

FELIX W. K. IRELAND, Plaintiff/Appellant, v. **FAMATA IRELAND**,
Defendant/Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
GRAND BASSA COUNTY.

Heard: June 6, 1983. Decided: July 7, 1983.

1. Desertion is the willful and unjustified abandonment of a spouse by the other.
2. Unlike other contractual obligations, the contract of marriage not only enjoys the blessings of the contracting parties but also those of the state. The State is always an interested third party with an implied privity of contract in all marriages sanctioned under the law of the land.
3. In order for a party to sustain an action of divorce on the ground of desertion, the party must prove that: (a) the other party has deserted the home and board for more than one year; (b) repeated efforts have been made to bring the other party back home, but without success; and (c) the desertion was wilful and without justifiable reasons.
4. A general denial is not an affirmative plea which must be pleaded with particularity.

In an action of divorce for desertion, the lower court ruled that the wife having left her home for justifiable cause, desertion could not lie as a proper ground for divorce. On appeal to the Supreme Court, the Court agreed that the ground stated by the appellant did not fully satisfy all of the conditions of the Domestic Relations Law for the successful prosecution of a divorce case. The Court noted that while the appellant had shown that the appellee had deserted her home and board for a period of more than a year, as required by the Domestic Relations Law, he had failed to show that the desertion by appellee was without justifiable reasons as contended by the appellee.

The appellee had contended that she was forced to leave the appellant's home because of his promiscuous and adulterous behaviour, as well as the continuous brutality of her by the appellant. In the absence of evidence refuting the appellee's allegation, the Court said, the jury was correct in denying the divorce and the trial court acted properly in affirming in its final judgment the verdict of the jury. The Court therefore affirmed the judgment denying the prayer for divorce.

S. Edward Carlor and Evelynna Cooper appeared for the appellant. Raymond A. Hoggard appeared for the appellee.

MR CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

This is an appeal by the plaintiff from the judgment of His Honour A. Benjamin Wardsworth, assigned circuit judge, Second Judicial Circuit Court, Grand Bassa County,

sitting in its November Term, A. D. 1977, in favour of the appellee (wife) and against the appellant (husband) in an action of divorce for desertion.

The acts complained of, as the result of which he was propelled to institute this action, were that the appellant and appellee were lawfully married on the 31st of December, A. D. 1968 in the City of Monrovia and that thereafter both lived together as husband and wife until the 7th of January, 1971, when the appellee became unmindful of her marital vows and covenants and deserted the "bed and abode", of the appellant despite his hopeless efforts to persuade her to return. This case ended, as already indicated herein, in favour of the appellee.

The appellant has appealed to this Court for a reversal of the lower court's judgment contending, inter alia, that the trial judge, misdirected himself to the issue of whether or not the appellant had adduced evidence sufficient enough to sustain the action of divorce for desertion. The sole issue, as judged from the records submitted to us for review, is whether or not the learned judge misdirected himself on the question of sufficiency of evidence? The best way to answer this question is to examine the issue from both sides of the coin.

The appellant contended in essence that despite his faithful observance of his marital vows, the appellee notwithstanding, neglected her marital vows; so much so that she decided eventually to pack her belongings and shamefully left her husband. The appellant contended further that despite repeated overtures and advances, the appellee categorically refused to look back. This desertion, appellant contended further, has progressed well beyond twelve calendar months, causing thereby irreparable damage to the appellant. The appellee, on the other hand, contended that she never deserted the appellant as such but rather that she was constructively evicted by the appellant from his house, in that three (3) months after their marriage the appellant left his home and commenced living with his concubine and that nine months later the appellant threatened to harm the appellee if she did not quit the appellant's home. The appellee contended further that prior to her leaving the appellant's home the appellant had on several occasions inflicted serious bodily harm on her as a means of forcing her out of his home. The appellee went on to say that the appellant had the sinister reputation of promiscuity involving other women in the community.

After this account, we deem it appropriate to ask ourselves this question which side should we follow? This question can only be answered by looking at the testimonies given by eye-witnesses in corroboration of the allegations of the parties. At the trial of the case, the appellant produced one witness in the person of Philip Collins who testified to the effect that he once accompanied the appellant to the appellee's new abode located behind the Monrovia College to persuade the appellee to return to her marital home but the appellee furiously rejected the idea and insulted them. The appellee, for her part, produced also one witness whose testimony was to the effect that the appellant had from time to time engaged himself in cruel and brutal acts towards the appellee and that as a result she was on some

occasions hospitalized for serious bodily injuries. The testimony deposed on behalf of the appellee also confirmed the appellant's moral turpitude as alleged by the appellee. It is plain therefore from the evidence adduced that the appellant facilitated the appellee to leave his bed and abode.

Unlike other contractual obligations, the contract of marriage not only enjoys the blessings of the contracting parties but also those of the State. The State is always an interested third party with an implied privity of contract in all marriages sanctioned under the law of the land. 24 AM. JUR. 2d., Divorce, § 10; Bryant v. Bryant, 4 LLR 328 (1935). This goes a long way to explain why marriage contracts must be taken very seriously by the parties concerned, as the foundation of any nation rests on stable family units which in turn rest on solid marriage commitments. This legal phenomenon is best explained in our Domestic Relations Law now in force. The Domestic Relations Law, Rev. Code 9:8.1(b), allows a divorce at the instance of either the husband or the wife, for solid legal grounds, one of which is desertion.

