

DIV. C. 74/11 2011 C. NO. 15
IN THE HIGH COURT OF SIERRA LEONE
(FAMILY AND PROBATE DIVISION)

BETWEEN: -

BECOME ANDREW THEOPHILUS COLE -PETITIONER

AND

MELROSE ELIZABETH LEONORA COLE- RESPONDENT

D. G. Thompson Esq. for the Petitioner

JUDGMENT DELIVERED THE 11th DAY OF May 2012

The Petitioner herein **BECOME ANDREW THEOPHILUS COLE** has filed a petition dated 16th September 2011 in which he seeks the dissolution of his marriage to the Respondent **MELROSE ELIZABETH LEONORA COLE**. The parties were married on the 2nd January 1988 at the St. George's Cathedral George Street, Freetown. After the marriage they lived and cohabited at No 8, Boyle Street Freetown. There is one child of the marriage who is now an adult. The Petitioner is a retired civil servant and is now a consultant on social and essential services. The Respondent is a caterer and now lives in the United States of America. There has been no previous proceedings relating to the marriage in any court in Sierra Leone or elsewhere.

The Petitioner alleges that the Respondent has deserted him for a period exceeding three years immediately preceding the presentation of the petition.

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He gave particulars of the desertion as follows: That sometime in 2000 the Respondent asked the Petitioner's consent to visit her mother and brothers who were living in the USA. The Petitioner gave his consent for her to visit them and stay for three months. After a period of six months the Petitioner called the Respondent every week to enquire when she would return and the Respondent would tell him that she was waiting for her permanent stay in the USA to be processed. That after she remained in the USA for three years she stopped picking up his calls and would only call him when she so desired.

The Petitioner complained on several occasions to his mother in law about the Respondent's refusal to return to the matrimonial home and she would appeal to him to be patient. That the Respondent has now stayed away for over ten years. That even when their only child got married in Freetown on 2nd January 2009 when she and the Petitioner expected the Respondent to travel to Freetown to attend the wedding she failed to do so. That in March 2009 the Respondent got her sister to go to the matrimonial home and remove all the Respondent's personal belongings from there and that since then the Respondent did not call the Petitioner nor did she return to the matrimonial home.

The Respondent did not enter appearance nor file an Answer to the petition and it was therefore heard as an undefended cause.

At the hearing the Petitioner testified on his own behalf and reiterated the particulars of desertion set out in his petition.

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He alleged that the Respondent by failing to return to the matrimonial home evinced an intention to bring cohabitation with him to an end. His ground for seeking the dissolution of his marriage to the Respondent is one of desertion.

Desertion has been described as "the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage." See **Halsbury's Laws of England** 4th ed. Vol. 13 at paragraph 576.

It is my view that the Respondent's conduct in this case aptly fits the definition of desertion. The evidence is that she left the matrimonial home with the consent of the Petitioner to visit her relations in the USA but she has stayed away for over ten years even after the persistent appeals to her made by the Petitioner for her to return to the matrimonial home. She has clearly totally repudiated the obligations of her marriage to the Petitioner.

In the circumstance the Petitioner has sufficiently proved the contents of his petition and established that the Respondent is guilty of the matrimonial offence of desertion.

I therefore pronounce a decree nisi in favour of the Petitioner on the ground of the Respondent's desertion of ~~her~~ ^{him}.

SIGNED: - A. SHOWERS

A. Showers
11/5/2012

JUSTICE OF COURT OF APPEAL