

IN THE CIRCUIT COURT 3 HELD AT ACCRA ON FRIDAY THE 24TH DAY OF MARCH, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT COURT JUDGE

SUIT NO. C5/18/2021

ANITA MAWUSI OLINGA

PETITIONER

VRS

ROBERT KUNIHIRA

RESPONDENT

PETITIONER PRESENT AND REPRESENTED, RESPONDENT ABSENT

JUDGMENT

The Parties to this suit got married under the Marriages Ordinance (CAP 127) on February 18, 2017 at the Christ Embassy Church Accra. The parties have no child of the said marriage. The Petitioner is seeking the dissolution of the marriage on the 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 bears all the cost of action including legal fees of the Petitioner.

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 lived 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.

ISSUES

The **main issues** for determination are as follow:

- 1. Whether or not the marriage celebrated between the Petitioner herein, Anita Mawusi Olinga and the Respondent herein, Robert Kunihira on February 18, 2017, at the Christ Embassy Church International Accra has broken down beyond reconciliation?

ISSUE ONE (1)

- 1. **Whether or not the marriage celebrated between the parties on February 18, 2017, has broken down beyond reconciliation?**

Petitioner's evidence is that the Respondent's behaviour is unreasonable and therefore is unable to continue in the marriage. According to the Petitioner after their marriage the parties lived

together happily for 6 years until the Respondent began to shirk his responsibility of maintaining the home. The Petitioner tendered exhibit A to prove the existence of marriage between the parties. The Petitioner severally cautioned the Respondent to secure himself a job after Petitioner realised that she had been wooed prior to the marriage to believe that the Respondent was unemployed. The Petitioner further stated that the Respondent caused her to experience much hardship until she was unable to bear. The Petitioner therefore moved to live with her mother as a result. The Respondent continued to neglect his responsibility of maintaining her. The separation caused the Petitioner much psychological pain which has a toll on her health. Consequently, she can no longer continue in the marriage relationship. Several attempts at reconciling the parties proved futile.

PW1 was Francisca Ahadzi Ocansay. She lives at East Legon Adaman. She is a trader and sells ladies slippers and lace. According to PW1 she is the mother of the Petitioner and after the parties got married the Respondent did not maintain the home and it was she the Petitioner who gave Petitioner money for the maintenance of parties' home. The Respondent has refused all help to get him employed and he insists on carrying on his own business. Even offers for the Respondent to travel abroad was turned down. The Respondent even owes rent and the landlord seized his belongings. According to PW1 she is in court to testify as the Respondent abandoned the Petitioner her daughter.

Having considered the evidence before the court as a whole, the Court

finds that the Petitioner has been able to prove her claim of unreasonable behaviour on the part of the Respondent in accordance with law. It is unreasonable for a married man not to show care and concern for the spouse and leave her in complete neglect. The Respondent made it intolerable for the Petitioner to continue in the marriage. Attempts at reconciliation according to the Petitioner proved futile. The parties have for more than 2 years not lived as husband and wife. This court hereby finds that marriage between the parties have broken down beyond reconciliation and same is dissolved.

DECISION

1. The court hereby order that the marriage celebrated between the Petitioner herein, Anita Mawusi Olinga and the Respondent herein, Robert Kunihira on February 18, 2017, at the Christ Embassy Accra has broken down beyond reconciliation and same is dissolved. A decree of divorce is hereby granted.
2. I will make no order as to cost.

LEGAL REPRESENTATION

**MARY ACKABAH (ESQ.) HOLDING BRIEF FOR ISAAC ANNAN RIVERSON
(ESQ.) FOR THE PETITIONER**

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT COURT JUDGE)**