A logical analysis of section 8.1(b) of the Domestic Relations Law induces us to conclude that in order for a party to sustain an action of divorce on the ground of desertion, the party must prove that (a) the other party (spouse) has deserted and that the desertion has lasted more than one year; (b) repeated efforts have been made to bring the other party back home; and (c) the desertion was wilful and without justifiable reasons. A look at the records revealed that the desertion alleged by the plaintiff had lasted more than one year at the time of filing this case and that this fact does not appear to have been contradicted by the appellee. A look at the records further revealed that some efforts had been made by the appellant to bring back his wife, the appellee, as judged from the evidence given by one Philip Collins in favour of the appellant. The appellant would, therefore, appear to have satisfied two statutory conditions of the Domestic Relations Law. Nevertheless, it is the opinion of this Court that the appellant has not succeeded in showing to this Court that the appellee's desertion was without justifiable grounds.

We have sufficient evidence to show that the appellee's desertion was for very good reasons. The testimony deposed by the witness called by the appellee completely corroborated the evidence of the appellee as to the appellants brutal conduct. The testimony contains charges of promiscuity, adultery and brutality on the part of the appellant with all and sundry. It also included threats of violence, one being couched in the following terms:

"If any of your family gets into this house I will surely shoot them and If she does not leave his premises (meaning Mrs. Ireland), he (Mr. Ireland, the appellant) will surely brutalize her again." (Vide: Frank Kona Ware's testimony, given on Wednesday, 23' day of November, 1977).

These allegations were not rebutted by the appellant. He had on several occasions threatened his wife's life. These threats were not always in vain. The trial judge did not, therefore, misdirect himself on the question of the sufficiency of the evidence.

As observed at the outset, the issue of the sufficiency of the evidence features out as being the principal issue for the determination of this case. This principal issue takes care of counts two and three of appellant's bill of exceptions. However, we also observed that in his count one of his bill of exceptions, the appellant has charged the trial judge with reversible errors for sustaining appellee's answer which appellant contends was vague, contradictory, hypothetical and evasive in that the appellee admits deserting the appellant and yet sets up justification. Our view is that the trial judge did not commit any reversible error in sustaining appellee's answer in that the appellee's denials were simply general denials and as such amounted to a mere set off. There is no law under our statutes that requires affirmative pleadings for general denials. A general denial is not an affirmative pleading that must be pleaded with particularity. 61 AM. JUR 2d, Pleadings, §§143, 147, 169 & 172.

What the appellee tried to impress upon the mind of the court is that she was forced to leave the appellant's home and therefore such desertion not being wilful was thus justifiable. Under the controlling statute desertion is defined:

"The desertion of the plaintiff by the defendant for a period of one or more years, provided that it is alleged and proved that the plaintiff has without avail endeavored to induce the defendant to return to marital duties. Desertion means the wilful and unjustified abandonment of a spouse by the other." Domestic Relations Law, Rev. Code 9:8.1.

Appellant having failed to rebut the evidence that appellee was forced to leave his bed and abode or show that the desertion was wilful, he could not have been said to have proven desertion against the appellee.

It is therefore the considered opinion of this Court that the trial judge did not commit any reversible error in overruling the appellant's arguments in this regard. Therefore, count one, like counts two and three, of the bill of exceptions, is not sustained.

In our opinion, conduct of the kind complained of by the appellee would most likely produce upon her health the very effect which she described, and to put her in constant apprehension of physical violence. In the circumstances, we cannot see how the appellant could be entitled to a decree of dissolution of the marriage as prayed in his bill of exceptions and brief.

It is true, as evidenced from the records, that the appellant is by and large responsible for the desertion by the wife; that is a fact that has been laudably established. But it is also true that no sooner had the wife, appellee, left the appellant's bed and abode, she got herself a paramour for a husband. As a matter of fact, the records certified to us tend to disclose that

since 1971 the appellee has been staying with another man enjoying all the privileges and rights of a married woman and yet this same lady has been collecting monthly allowances from "her" husband, the appellant; and here she is resisting the divorce proceedings! It is no longer a secret that the appellant and appellee are now openly, overtly and notoriously "married" to different persons as husband and wife, respectively. The husband as usual, has to provide the daily bread for his new companion, not to mention other dependants including the appellee. The wife (appellee) is biting both ends; from the new companion and from the "old" husband, thereby making double profits out of a single loss! This is what we call in judicial parlance "unjust enrichment"! The question is, how long are courts of this country going to tolerate and condone this exploitation of man by man and for how long are our courts going to allow this one-way traffic affair to exist in our society?

The appellant has lost his case because he has failed to provide the grounds anticipated by our statutes to sustain a divorce on the ground of desertion; and our courts being courts of legal justice, as opposed to moral justice, have decided to confirm this judgment with the consequential effect that the appellant and appellee are still "husband" and "wife". Does this solve the problem between the parties in this case? Will the appellant live with the appellee? Or better still, will the appellee, who has resisted the complaint, live with the appellant? Is she able, willing and ready to resume her marital obligations with the appellant? These are burning questions that are still haunting our minds and our courts of law, particularly lower courts, must endeavor to answer them whenever petitions for divorce are filed by spouses. Otherwise, decisions such as this will but only help to widen the vicious circle.

In view of the foregoing legal reasons, the judgment of the trial court is hereby upheld. The Clerk of this Court is ordered to send a mandate to the lower court with instructions to resume jurisdiction over the case and enforce its final ruling. Costs are disallowed. And it is hereby so ordered.

Judgment affirmed.