

IN THE CIRCUIT COURT 3 AT ACCRA HELD ON FRIDAY THE 14<sup>TH</sup> DAY OF APRIL, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT COURT JUDGE

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SUIT NO. C5/226/2022

AKUA AFRIYIE DARKO

PETITIONER

VRS

OSEI KWADWO DARKO

RESPONDENT

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PETITIONER PRESENT AND UNREPRESENTED; RESPONDENT ABSENT

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**JUDGMENT**

The Petitioner filed this Petition on March 24, 2022. The Parties to this suit married under the Marriage Ordinance (Cap 127) on June 21, 2003 at the Principal of Marriages Office Accra. The parties have two children of the said marriage. The Petitioner is seeking the dissolution of the marriage on the grounds that the parties have for the past 4 years have not lived as husband and wife and grounds of unreasonable behaviour.

The Petitioner prayed to the Court as follows;

1. That the marriage celebrated between the parties be dissolved.

2. That the Respondent be ordered to maintain the two children of the marriage with an amount of GHC1,000.00
3. That the Respondent be ordered to pay all hospital bill in respect of the children when it becomes due.
4. That the Respondent be ordered to pay the school fees of the children when it becomes due.
5. An order directed at the respondent to pay half of the Petitioners rent.
6. An order directed at the Respondent to pay an amount of 100,000.00 as alimony to the Petitioner.
7. An order directed at the Respondent to pay Petitioner's legal fees.

The Respondent was served with the Petition by substituted service. The Respondent did not enter appearance and was also not present in court when the case was called for hearing even though the Respondent was duly notified. The Petitioner was therefore called upon to prove her claim. Petitioner filed witness statement to prove her claim.

Under **order 36 rule 2(a) and (b) of the High Court (Civil Procedure rules), 2004 (C.I. 47)**, "Where an action is called for trial and a party fails to attend, the trial Judge may (a) where the Plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim; (b) where the defendant attends

and the plaintiff fails to attend, dismiss the action and allow the defendant to prove the counterclaim, if any;...”

In the case of **Ankumah V City Investment Co Ltd. [2007-2008]**

**SCGLR 1064** it was held, “The defendant after several attempts was finally served but failed to appear in court. The trial court therefore rightly adjourned the case for judgment. A court is entitled to give a default judgment, as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard.”

That party is deemed to have deliberately failed to take advantage of the opportunity to be heard. In such a situation, the *audi alteram partem* rule cannot be said to have been breached.

The Respondent was served with the petition and same was proved but the Respondent did not enter appearance. He also did not appear in court to defend the suit. The Petitioner was therefore called upon to prove her claim. Petitioner filed witness statement and called one witness who testified by giving oral evidence to prove her claim.

**Section 1(2) of the Matrimonial Cause Act, 1971 (Act 367)** states that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In addition, the court before which such a petition is presented is required by law to determine as a fact that the marriage, has indeed broken down

beyond reconciliation. In Support of this, Section 2(3) of Act 367 provides as follows:

Notwithstanding that the court finds the existence of one or more of the facts specified in subsection (1) the court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation.

**Section 2(1) of Act 367** stipulates the facts which a petitioner or a cross-petitioner may rely on to prove that the marriage which is sought to be dissolved has broken down beyond reconciliation as follows,

- a. That the Respondent has committed adultery and by the reason of such adultery the Petitioner finds it intolerable to live with the Respondent; or
- b. That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; or
- c. That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or
- d. That the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the grant of a decree of divorce: provided such

consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a Petition for divorce under this paragraph notwithstanding the refusal; or

- e. That the Parties to the marriage have not live as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f. That the parties have after diligent effort been unable to reconcile their differences.

The Petitioner prayed that the marriage between the parties be dissolved on the basis of unreasonable behaviour on the part of the Respondent and the ground that the parties have for the past 4 years not lived as husband and wife.

At the close of the trial, the legal issues that fell for determination by the court were;

1. whether or not the marriage celebrated between parties on June 21 2003 at the Assemblies of God Church Kumasi has broken down beyond reconciliation.
2. Whether or not the Respondent can be ordered to pay to the Petitioner an amount of GHC 1,000.00 a month as maintenance of the two children of the marriage.
3. Whether or not the Respondent can be ordered to pay all hospital bills in respect of the children when it becomes due.

4. Whether or not the Respondent be ordered to pay the school fees of the children as and when it becomes due.
5. Whether or not the Respondent can be directed to pay half of the Petitioners rent.
6. Whether or not the Respondent can be directed to pay an amount of GHC100,000.00 as alimony to the Petitioner.
7. Whether or not an order directed at the Respondent to pay Petitioner's legal fees.

The Petitioner tendered in evidence Exhibit A which is a copy of the Ghana Gazette dated Wednesday 31, July 2013 which relates to her change of name after their marriage. She also tendered exhibit B which is the Marriage Certificate of the parties to prove that she is in fact married to the Respondent. The Petitioner again tendered photograph of herself when she was assaulted by the Respondent. According to the Petitioner the Respondent assaulted her sometime ago and the matter was settled by the family members for the parties to continue in their marriage. However, the Respondent continued to assault her, hence her decision to apply to the court for the court to dissolve the marriage. The Petitioner further stated that respondent constantly insults her in front of friends and family members to belittle her consequently the parties have for the past four years prior to the filing of the petition have not lived as husband and wife. Petitioner also stated in evidence that the parties have two children namely Nana Yaw Darko aged 17 and Maame Akua

Amponsah Darko aged 15. She accordingly prayed that the court grants her the reliefs endorsed on her petition filed.

