IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 5TH DAY OF MAY, 2023 BEFORE HER HONOUR, AFIA OWUSUAA APPIAH (MRS) THE CIRCUIT COURT JUDGE.

SUIT NO: C5/343/2022

LEONELL LOVELACE LAMKAI
LAWSON HSE NO H/101/A-22
FLAMBOYANT ESTATE- ACCRA **PETITIONER**

V

HELEN ACHERE LAWSON
GA 4376-202
4TH NII ADOTE KOJO STREET
MATAHEKO HOUSE NO B 681/15 **RESPONDENT**

JUDGMENT

Petitioner herein on the 12/7/2022 instituted the instant petition against Respondent herein praying the court for the reliefs below;

1. A declaration that the marriage between the parties has broken down beyond reconciliation and should be dissolved by the Honourable Court.
2. That custody of the issue of the marriage be given to Respondent but reasonable and adequate access be granted to Petitioner.
3. That the Petitioner commits to be continually responsible by way of maintenance of the issue of the marriage.

Per the petition, parties herein on 23/3/2013 got married under customary law but subsequently converted same into an ordinance marriage marriage on the 27/3/2013 at the International Central Gospel Church, Christ Temple, Abbossey Okai. They cohabited at Noth Kaneshie and Mataheko respectively after the marriage and are blessed with one issue, Emmnauel Benjamin Odartey Lawson on September 2015. Petitioner works with First Sky Group

whilst Respondent works with the Ghana Police Church. Petitioner contends that the marriage celebrated between the parties has broken down due to the unreasonable behaviour of Respondent and stated several alleged instances of the unreasonable behaviour of Respondent in the petition.

Respondent despite being served with the Petition, affidavit of Petitioner showing no entry of appearance to the petition, application for setting down and hearing notices through substituted service on different consecutive dates per the orders of the court failed/refused to appear for the conduct of the case. It is trite learning that where a court has taken a decision without due regard to a party who was absent at a trial because he was unaware of the hearing date that decision is a nullity for lack of jurisdiction on the part of the court. See **Barclays Bank v Ghana Cable Co. [2002-03] SCGLR 1 and Vasque v Quarshie [1968] GLR 62**. However, where the party affected was sufficiently aware of the hearing date or was sufficiently offered the opportunity to appear but he refused or failed to avail himself (as evident in this case) the court was entitled to proceed and to determine the case on the basis of the evidence adduced at the trial. See In re West Coast Dyeing Ind. Ltd; Adams v Tandoh [1987-88] 2 GLR 561.

The Court accordingly proceeded to hear the case of Petitioner since Respondent after being duly served failed appear before the court to exercise the rights available to her as part of the civil practice in our Courts and the determination of the petition fixed for today.

Under the laws of Ghana, ordinance marriage may only be dissolved by a court and that also after it has been established that the marriage has broken down beyond reconciliation. (See section 1(2) of the Matrimonial Causes Act, 1971 Act 367). The failure of the Respondent to appear at trial to cross examine the Petitioner on the evidence or challenge same either in cross examination or by contrary evidence does not exonerate the Petitioner from satisfying the court that the marriage has broken down beyond reconciliation.

Section 2(1) of Act 367 requires that a petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation.
Petitioner's ground for seeking the dissolution of his marriage to Respondent is based on unreasonable behaviour.

Section 2(1)(b) of Act 367 provides that where the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent same suffice as proof of the break down of the marriage beyond reconciliation.

Hayfron-Benjamin in the case of **Mensah v Mensah [1972] 2 GLR 198** held that "In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behavior including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova's Charter. The test is objective".

