

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON 6<sup>TH</sup> DAY OF  
OCTOBER, 2023 BEFORE HER HONOUR KIZITA NAA KOOWA QUARSHIE,  
CIRCUIT COURT JUDGE

SUIT NO. C5/286/2023

ISABELLA OSOMAFO DARKOH = PETITIONER

VS

OSOMAFO KWAME DARKO = RESPONDENT

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JUDGMENT

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**BACKGROUND**

Petitioner Isabella Osomafo Darko commenced the present suit on the 15<sup>th</sup> of May, 2023 with a petition filed for the following reliefs on the date mentioned:

- a. Dissolution of the marriage between herself and the Respondent Osomafo Kwame Darkoh
- b. Any other relief(s) the court deems fit.
- c. An order for each party to bear his or her own legal costs.

She also filed a Notice to Appear on the same date.

On the 16/6/2023 she filed to set the matter down for trial and attached an affidavit in support of the application. Petitioner pointed the court to the fact that Respondent had failed within the time limited to enter appearance to do so.

A search labelled Exhibit 'A' showed that Respondent had not filed any appearance though he had been personally served the Notice to Appear on 8/7/2023.

The court set the matter down for trial and ordered the parties to file witness statement and pre-trial checklist simultaneously.

On the 10<sup>th</sup> of August, 2023 case management conference was conducted and on the 31<sup>st</sup> of August, 2023 the Petitioner was sworn in to give evidence.

The Respondent at all times had been served with Hearing Notices and court notes but refused/failed to come to court.

#### Petitioner's Case

Petitioner said she and Respondent married under the marriage Ordinance Cap 127 at the Registrar General's Office, Sekondi-Takoradi Metropolitan Assembly on the 21<sup>st</sup> of April, 2017.

After the marriage she and her husband lived at Tse Addo in Accra from April, 2017 to November, 2018 till she left for an official duty to South Korea for 4 years.

The Petitioner told the court in her petition that both parties are Ghanaians and there is one issue between them Melchizedek Osomafo Kwabena Sekyiamah Darkoh who is 5 years old.

She stated further that she is in court because the marriage between herself and Respondent has broken down beyond reconciliation due to the fact that the Respondent has behaved unreasonably towards her.

According to Petitioner, Respondent shirked his responsibilities in the marriage which caused her to be physically and financially burdened at all times.

Again, though she purchased a car to be used by the Respondent for Uber services he made no effort to find a job.

The unreasonable behavior of Respondent was further evidenced in the fact that he hardly spent time with Respondent under the guise of devoting all his time to his church members and church activities.

Again he showed disrespect toward her and her children (who are not Respondent kids) and discloses their marital conversations to third parties.

Petitioner stated further that the unreasonable behavior cumulated to a point where a hostile atmosphere was created at home which ultimately resulted in a lack of communication and affection between the parties and several attempts to reconcile the parties have been unfruitful.

### **Respondent's Case**

Respondent though successfully served failed to enter appearance nor file an answer to the petition. The court noted that at all times he was served personally with the processes successfully.

The court will therefore go into the merits of the case to determine the action.

### **ISSUE FOR TRIAL**

Under the Matrimonial Causes Act, 1971, Act 367 S(1) A petition for divorce may be presented to the court by either party to the marriage.

(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. The court therefore sets the aforementioned issue down for trial.

Section 10(1) of the Evidence Act 1975 (NCRD 323) provides that, for the purpose of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

Section 10(2) of the Evidence Act, 1975 (NCRD 323) states that, The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

## **SECTION 11 – BURDEN OF PRODUCING EVIDENCE**

Section 11(1) of the Evidence Act 1975 says: For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

In the case of ENGMAN v DIVINE WORD MISSIONARIES 2014 68 GMJ 95 the court held thus: “Going on the provisions of section 11 of the Evidence Act, 1975, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue. In a civil action, this burden demands that a party produces sufficient evidence such as will lead a reasonable mind, on all the evidence to conclude that the existence of the fact in issue is more probable than its non-existence.

Section 12 of NRCD 323, which relates to the standard of proof, required in civil cases states thus; section 12 Proof by a Preponderance of the Probabilities also states:

- (1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.
- (2) “Preponderance of the probabilities” means the degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.

#### Section 14 – Allocation of Burden of Persuasion

Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential claim or defence he is asserting.

### **ANALYSIS/APPLICATION OF THE LAW TO THE FACTS AND RESOLVING THE ISSUES (EVALUATION)**

ISSUE 1: Whether or not the marriage celebrated between the parties has broken down beyond reconciliation.

#### RELEVANT LAWS

The law governing the dissolution of monogamous marriage in Ghana is the **Matrimonial Causes Act 1971 (Act 367) Section 1 of Act 367**. It states that a petition for divorce may be presented to the court by either party to a marriage and the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under section 2 of Act 367, it further states that 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 factors:

- a. That the Respondent has committed adultery and that by reason of the adultery, the Petitioner finds it intolerable to live with the Respondent;
- b. That the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent;
- c. That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- d. That the Parties to the marriage have not lived as husband 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 that the 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 despite the refusal;
- e. That the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition, or
- f. That the parties to the marriage have, after diligent effort, been unable to reconcile their difference.

