

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU  
PETITION NO: FCT/HC/PET/052/2023  
DELIVERED ON THE 02/10/2025**

**BETWEEN:**

**MRS. DEBORAH SHEKWOHIGBE AKINLADE.....PETITIONER**

**AND**

**MR. TOLULOPE GABRIEL AKINLADE.....RESPONDENT**

**JUDGMENT**

The Petitioner Mrs. Deborah Shekwohigbe Akinlade whose address is opposite ECWA Church, Sauka-Kuje, Abuja petition this Hon. Court for the dissolution of marriage contracted at Kuje Area Council of Federal Capital Territory on the 29/04/2017 on the ground that the marriage has broken down irretrievably in that:

- (a) The Parties to the marriage have lived apart and have been continuously living apart since November, 2019 and till the date of presentation of the petition.*
- (b) The Petitioner has left the Respondent for a continuous period of at least four (4) years immediately preceding the presentation of the petition.*

*The said petition was duly served on the Respondent in line with law and procedure by pasting same on the door post of the*

Respondent's House, being Angwan Gede, Zone D, House No. **57**, Kuje, Abuja and same forwarded to his WhatsApp phone No. **07033790979**.

The Respondent who was served with the process of this Court, put in an appearance by his Counsel S. Tijani Esq. on the 04/11/2024. The Petitioner testified on the 04/11/2024. The Petitioner's case is that she got married to the Respondent at the Kuje Area Council Marriage Registry on the 29/04/2017. That since the marriage, the Respondent has continuously deserted and or refused to consummate the marriage for a period of four (4) years preceding time of the petition.

Petitioner avers that the Respondent has repeatedly said he is no longer interested in the marriage again. As all effort to reconcile the parties proof abortive.

The Petitioner sought for the following reliefs:

- (1) *A Decree for the dissolution of the marriage contracted between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably in that;*
  - (a) *The parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.*
  - (b) *Custody of the sole child of the marriage to be granted to the Petitioner pending when the child is of age as he has been with her since birth.*
  - (c) *To order the Respondent to pay for the school fees (inclusive of school bus, and lesson fees) for the sole child of the marriage as stated below:*
    - i. **₦50,000 x 3 = ₦150,000 for a session**

- ii. *Payment of the sum of ₦10,000 per month for Petitioner's upkeep which includes medical, feeding and clothing.*
  - iii. *Payment of the sum of ₦75,000 for house rent*
  - iv. *Repayment of the loan took for the completion of the house built of the sum of ₦180,000 having paid ₦20,000 out of ₦200,000.*
- (d) *An Order of perpetual injunction against the Respondent from insulting or carrying out any act of molestation against the Petitioner.*

PW1 tendered Marriage Certificate and Church Certificate in evidence as Exhibits **P1** and **P2** respectively.

The Respondent who was served with the petition and represented by a Counsel did not adduced any evidence in defence of the petition.

The Petitioner filed its final written address on the 05/05/2025 and formulated a sole issue for determination, to wit;

***Whether from this evidence on record, the Petitioner is entitled to the relief sought in her petition?***

Learned Counsel argued the above issue, citing relevant case laws and status in urging the Court to grant all the reliefs sought.

It is the law that where a Respondent does not adduce evidence as in the instance case, the evidence before the Court goes one way leaving the Court with no other evidence or set of facts with which to do the measuring of the scale. This is because in a situation where a Defendant leads no evidence in proof of the facts pleaded by him, such pleading is deemed abandoned and the Defendant would be left with nothing with which to present against the Plaintiff. See ***FAIR***

***LIVE PHARMACEUTICAL INDUSTRIES LTD & ANOR VS. TRUST ADJUSTER NIG. LTD (2012) LPELR 20860 (CA).***

In a situation where evidence adduced is unchallenged and or uncontradicted, minimum proof will be accepted. The bottom line is that whether the Defendant adduces or does not adduce any evidence at the trial, it remains the fundamental and primary duty cast on the Petitioner, to prove his case by credible evidence. See ***BUSARI & ANOR VS. ADEPOJU & ORS. (2015) LPELR 4170 (CA).***