It been held also in the case of **Knudsen v Knudsen [1976] 1GLR 204,** per **Amissah JA** that "the question therefore is whether the Petitioner established that the Respondent behaved in such a way that he could not reasonably be expected to live with her. Behaviour of a party, which would lead to this conclusion, would range over a wide variety of acts. It may consist of one act if of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.",
Petitioner's unchallenged evidence on oath is that, shortly after the marriage, Respondent became very reluctant to allow any sex between them and any sexual acts would only happen after days of promptings and pleas. He stated that when he was overjoyed upon Respondent getting pregnant, the latter

was surprised and unhappy about it and upon interrogations she disclosed to him that she had no intentions of having a child with him because she already had one child from her precious marriage. Petitioner testified that shortly after the birth of the child, he found out that Respondent was making arrangements to relocate outside the country with the issue without his knowledge or consent. When he confronted her, respondent told him she no longer wanted to live in Ghana and that the marriage was "done with" and that she was no longer interested in the marriage. Petitioner stated further that, Respondent continued to show him disrespect by carrying on phone conversations deep into the night in his presence and told him she was no more interested in the marriage when he complained. He contends that Respondent has through her actions and words indicated to him that she was no longer interested in the marriage and reiterated this position during a meeting convened by their families in an attempt to reconcile them. According to Petitioner subsequent to the meeting all attempts he made to have sexual relationship with respondent was refused as she insisted she had no desire to have anything to do with him. Petitioner states that he has reluctantly not had any sex since January 2018 and friendship, camaraderie w or any measure communication as married couple has halted. He contends that the matrimonial home became hostile and Respondent expressly told him to move out because she wanted separation compelled him to move out of the matrimonial home. He contends that he had engaged revered friends, family members, marriage counselors and men of God to try salvaging the marriage but Respondent insist she has no interest in the marriage anymore. Subsequently on 13/11/2019, a family meeting was convened where the customary marriage was dissolved.

The Supreme Court in the case of **FORI v. AYIREBI AND OTHER [1966] GLR 627** held "when a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact".

The unchallenged evidence of Petitioner supra cumulatively is of such gravity that it would be unreasonable to expect him to expect him to live as husband and wife with her. The court therefore finds that Respondent has behaved in an unreasonable manner expected of a spouse.

In the case of **KOTEI V KOTEI [1974] 2 GLR 172, Sarkodee J** held as follows, "The sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. But the petitioner is also obliged to comply with section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that section... "Subsection (3) contains an important provision which brings into focus the general scheme of the Act, which is to encourage reconciliation as far as may be practicable. Thus section 8 enjoins the petitioner or his counsel to inform the court of all attempts made to effect a reconciliation and gives the court power to adjourn the proceedings at any stage to enable attempts at reconciliation to be made if there is a reasonable possibility of reconciliation. It is, however, wrong, in my view, to say that proof of total breakdown of the marriage and the possibility of reconciliation should be taken "disjunctively." This, counsel for the respondent explained, meant that there is a burden to prove separately that the marriage has broken down and even when it is proved that it has broken down that there should be the further proof that it is beyond reconciliation. It is accepted that proof of one or more of the facts set out in section 2 (1) is essential and that proof of one of them shows the marriage has broken down beyond reconciliation. It is also conceded that notwithstanding proof the court can refuse to grant the decree of dissolution on the ground that the marriage has not broken down beyond reconciliation. It will be noted that the discretion given to the court is not a discretion to grant but to refuse a decree of dissolution. This means that once facts are proved bringing the case within any of the facts set out in section 2

(1) a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that

special grounds exist justifying the exercise of the court's power. Once he or she comes within any one of the provisions in section 2 (1) (e) and (f), the presumption is in his favour; proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation. Proof of five years' continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage."

Further, evidence on record establishes that several attempts to settle the difference that parties have been unsuccessful and the families on 13th November 2019 purported to dissolve the non-existing customary marriage of the parties. I must say that the act of the families of parties purporting to dissolve the customary marriage of the parties was an act in futility and void ab initio. Admitted, a customary marriage was celebrated between parties herein on 23/3/2013. However upon the celebration of the marriage under ordinance on 27/3/2013, there was a conversion of the customary marriage into an ordinance marriage. The customary marriage celebrated on 23/3/2013 seized to exist and therefore same could not be dissolved by the families of the parties in 2019. This not withstanding, the act of the families discloses to the court that the differences of the parties could not be resolved or reconciled and their marriage could not be salvaged by their families hence their steps to dissolve same. Also, parties have not lived as husband and wife since November 2019.