Section 2(2) of Act 367 states that on a petition for divorce, it shall be the duty of the court to inquire, so far as is reasonable into the facts alleged by the Petitioner and the Respondent.

In the case of **Kotei vs Kotei** 1974 GLR page 172 the Petitioner married the Respondent in 1962. They had two children and they resided in the United Kingdom but returned to Ghana in 1967. The Petitioner was posted to Kumasi in

1967 and as he had no suitable accommodation for the Respondent and the children they stayed in Accra.

The Respondent visited the Petitioner only twice. In 1974 the Petitioner filed for divorce alleging that he and the Respondent had not lived as man and wife for over six years and the marriage is broken down beyond reconciliation but the Respondent on the other had asserted that she loved the Petitioner. It was held that the Petitioner was entitled to a grant of the dissolution. Sarkoedee J said **“Once the facts are proved to bring the case within any facts set out in section 2(1) a decree of dissolution should be pronounced”**.

In respect of what constitute unreasonable behavior by a spouse it was held by Hayford Benjamin J in the case of **Mensah vs Mensah** (1972) 2 GLR 198 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 behaviour including the history of the marriage. If it always a question of fact. The conduct complained of must be grave and mere trivialities will not suffice.

The court summaries that this petition is brought primarily under section 2(1) b, and f of Act 367.

From the facts averred to in the pleadings it is evident that despite several attempts by family and friends of the parties aimed at reconciliation, the parties have not been able to reconcile their differences.

Again in **Knusden vs Knusden** (1976) 1GLR 204 CA on the test of unreasonable behaviour it was held:

*“The behaviour of a party which will lead to this conclusion would range over a wide variety of acts”*.

*It may consist of one act if it is sufficient ground of a persistent course of conduct or 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”.*

The learned author William Cornelius Ekow Daniels page 308 of the book The Law on Family Relations in Ghana under the heading Test of unreasonable behavior states the following at page 308 of the book.

*“All that a Petitioner is required to do in this context is to give particulars or the extent of the behaviour of the Respondent which has necessitated the presentation of the petition. Thereafter he is required to establish that as a result of that particular behaviour he cannot reasonably be expected to live with the Respondent”.*

The court will refer to some paragraphs of the Petitioner’s witness statement to ascertain if unreasonably behaviour the Respondent can be established.

Paragraph 12. Whenever the Respondent receives gifts from members of his Ministry of especially food, stuffs, he sends some to the sister and the rest to where I had no idea. When I ask him he will tell me that what we will use will come in due course.

Paragraph 13. As a result, I have catered for, amongst others, the financial, educational, clothing, health, shelter, food, and emotional needs of the family singlehandedly including some needs of the children of my husband as well as my husband’s nephew by name Nii.

Paragraph 15. During the course of the marriage, the Respondent devoted all his time to members of his Ministry and the activities of the Ministry and neglected his conjugal obligations to me.



- Paragraph 21. Before I left for South Korea, Respondent will occasionally ask me to divorce him if I want when nothing had actually happened between us which baffled me.
- Paragraph 22. I tried to find out if I was not doing something right to the extent that I even had to look for a bigger apartment because I thought probably may be the children were a bother to our privacy since we were living in single room with a partition but things were still the same so I concluded that he wasn't interested in the marriage but wasn't ready to take the initiative to walk out but rather deploy a mechanism to frustrates me
- Paragraph 27. Sometime in 2020, I purchased a vehicle for the Respondent to run as an uber to make him financially independent and to help provide for the needs of the family. However, he used the car to pick up members of his Ministry to and from church.
- Paragraph 28. In December, 2022, I returned to Ghana upon expiration of my term of duty in Korea, however, I could not live with the Respondent as husband in the house I rented prior to my duty in South Korea.
- Paragraph 29. I state that the marriage has broken down irretrievably and same cannot be salvaged.

### **DECISION**

After a careful evaluation of the facts on record and the evidence presented by the Petitioner which was unopposed by the Respondent, the court notes that the marriage celebrated between the parties on the 21<sup>st</sup> of April, 2017 has broken down beyond reconciliation.

BY COURT: It is hereby decreed that the marriage celebrated between the parties be dissolved this 6<sup>th</sup> day of October, 2023.

The court further grants the petitioner custody of the issue between the parties Melchizedek Osomafo Kwabena Sekyiamah Darkoh who is 5 years old and grants the Respondent reasonable access to be agreed upon between the parties

The Marriage Certificate Number 201/2017 is hereby cancelled.

There is no order as to costs.

**(SGD)**

**H/H KIZITA NAA KOOWA QUARSHIE**

**CIRCUIT COURT JUDGE**