The Petitioner did not call any witness

The Petitioner's evidence stands uncontested. Having considered the Petitioner's evidence as a whole, the court is satisfied that the Petitioner has led credible evidence to back her claim on issued one. The Court therefore, hold that the marriage celebrated between the parties herein has broken down beyond reconciliation.

The Petitioner has not specifically prayed the Court to grant custody of two (2) children of the marriage to her. **Under section 45(1) of the Children's Act 1998 (Act 560)**, "A Family Tribunal shall consider the best interest of the child and the importance of a young child being with the mother when making an order for custody or access." The Court presumes per the Petitioner's reliefs the Petitioner currently have custody of the children. The court however ought to, consider the best interest of the children. The Court would not remove the child from the environment she is accustomed to. The court in the interest of justice hereby grant custody of the children to the Petitioner, (mother of the children). The Respondent is to have reasonable access to the children of the marriage.

**Whether or not the Respondent can be compelled to maintain the two (2) children in the marriage and, pay their school fees**

**and all other incidental expenses associated with the children's education as well as medical health of the children?**

Section 3 of the Matrimonial Causes Act, 1971 (Act 367) states:

“Without prejudice to the generality of subsection (2), an order under that subsection may;

(c) 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”

Section 6 of the Children's Act, 1998 (Act 560) states:

“6(1) No parent shall deprive a child of his welfare whether-

(a) The parents of the child are married or not at the time of the child's birth, or

(b) The parents of the child continue to live together or not.

6(3) Every parent has the rights and responsibilities whether imposed by law or otherwise towards his child which include the duty to –

(c) Provide good guidance, care, assistance and maintenance for the child and assurance of the child's survival and development.

(d) Except where the parents have surrendered his rights and responsibilities in accordance with law.

The court is of the opinion considering the current economic conditions that an amount of GHC1,000.00 a month for the maintenance of the two (2) children is very fair and equitable as the Petitioner could have to supplement this amount. In addition to the



payment of school fees, all the incidental expenses associated with the education and medical bills of the children of the marriage will be borne by the Respondent.

**Whether or not Respondent can be compelled to pay half of the Petitioner rent to support the accommodation for the children of the marriage?**

The Petitioner prayed the court to order the Respondent to pay half of the Petitioner rent to support the accommodation of the children.

On this issue, the court is of the opinion that if the Respondent is to pay for the children's education and medical bills then it will be fair to order the Petitioner to bear the cost of accommodating the children of the marriage. The Petitioner claim under this issue is accordingly refused.

**Whether or not the Respondent can be directed to pay an amount of GHC100,000.00 as alimony to the Petitioner.**

The Petitioner is asking for financial provision of GHC100,000.00 per claim under ancillary reliefs. **Under Section 20 of the Matrimonial Causes Act 1979 (Act 367)** the court has a discretion to make an order with regard to financial provisions in respect of and for the benefit of any of the parties. The Court would have to take into consideration the length of time the parties have stayed together; whether any of them was dependent on the other, whether any party would experience any hardships following the dissolution of the

marriage; whether the wife gave up her job or profession to run the home among other factors.

There is evidence on record that the Petitioner is gainfully employed. I consider the length of time the Respondent has been married to the Petitioner, the discontinuance of the marital life and the detrimental effect this would have on the Petitioner and conclude that the Petitioner deserves financial provision as claimed. I cannot but agree with Jones Dotse JSC when he stated in the case of **Mensah v Mensah (1998-99) SCGLR 350** that:

**“...The tendency to consider women (spouses) in particular as appendages to the marriage relationship, used and dumped at will by their male spouses must cease.”**

The court accordingly directs that the Respondent pays an amount of GHC40,000.00 to the Petitioner.

## **DECISION**

1. The Court hereby finds that the marriage celebrated between the Petitioner, Akua Afriyie Darko and Osei Kwadwo Darko the Respondent, herein on June 21, 2003 at Assemblies of God Church Kumasi, has broken down beyond reconciliation and same is hereby dissolved. The marriage certificate No. AY069387 is accordingly cancelled. A decree of divorce is hereby granted.

2. The court grants custody of Nana Yaw Darko aged 16 and Maame Akua Amponsah Darko aged 14 to the Petitioner. The Respondent is to have reasonable access to the children.
3. The Respondent is ordered to maintain the two (2) children of the marriage with GHC1,000.00 every month to be reviewed when economic conditions change.
4. The Respondent is ordered to pay the children's school fees and all incidentals relating to the children's education as well as their medical expenses as and when they fall due.
5. The Respondent is ordered to pay an amount of GHC40,000.00 to the Petitioner as financial provision.
6. Cost of GHC1,000.00 is awarded in favour of the Petitioner.

**LEGAL REPRESENTATION**

**YAW DANKWAH FOR THE PETITIONER**

**H/H SUSANA EDUFUL  
(MRS)**

**(CIRCUIT JUDGE)**