

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA- ABUJA**

**DATED THIS TUESDAY THE 9<sup>TH</sup> DAY OF JULY, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI**

**SUIT NO: FCT/HC/PET/190/2022**

**BETWEEN:**

**TARI-FILA GODSPOWER EKPERI.... PETITIONER/APPLICANT  
AND**

**TINA TANNEH ROBERTS .....RESPONDENT**

**JUDGEMENT**

This is a notice of petition with PT. No. PT/190/2022 dated 5<sup>th</sup> day of April, 2022 and filed the same date. The petitioner seeks the following orders:

- a. A decree of dissolution of the marriage of the petitioner to the Respondent contracted on the 30<sup>th</sup> day of August, 2008 at AMAC Marriage Registry, Abuja FCT on the ground that the Respondent has neglected, abandoned and deserted the petitioner for more than two years immediately preceding the presentation of the petition for divorce and that the petitioner could not reasonably be expected to live with the Respondent. Such further orders or order as this Honourable court may deem fit to make in the circumstance. Attached to the petition is a verifying affidavit of Tari-Fila Godpower /Ekperi of 7 paragraphs with witness statement on oath of 8 paragraphs, certificate relating to reconciliation signed by one Barr. Douglas Najime (Messrs Petitioner's counsel of Chatham Partners No. Usman Sarki Crescent, Off M.T.O. Akabo Street off Ngozi Okonjo-Iweala way Utako Abuja-FCT, and certificate of pre-Action counselling dated the 5<sup>th</sup> -04-2022**

signed by Douglas Najima and Tari-Fila Godspower and the certificate of marriage between Tari-Fila Godpower AND Tannah Tina Roberts dated the 30-08-2008. Upon the filing of the petition, the petitioner counsel filed motion No. M/189/2023 for an order granting leave to the Applicant to serve the originating and subsequent processes in this matter on the respondent outside Nigeria particularly at No. 34 Dyerville Avenue by sending same via a registered courier company or any other postal service to the Respondent at No. 34 Dyerville Avenue Johnson Rhode Island 62919 USA being the Respondent's Current Address. The motion was moved and the order sought was granted dated the 26-09-2022. Upon the grant of the said motion the matter was adjourned to 24-10-2022 for hearing. On the 24-10-2022 parties were absent G. T. Chatter appeared for the Petitioner. On this date the petitioner counsel informed the court that the Respondent has not been served owing to the fact that there was a delay in service, hence applied for a date to effect service on the Respondent. The matter was again adjourned to 30<sup>th</sup> Nov, 2022 parties were absent while one Douglas Najime appeared for the petitioner. The petitioner's counsel informed the court that they were unable to effect service on the Respondent due to the fault of the petitioner and sought for a further date to effect service on the Respondent. The matter was again adjourned to 8-2-2023 for report of service. On the 8-2-2023 parties and their counsel were all absent in court and the matter was adjourned to 30-03-2023 for report of service. On the 30-03-2023 parties were absent but the counsel to the petitioner G.T. Shatar was in court while the Respondent and his counsel were present. The petitioner's counsel informed the court that the Respondent has not been served due to the petitioner being economically not buoyant to effect service through the means of the order granted hence has a fresh motion ex parte for hearing. The motion with number, m/89/2023 dated the 30-03-2023 brought pursuant to order 7(11)(1)8, )(1)( e) and 43 of the rules of this Honourable court to set aside or vary the order for substituted service granted on the 26-September, 2022 and granting leave to the Applicant to serve the originating and subsequent processes in this matter on the Respondent by substituted means, by scanning all processes or any process and forwarding same to the Respondent vide her current WhatsApp number +1(401)481-7945 and email address troberts1278@yahoo.com . the order sought was granted and the matter adjourned to 08-05-2023 for report of service. On the 8-5-2023 parties were absent; G.t. Shatar for the petitioner was in court. On this date informed the court that the Respondent has been served and prayed the court to

deem the matter mentioned. And the court deemed the matter as properly mentioned and adjourned to 19-06-2022 for hearing. On the 19-06-2023 parties were absent one Douglas Najimit for the petitioner was in court. He informed the court that the Respondent is aware of today's date and upon that urged the court to proceed with the hearing of this matter. The prayer was granted. PW1 evidence was taken.

