CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON WEDNESDAY, 20TH APRIL, 2023

SUIT NO. C5/88/22

MICHAEL KWARFO - PETITIONER
SUING PER HIS LAWFUL ATTORNEY
COLLINS ADU BOAHEN

VRS

DIANA ADUBIA BOADI - DEFENDANT

JUDGMENT

The parties to this action celebrated their marriage on the 1st day of February, 2017 under the ordinance at the Kpone Katamanso District Assembly. They cohabited at Sebrepor for one and a half months before the petitioner returned to Germany. There is no issue of the marriage.

According to the petitioner, their marriage has broken down beyond reconciliation due to the unreasonable behavior of the respondent. That almost three months after the celebration of their marriage, the respondent returned the traditional drinks signifying the dissolution of their traditional marriage and has since moved on in life with another person and had a child. That after he returned to Germany in April, 2017, they have not had any sexual intercourse. He prayed the court to dissolve their marriage.

The respondent was served with the petition and notice for trial but failed to enter appearance or file an answer to the petition. As it is the duty of a court to give a party to a case before it a hearing, the failure of the respondent to appear in court to be heard is taken to mean that she did not wish for the court to hear her before deciding on the matter.

Dotse JSC speaking for the Supreme Court in the case of ***Julius Sylvester Bortey Alabi v. Paresh & 2 Others [2018] 120 GMJ 1 at p. 11*** held: *"We are therefore of the view that, if a party voluntarily and deliberately fails and or refuses to attend a court of competent jurisdiction, (such as the High Court which determined this case) to prosecute a claim against him, he cannot complain that he was not given a fair hearing or that there was a breach of natural justice. The Defendants must be respected for making such a choice, but they must not be allowed to get away with it*".

Similarly, the Court of Appeal also in the case of ***Ghana Consolidated Diamonds Ltd. v. Tantuo [2001-2002] 2 GLR 150*** held at holding 4: *"A party who was aware of the hearing of a case but chose to stay away out of his own decision could not, if the judgment went against him complain that he was not given a hearing*". See also the case of ***Accra Hearts of Oak Sporting Club v. Ghana Football Association [1982-83] GLR 111 at page 117.***

As this is a matrimonial matter, and proceedings are to be by enquiry, the Court set the matter down for the petitioner to prove his claim.

The relevant issue for the court to determine is;

1. **Whether or not the marriage has broken down beyond reconciliation.**

THE CASE OF THE PETITIONER

In his evidence in chief, petitioner attorney tendered in evidence EXHIBIT A as a copy of the power of attorney donated by the petitioner and EXHIBIT B as a copy of the marriage certificate of the parties herein. He also tendered in evidence as EXHIBIT C, the witness statement of one Grace Badu.

His evidence is that the petitioner is a clerk in Germany and the respondent is a nurse. That the respondent has behaved in such a way that he cannot reasonably be expected to continue to live with her and her behavior has caused him much distress and anxiety.

That without just cause, respondent complained to his family that the monthly allowance he gave her was not sufficient. That she became hostile towards him and started to abuse him verbally right after she was refused a German visa in an attempt to join him abroad.

Also that the respondent started exhibiting adulterous tendencies by making telephone calls deep into the night and ignoring the calls of petitioner which would always be registered as call waiting. That the respondent by her conduct showed that she only married him because she wanted to travel to Germany.

Further that the respondent informed his family that she was no longer interested in the marriage and returned the traditional drinks three months into their marriage. That all attempts by family and friends to reconcile their differences have failed.

That the respondent has moved on with her life and has had a child by another person. That save for the first six weeks of their marriage when they had intercourse, they have since not had sexual intercourse for over five (5) years.

CONSIDERATION BY COURT

Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. Thus although the respondent in her answer admits that the marriage has broken down beyond reconciliation and also alleges unreasonable behavior and adultery, the Court through evidence must satisfy itself that the marriage has broken down beyond reconciliation. See the case of ***Ameko v. Agbenu [2015] 91 G.M.J.***

Blacks' law dictionary, (8th edition, 2004 p. 1449) defines divorce as "***the legal dissolution of a marriage by a Court***." In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. The ground upon which a divorce can be obtained from the Courts is clearly stated under the ***Matrimonial Causes Act, 1971 (Act 367).***

In ***Section 1 (2)*** *of* ***Act 367***, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner's basis for arriving at the conclusion that their marriage has broken down beyond reconciliation is unreasonable behavior. Although the respondent did not

appear in court or file any process, her non appearance does not mean that the petitioner is entitled to be believed by the court automatically.

