEKA OKOWU EMEA PETITIONER

AND

HELEN CHUKWUEMEKA

RESPONDENT

JUDGMENT

By a Petition dated 2nd of March 2020 against the Respondent, the Petitioner prays this Court for the following:

- (1) A Decree of dissolution of marriage between the Petitioner and the Respondent.
- (2) And for such further Order or other orders as the Court may deem fit to make in the circumstance.

The Respondent was served with the Petition on the 22nd day of June 2020 by a registered courier. The Respondent was further served with a Hearing Notice on 25th November 2020. The Respondent failed, refused and or neglected to file an Answer to the Petition.

On the 24th day of March 2021, the Petitioner opened his case and gave evidence on his behalf. He is Chukwuemeka Okowu Emea. His current address is No. 210 Dulfshill Drive, U.K. He is a consultant in the Energy Industry. He knows the Respondent.

Before he relocated, he was living at B16 Close, Citec, Mbor, Abuja. The Respondent is his wife. He married her on the 1st day of May 2010 at the Presbyterian Church, Wuse II, Abuja. They cohabited at Citec Estate, Mbor, Abuja.

After the wedding, he travelled frequently due to the nature of his job sometimes for a short period, at other times for a long period. If it is for a long period, he travelled with her.

In August 2018, she obtained permission from him to travel to Coventry to visit her uncle. That through 2010 – 2018 there was no issue to the marriage.

A week after her visit to Coventry, she said she had gotten a job in Coventry. He was happy for her but she later informed him that she does not think she will be coming back to the house. He asked her why but she was adamant. He also reached her parents but there was no positive response.

Two months thereafter, she came to the matrimonial home to collect her properties. That since August 2018 that she moved out of the matrimonial home, he had no contact with her.

She has been living her life in Coventry, U.K. That he has been denied his conjugal rights.

He identified the Marriage Certificate and it is Exhibit A. That there is also a Certificate of Marriage Blessing at the Presbyterian Church. It is Exhibit A1.

Exhibit A2 is a copy of Marriage Certificate handed out to him by the Presbyterian Church.

The Respondent failed, refused and or neglected to cross-examine the Petitioner. In the circumstance, she was foreclosed.

The Petitioner's Counsel adopted his Final Written Address dated 30/05/2022. In the said Written Address, Learned Counsel submitted two (2) issues for determination.

However, the issue germane for the determination of this suit is – **Whether from the unchallenged evidence adduced by the Petitioner, the marriage between the parties could be held to have broken down irretrievably.**

Learned Counsel argued that the Respondent left the matrimonial home since 2018 till date. That she is not objecting to the reliefs sought as she failed to file any Answer.

That the Petitioner has proved Section 15 (2) (d) of the Matrimonial Causes Act.

Learned Counsel also made allusion to Section 82 (1) of the Matrimonial Causes Act. That the evidence of the Petitioner is unchallenged. That the Court is entitled to believe the Petitioner's evidence.

That the marriage between the Petitioner and the Respondent has broken down irretrievably. He urges the Court to dissolve the said marriage.

The crux of the Petitioner's case is that the Respondent deserted him since 2018 when she packed out of the matrimonial home in 2018 to reside in Coventry, United Kingdom.

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

The ingredients to establish desertion are well settled. They are:

- (1) Physical separation.
- (2) Intention to remain permanently separated.
- (3) Absence of the spouse's consent.
- (4) Absence of justification.

See **NULLEY vs. NULLEY (1970) 1 ALL ER 450.**
DUNN vs. DUNN (1948) ALL ER 822.

From the only evidence available, the Respondent packed out of the matrimonial home since 2018. She told the Petitioner, her husband of her intention not to come back to the matrimonial home.

He said when he asked why, she remained adamant. He reached the parents but there was no positive response. She had packed out all her belongings. She has now left for about six (6) years. She was served with the processes of Court. She failed to file an answer. She also failed, refused and or neglected to give her own side of the story.

It is my humble view that the Petitioner has proved that the Respondent has the intention of remaining permanently separated.

From the evidence, the Petitioner did not consent to the Respondent's act of desertion. There was no evidence of quarrel, cruelty or other reasons which could justify the Respondent's action.

In the circumstance of this case, it is my view that the Petitioner has proved that the Respondent deserted the matrimonial home. Consequently, the marriage between the Petitioner and the Respondent has broken down irretrievably and I so hold.

The marriage between EMEKA OKOWU EMEA and HELEN AMARACHI CHUKWUEMEKA celebrated on the 1st day of May 2010 is hereby dissolved by an Order of Decree Nisi.

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

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
15/11/2022

Parties absent.

J. F. Igoche, Esq. for the Petitioner.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

15/11/2022