Summarising the evidence of PW1 thus: told the court that he is Tari-Fila GodspowerEkperi of Block 73 FCT FLAT 7 Dankam close Area 2 Garki Abuja. In his testimony informed the court that he made a witness statement on oath and a verifying affidavit this he identified same through his testimony informed the court that he made a witness statement on oath and a verifying affidavit this he identified same through his signature and his name. Having identified the said witnesses statement on oath, urged the court to accept and adopt the said witness statement on oath as it's oral evidence before the court. On this the court adopted same as the oral statement of the petitioner before this court.

In the course of his evidence, he made reference to paragraph 2 that he was married to Tina Tanneh Roberts on the 30<sup>th</sup> August, 2008 and that his marriage certificate is his evidence. This he identified same through his name and his signature on the said marriage certificate between Tari-Fila GodspowerOkperi and Tanneh Tina Roberts dated the 30-08-2008 conducted at AMAC marriage Registry & Act Abuja was admitted in evidence as exhibit A.

Upon his evidence urged this court or prayed the court to dissolve the marriage between him and the Respondent. The matter was adjourned to 9-10-2023 for cross-examination.

On the 9-10-2023 parties were present in court one P. YT. Gbendeholding the brief of Douglas Najime for the petitioner. The petitioner was present in court. On this date the petitioner counsel informed the court that neither was he present. That he was informed that the Respondent was in receipt of hearing notice in respect of today's date.

In view of the foregoing applied to the court to close the case of the petitioner and further applied for another date to address the court. Secondly applied to the court to foreclose the Respondent from cross-examination

Applied to the court to foreclose the Respondent from cross-examining PW1 and to also foreclose the Respondent from defending this suit. The two applications made by the petitioner, one for foreclosure of the right of the respondent to cross-examine the petitioner and secondly the right to defend this case, the prayers of the petitioner were all granted and the defendant foreclosed from cross-examining the PW1 and to defend this matter. And the matter was adjourned to 14-11-2023 for defence- meaning the second arm of the petitioner's application was not granted and the matter adjourned to 14-11-2023 for defence.

On the 27/5/2024 this matter was adjourned for defence. One G. I. Shaka appeared for the petitioner, while neither the Respondent nor his counsel were present in court. On this the petitioner counsel applied to this court by virtue of section 36(1) of the CFN (1990) (as amended) as the respondent has been given ample opportunity but have failed to utilize same. In view of the foregoing pray the court and crave the court to foreclose the Respondent of their right to defence.

The oral application made by the petitioner counsel for the court to foreclose the right of the Respondent to defend this case was granted and the Respondent foreclosed. Upon the foreclosure, the petitioner counsel informed the court that he will be waving his address and prayed the court for a date for judgment.

The facts relied upon by the petitioner as constituting the grounds for the dissolution of marriage are stated as follows:

- 1. That the petitioner states that before his marriage to the respondent he looked forward to having a lasting, honest loving and peaceful companionship with the Respondent and he is committed to the marriage by all standards which could not afterwards be realized.**
- 2. That the marriage between the petitioner and the Respondent was conducted in accordance with the marriage Act 2004.**
- 3. The marriage between the petitioner and the Respondent was conducted on the 30<sup>th</sup> day August, 2008 and a certificate of marriage issued by AMAC marriage Registry Abuja FCT.**
- 4. That sometime in September, 2008, the Respondent deserted home to another country (United State of America) till date.**
- 5. That he respondent has refused to return or come back to Nigeria.**

