

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE GWGWALADA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 13 GWAGWAGLADA  
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU  
ON THIS 11<sup>TH</sup> DAY OF MARCH 2024**

**FCT/HC/PET/364/2022**

**BETWEEN**

**MRS MABEL CHETACHI LEO-----PETITIONER**

**AND**

**PASTOR GODSWILL OLIVE LEO-----RESPONDENT**

*Parties not in Court and not represented by counsel.*

**JUDGEMENT**

The Petitioner filed a Notice of Petition dated 1<sup>st</sup> July, 2022. She asserted that she got married to the respondent at Unical Chapel of Redemption Calabar Municipal Registry on 25<sup>th</sup> day of May 2013 according to the marriage Act. A copy of the marriage certificate was tendered and admitted as Exhibit A1. They cohabited at Agbor after the marriage and later relocated and cohabited at University of Calabar staff quarters, Calabar, Cross River State. The parties ceased cohabiting when sometime in July 2013, when the respondent advised the Petitioner to travel to Calabar for NYSC programme as both parties have agreed to finally settle down in Calabar, and all of a sudden the respondent refused calling the petitioner nor pick her calls. The marriage is blessed with a child Moses Chetachi Godswill – 8 years as at the time of filing this petition.

The petitioner claimed that since immediately after the marriage, the respondent have abandoned her deliberately. He had remarried and told

her that at appropriate time he would come and pick his son. They have never lived together as husband and wife for a period of four months and the respondent have refused to provide for the upkeep, wellbeing and education of the only child in custody of the petitioner.

The petitioner therefore seek the following reliefs:

- a. Dissolution of the marriage which has broken down irretrievably.
- b. Custody of the only child of the marriage.
- c. An order of the court directing the respondent to be paying **N30,000 (Thirty Thousand Naira)** monthly to the petitioner for the feeding of the only child of the marriage.
- d. An order directing the respondent to be paying the sum of **N100,000 (One Hundred Thousand Naira)** yearly for the clothing of the only child of the marriage.
- e. An order directing the respondent to be responsible for the health needs of the only child of the marriage.
- f. An order directing the respondent to be responsible for the payment of school fees and other sundry education expenses of the only child of the marriage.

The petitioner adopted her witness statement on oath on the 7<sup>th</sup> November, 2023 and the certificate of marriage admitted as Exhibit A1. The matter was adjourned for cross-examination of the petitioner by the respondent. The respondent was foreclosed from cross-examining the petitioner and later from defending after about two adjournments when it became obvious that the respondent despite service of hearing notices

was absent and failed to defend the case. The petitioner was directed to file a final written address. As stated, the respondent did not enter appearance. The court has only the evidence of the petitioner to contend with.

In the petitioner's final written address, a sole issue was formulated for determination to wit:

*Whether from the evidence before the court, the petitioner has proved her case so as to be entitled to the reliefs sought.*

In his argument counsel for the petitioner Augustine Nwosu relied on the case of **ATTORNEY GENERAL OF BAYELSA STATE V ATTORNEY GENERAL OF RIVERS STATE (2007) AFWLR (PT. 349) PG 1012 @ 1017** where the Supreme Court held that:

*"In civil matters, it is incumbent on a party who is claiming a relief against his opponent to prove what he asserts, for unless he provides good and credible evidence to discharge the burden of proof placed on him by the law, his case is bound to fail. He who asserts must prove."*

He referred to the unchallenged and uncontroverted testimony of the petitioner and Section 15(2) (c)(d) of the Matrimonial Cause Act Cap 220 of the Laws of the Federation of Nigeria which provides that grounds upon which the court can dissolve a marriage under the Act. The counsel observed that one of the grounds upon which the claim of the petitioner is based is desertion and that in order to prove desertion, the petitioner prove the following:

1. Desertion or periodical separation.
2. The manifest intention to remain permanently separated.
3. Lack of just cause for withdrawal from cohabitation.
4. Absence of consent of the deserted spouse.

He submitted rightly that the petitioner has proved that the respondent abandoned her since 2013, and even when she gave birth, the respondent never visited till date not to talk of take care of the welfare of the baby. He also submitted that the facts and evidence presented before this court show that the petitioner has met with the conditions as provided in the statute. And that where any piece of evidence has not been challenged, controverted and or contradicted in anyway, the court is duty bound to act on it. He cited the authorities of **KENT (WA) LTD V MARTECHAN IND. LTD (2003) 8 NWLR (PT. 66) PG 459** and the case of **CONSOLIDATED RESOURCE LTD V ABOTER VENTURES NIG LTD (2007) 6 NWLR (PT. 1030) PG 221**.

I agree with the submission of the Learned Counsel to the Petitioner that the Respondent was availed the opportunity to present his case but has failed to do so. The case of the Petitioner therefore remains unchallenged and unconroverted. The burden of proof is on one who asserts and where the evidence adduced by a party is not challenged or controverted, the burden of proof is discharged on minimal proof. The petitioner has proved by her unchallenged evidence that she was deserted, abandoned by the respondent. That she never enjoyed the relationship as husband and wife with the respondent. She was made to cater for herself and the child of the marriage. And more so the respondent she claimed has

remarried. There is nothing in the marriage to salvage as her marriage has broken down irretrievably the couple having lived apart for about eleven (11) years. I therefore dissolve the marriage between the Petitioner and the Respondent in the circumstance.

2. Custody of the only child of the marriage is granted to the Petitioner until he attain the age of maturity (18 years). And in the event that the Respondent wants access to the child, he must seek the leave of this court or any court of competent jurisdiction.

3. The respondent is also directed to take responsibility for the feeding of the child by paying **N30,000 (Thirty Thousand Naira)** feeding allowance monthly to the petitioner.

4. The respondent is also directed to be paying the sum of **N100,000 (One Hundred Thousand Naira)** yearly for the clothing the child of the marriage.

5. The respondent to be responsible for the payment of school fees and other sundry expenses associated with the education of the child.

6. The respondent shall also be responsible for the health needs of the child as at when the need arises.

**SIGN**

**HON. JUDGE  
11/3/2024**