The respected ***Benin JSC*** in the case of ***John Tagoe v. Accra Brewery Ltd. [2016] 93 G.M.J. 103 @ 123*** *was convicted that: "It is trite law that he who alleges, be he plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when he has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be*."

The petitioner still bears the burden of proof and persuasion to establish his case on a balance of probabilities in the mind of the court. The burden on him is akin to a double edged sword. Akamba JA (As he then was) in the case of ***Kwaku Mensah Gyan & I Or. v. Madam Mary Armah Amangala Buzuma & 4 Ors. (Unreported) Suit No. LS: 794/92 dated 11th March, 2005*** explained: *"What is required is credible evidence which must satisfy the two fold burdens stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section.*

Although the basis of this petition is unreasonable behavior, the petitioner attorney testified of other grounds leading to the breakdown of the marriage. He testified of the parties not having had any sexual intercourse for more than five years and the dissolution of the traditional marriage three months after the celebration of the ordinance marriage as well as the respondent moving on and having a child by another man. He also testified that all attempts to reconcile the parties by elders of their families have failed.

EXHIBIT C which is the witness statement of one Grace Badu also indicates that the parties began reporting each other to her after the petitioner returned to Germany. That despite her advice to both of them and efforts made to reconcile them by elders of their family, the parties could not be reconciled. That the respondent informed her that she could not continue with the marriage and the petitioner also expressed the desire to have the marriage dissolved. That the respondent returned the head drink signifying the dissolution of the traditional marriage.

A party only needs to establish one of the grounds for the court to arrive at a conclusion that a marriage has broken down beyond reconciliation. In the case of ***Kotei v. Kotei [1974] 2 GLR 172***, ***Sarkodee J*** (as he then was) held that "once the 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''.

As one of the grounds for arriving at a conclusion that a marriage has broken down beyond reconciliation is the inability of parties to reconcile despite diligent efforts, I would first consider that.

Section 2 (1) (f) of the Matrimonial Causes Act, 1971, (Act 367) provides that;

2. (1) For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts:
(F) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

From petitioner's own evidence, particularly EXHIBIT C, there have been cracks in their marriage almost right from the inception and all efforts to reconcile them particularly

from the one who introduced them to each other, Grace Badu failed. Further attempts to reconcile them by the elders of their family also failed and the traditional marriage has been dissolved.

Although the parties by marrying under the ordinance had converted their marriage from customary to ordinance, in our Ghanaian society, the family of both parties to a marriage play an important part in the sustenance of the marriage. They are usually called upon to settle any differences that the parties may have and by so doing steady the marital boat and keep it afloat. The families usually put their best foot forward to reconcile the parties and are usually the last point of hope in resolving matrimonial disputes.

The fact that the families of both the petitioner and respondent have by taking and accepting the head drink resolved that they go their separate ways is a strong indication that the differences between the parties cannot be resolved. The acceptance of the drinks is an announcement by the families to the whole world that they no longer have any familial duties and obligations towards each other and particularly as there are no issues between the parties, have all but returned to the state of being strangers.

The fact that this dissolution occurred just three months after the celebration of the ordinance marriage means that the parties and their families have for many years considered their marriage as dead and nothing can be done to resolve it. They have been married for a little over six years on paper. However, in reality, it appears that their marriage all but lasted for three months. More than five years of irreconciliable differences is enough for any court to arrive at a conclusion that their marriage has broken down beyond reconciliation.

On the basis of the evidence, I hereby find after my enquiry that the marriage between the parties has broken down beyond reconciliation on the grounds that all diligent efforts to reconcile them have failed. I duly issue a decree of dissolution to dissolve the marriage celebrated between them on the 1st day of February, 2017 at the Kpone Katamanso District Assembly. Their marriage certificate is accordingly cancelled. The Registrar is to notify the registrar of marriages at the Kpone District Assembly of the cancellation to enable them amend their records accordingly.

(SGD)

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

LAWRENCE ADOMAH FOR THE PETITIONER