- 6. That till date the Respondent has refused the petitioner from visiting or moving to where she is currently staying and has blatantly refused to return to Nigeria/the matrimonial home that she is fed up with the marriage**
- 7. That the respondent has totally neglected, abandoned and deserted the petitioner.**
- 8. That the petitioner and the Respondent have lived apart for a continues period of at least two (2) years immediately preceding the presentation of this petition.**
- 9. That it is preferable for the petitioner and the Respondent to stay apart, the petitioner and the respondent have seen each other as being no longer capable of living together a husband and wife.**
- 10. That the petitioner continues to live at Bloc 72 Flat 9 Danchama close, Area 2 Garki-Abuja FCT while the last known address of the Respondent is at 34 Pyerville Avenue, Johnston Rhodes Island 0299 United State of America.**
- 11. That the marriage between the petitioner and the Respondent has broken down irretrievable;**

Therefore based on the grounds as stated above, seeks the decree of dissolution of the Respondent's marriage contracted on the 30<sup>th</sup> Day of August, 2008 at AMAC marriage Registry Abuja FCT, on the ground that the Respondent has neglected abandoned and deserted the petitioner for more than two years immediately preceding the presentation of the petition for divorce and that the petitioner could not reasonably be expected to live with the Respondent.

I have carefully considered the evidence adduced by the petitioner as well as the documents admitted and the certificate of marriage, which document was not challenged nor controverted while the document tendered were in support of the case of the petitioner. The Respondent though properly served with the notice of the petition by substituted means chose to do nothing, stayed away from the defence of this suit, did not enter appearance and did not file any response to the petitioner's suit in form of defence. The law is trite that where the defendant (in this case the respondent fails to enter appearance and did not file any statement of defence, every allegations of fact contained in the statement of claim (in the petition) must be taken as established even without further prayers. See Arimi V Basharon (1979) 1 FNR. 276.

In this suit, the claim is one seeking for a decree of dissolution of marriage and no more. The petitioner in this suit was required to led evidence in proof of it's claim. Infulfilment of this requirement under the matrimonial causes Act 2004, the petitioner led evidence in support of this petition which has not been contested, challenged or controverted. The law is trite that where evidence is unchallenged, or uncontroverted and manifestly credible, and reasonable, the court is at the liberty to accept it and indeed act on it.

In the course of the evidence of the PW1, he has established that the petitioner and the respondent contracted the marriage on the 30<sup>th</sup> day of August, 2008 and a certificate issued by AMAC marriage Registry Abuja FCT. It is equally in his petition that the Respondent since September, 2008 deserted home to another country (United State of America)., that the petitioner and the Respondent have lived apart for a continuous period of at least two(2) years immediately preceding the presentation of this petition and the marriage between the petitioner and the Respondent has broken down irretrievably.

From the above stated ground which has been established by the petitioner and same was not challenged and the grounds upon which the petition is sought is one of dissolution of marriage only.

This court has another chance to grant the petitioner's request as the marriage between the petitioner and the respondent has broken down irretrievably that is in accordance with he provision of section 15(1)(d)(e)(f)(g) of the MCA 2004. The section provides thus:

15(1) d that respondent has deserted the petitioner for a continues period of at least one year immediately preceding the presentation of the petition

(e) **that the parties to the marriage have lived apart for a continues period of at least one to two years immediately preceding the presentation of the petition and the respondent does not object t a decree being granted.**

f. That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition. The

other party to the marriage has been absent from the petitioner for such time and in such circumstance as to provide reasonable grounds to presuming that he or she is dead.

By the testimony of the petitioner, it is evidently clear that the petitioner and the Respondent have lived apart for more than two years and the respondent has deserted the petitioner for more than two years preceding the filing of this petition.

I Therefore hold that the petitioner has proved his case as provided for in section 15((2) (d) (e)(f) & (g) of the MCA 2004 and therefore entitled to be granted the reliefs sought.

In the final analysis and in summation I accordingly hereby make the following order.

- 1. An order of a decree Nisi dissolution of marriage celebrated on the 30<sup>th</sup> day of August, 2008 between the petitioner and the Respondent herein on the ground that the marriage his broken down irretrievably.**

This is my Judgment.

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**Hon. Justice A. Y. Shafa**

**APPEARANCE:**

1. ElemonaAmade for the Petitioner.