The court is therefore satisfied per the evidence on record that the marriage celebrated between the parties on 23/2/2010 at Principal Registrar of Marriages Office, Accra has broken down beyond reconciliation due to the unreasonable behavior of Respondent.

The court accordingly hereby decrees the said marriage celebrated between parties herein on 27/3/2013 at the International Central Gospel Church, Christ Temple, Abbossey Okai be and same dissolved today, the 5th day of May, 2023 forthwith.

CUSTODY

The court under **section 22(2) of the matrimonial causes Act may**, either on its own initiative or on application by a party to proceedings under the Act, make an order concerning a child of the household, which it thinks reasonable, and for the benefit of the child. An order under that subsection may award custody of the child to any person; regulate the right of access of any person to the child; provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage. The court must consider the best interest of the child, the age of the child, the desire to keep siblings together, the need for continuity in the care and the control of the child among others.

Petitioner prays the court grants custody of the child of the marriage to the Respondent with reasonable access to him. Respondent did not partake on the trial and her position on Petitioner's prayer for custody to be granted to her is unknown. The court therefore is unable to grant custody of the chld of the marriage to Respondent as prayed for by Petitioner. Notwithstanding, from the evidence on record, the child is under the care of Respondent. Petitioner has expressed his desire for the child to remain in the care of Respondent in his relief for custody to be granted to Respondent. To ensure continuity and stability in the upbringing of the child and in the absence of any evidence compelling a contrary determination, the child shall remain in the care of Respondent with reasonable access to Petitioner especially on weekends, holidays and vacations.

MAINTENANCE

Petitioner prays the court for him to continuously maintain the child of the marriage. However, Petitioner failed to lead any evidence whatsoever in respect of how much he currently spends on the child's maintenance monthly.

Under **section 6 of the Children's Act, 2008, Act 560**, it is the responsibility of parents of a child whether married at the time of the birth of the child or separated to provide the basic necessities of life for a child including protecting the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression, provide good guidance, care, assistance and **maintenance** (Emphasis is mine) for the child and assurance of the child's survival and development. It is therefore the responsibility of both the mother and father of the child to ensure that a child is provided with all the necessities of life. In making maintenance orders, the court is obliged to consider the financial strength and obligations of the parties. In this instant case the court is giving very scanty details on the financial strength of the parties. Petitioner identifies himself as a worker with First Sky Group and Respondent a worker at Ghana Police Church. Their descriptions and statuses at their work places are unknown to the court. Their income, assets, liability and expenditure are also unknown to the court. This notwithstanding the court is mandated under Act 560 to make orders to ensure the welfare of the child. According taking into consideration the current economical conditions of the country and in consideration of the best interest of the child, the court orders as follows:

i. Petitioner shall pay as monthly maintenance for the upkeep of a minimum sum of GHc1000 effective May 2023.
ii. Petitioner shall be fully responsible for the school fees and other educational expenses of the child of the marriage
iii. Petitioner shall enroll the child unto a health insurance scheme shall be responsible for the periodic renewal of same.
iv. Any medical expenses not covered by the health Insurance scheme to be borne equally by the parties.

There will be no order as to cost.

PETITIONER PRESENT.

RESPONDENT ABSENT.

PAULINA OFFEIBEA ANSERE WITH VERA BEDIAKO H/B OF EDWIN KUSI APPIAH FOR PETITIONER PRESENT

SGD

H/H AFIA OWUSUAA APPIAH (MRS)
CIRCUIT COURT JUDGE