In view of the foregoing, the pertinent question to be resolved is whether the marriage, subject matter of this petition has broken down irretrievably such that the petitioner is entitled to the relief sought. It is without doubt that the Matrimonial Causes Act Cap No. 7 LFN 2004, is created to ease and facilitate the dissolution of a marriage that exists only in name. A marriage that has become a mere shell, an empty shell at that. See ***OKAFOR VS. OKAFOR (1996) VOL. 5 102 at 105.***

I must state here that under and by virtue of section 15 (1) of the Matrimonial Causes Act, the sole grounds for either party to a marriage to seek dissolution of their marriage is that the marriage has broken down irretrievably and the Court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, and only if, the Petitioner satisfies the Court of one or more of the eight (8) factual situations in paragraphs (a) – (h).

It is worthy to note here that the Petitioner herein relied on the factual situation provided in section 15(2) (d) of Matrimonial

Causes Act which is to the effect that the couple have lived apart for a continuous period of at least two years immediately preceding the presentation of petition and that the Respondent does not object to a decree of dissolution being granted. The other provision of living apart is section 15(2) (f) which deals with living apart for a continuous period of at least three years immediately preceding the presentation of the petition. These two provisions of the MCA have been described as the most radical departure from the old law. They are non-fault provisions and the Court is not preoccupied with whether either party to the marriage is at fault or not. The provisions are mandatory and confer no discretion on the Court once it is shown that the parties to the marriage have live apart for the statutory period. See *ADEREMI A. AJIDAHUN VS. DAPHINE O. AJIDAHUN (2000) 4 NWLR 654 at 612*.

It is the testimony of the petitioner that parties lived apart for over four (4) years preceding the presentation of the petition. A fact admitted through the conduct of the Respondent by refusing to enter any response or testimony and through his legal representation.

Since the Matrimonial Causes Act does not confer any discretion on the Court in a circumstance such as the present, where the parties to a marriage have live apart from each other (whether rightly or wrongly) for a period of at least two (2) years immediately preceding the presentation of the petition and the Respondent does not object. The Court must without further ado enter Judgment by dissolving the marriage.

I cannot but find and hold that the marriage between the Petitioner and the Respondent has broken down irretrievably. Accordingly, I will and do hereby record a decree nisi for the dissolution of the

marriage contracted on the 29/04/2017 between the Petitioner and the Respondent herein. The decree nisi shall become absolute by operation of law upon the expiration of three (3) months from today.

Having dissolved the marriage, I shall now consider the issue of the custody of the only child. Indeed, custody of a child in marriage, connotes not only the control of the child but carries with it the concomitant implication of the preservation and adequate care of the Child's personality both physically, mentally and morally. In other words, the responsibility includes his/her needs in terms of food, shelter, clothing and the like. See *ALABI VS. ALABI (2008) ALL FWLR (PT. 418) 245 at 257 page 296 para. C.*

May I also observe that in determining the welfare of children in Matrimonial Proceedings, it is certainly not the success of the petition or cross petition but the welfare of the children that is of paramount concern to the court..

The Petitioner in her evidence stated that the only child of the marriage Othniel Irewolewa Akinlade is in her custody and that she is the one taking care of him.

Considering the age of the child, I shall grant the petitioner the custody of the child of the marriage with access (at reasonable times) granted to the Respondent.

The Respondent is hereby ordered to pay the child's school fees, books, school bus as will be assessed by the child's educational institution chosen by parties.

Other reliefs sought by the Petitioner are hereby refused and dismissed as there is not enough evidence to justify the grant of same.

**SIGNED:  
HON.JUDGE  
02/10/2025**

**APPEARANCE:**

*Mercy Ojene, Esq, for the Petitioner*