

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON 20TH DAY OF
OCTOBER, 2023 BEFORE HER HONOUR KIZITA NAA KOOWA QUARSHIE,
CIRCUIT COURT JUDGE

SUIT NO. C5/270/2023

SAMUEL KWASI APPIAH = PETITIONER
HOUSE NUMBER RPL/C23/20
TEMA

VS

HARRIET ADOBEA YEBOAH = RESPONDENT
DANSOMAN – ACCRA

JUDGMENT

The present petition commenced by the Petitioner Samuel Kwasi Appiah praying solely that the marriage between himself and his wife Harriet Adobea Yeboah be dissolved by the Honourable Court, was filed on the 3/5/2023.

A search filed on the 2/6/2023 revealed that the petition and notice to appear were successfully served on the Petitioner who failed/refused to enter appearance, Petitioner filed an application to set the matter down for trial on the 30/6/2023.

The Court directed the parties to file witness statements and pre-trial checklist within a month.

Case management conference was done on the 10/8/2023 for hearing.

The Respondent had at all material times been served with a Hearing Notices and Court notes.

Evidence was taken on the 31/8/2023 and the case was adjourned to the 20/10/2023 for judgment.

PETITIONER'S CASE

Petitioner is a businessman/official of the Ghana Revenue Authority whiles his wife is a businesswoman plying her trade at Accra Central.

Petitioner says before this marriage to Respondent he was a bachelor and Respondent a spinster. On the 30th of October, 2016 they tied the knot of marriage at St. Joseph the Worker Catholic Church, Community 8 in Tema under part III of the marriages Act {1884-1985} (Cap 127).

After the marriage the two cohabited at PS Global Estates Tema in the Greater Accra Region.

During the pendency of the marriage they had no issue(s).

Petitioner said he is in Court for a dissolution of the marriage because same has broken down beyond reconciliation. He had the following to say:

According to Petitioner, Respondent deserted him and left the matrimonial home since November 2022 he said Respondent kept late night and did not come home on some weekends and never bothered to inform him of her whereabouts.

Both families of the couple attempted to reconcile them but failed. Petitioner says his wife's family has returned the customary drinks to him.

In addition to the family's attempt at reconciliation the Petitioner stated in his pleadings that their church elders have attempted also to meet the couple to settle their differences but the invitation was however declined by the Respondent.

Finally, Petitioner says he believes that the marriage between the parties has broken down beyond reconciliation since the marriage could not work.

RESPONDENT'S CASE

The Court notes that the Respondent was successfully served with the Divorce Petition and Hearing Notices at every stage plus Court notes but has failed/refused to come to Court. The Court will proceed to determine the case since the Respondent's conduct plus knowledge of ongoing case without opposition means consent. Her non-opposition is therefore an admission that the facts and evidence laid down by the Petitioner are the true state of affairs and the Court is at liberty to proceed without her provided that the rule of natural justice which states that a party should be given the opportunity to be heard has been complied with.

ISSUE FOR DETERMINATION

Whether or not the marriage between the parties has broken down beyond reconciliation?

ANALYSIS OF PETITIONER'S CASE

The Petitioner has come to Court with an allegation that his marriage has broken down beyond reconciliation.

In civil cases like this one, the Burden of Proof lies on him.

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 establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

In **Section 11(1) of the Evidence Act** it is provided that, burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issues. By section 11(4) such a party is required 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.

Section 14 of the Evidence Act states that:

“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 to the claim or defence he is asserting.

In **ACKAH V PERGAH TRANSPORT {2020} SCGLR 728 @ 736**

The Supreme Court per Adinyira JSC said at page 736

“It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it include the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence) without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the Court or

tribunal such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence”.

The Petitioner alleges that the marriage between himself and Respondent has broken down beyond reconciliation due to the unreasonable behaviour of his wife.

Section 1(1) of the Matrimonial Causes Act, 1971 Act 367 states that:

“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.*

“A petition for divorce may be presented to the Court by either party to a marriage”.

*The only ground upon which the Court will grant a petition for divorce is when the marriage is broken down beyond reconciliation, **Section 1(2) of Act 367**.*

The Court surmises that the current petition falls under section 2(1)(b) and (f) of Act 367.

At this Juncture the Court’s task is to ascertain if the marriage between the parties has broken down beyond reconciliation.

In the case of **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 behaviour** 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”.

Although Petitioner in his evidence said Respondent had deserted the matrimonial home, since November, 2022, the Court notes that for desertion to lie the Respondent should have deserted the Petitioner for at least two years immediately preceding the presentation of the petition. In this case, the time is less than two years and desertion by Respondent cannot be said to have occurred.

Section 2(1) c and e having been dealt with the Court’s duty at this stage is to ascertain whether the Respondent’s unreasonable behaviour led to the breakdown of the marriage.

Petitioner’s witness statement filed on the 25/7/2023 is identical to his petition and there is therefore no need to re-state same.

From that petition, the Court notes that if Petitioner found it tolerable to accommodate Respondent’s unreasonable behaviour, he would not have brought the petition for dissolution of the marriage between the parties to Court.

Again Petitioner took steps aimed at reconciliation which failed because their families (He and his wife’s families) were unable to bring them together.

The church was equally unable to reconcile the parties since Respondent refused to honour the invitation to attend the attempted meeting.

The Petitioner has been able to prove on a balance of probabilities that the marriage between himself and his wife has broken down beyond reconciliation.

ANALYSIS OF RESPONDENT’S CASE

Respondent has refused/refused come to Court at all.

It is trite that where a party had made an averment and that averment was not denied, no issue was joined and no evidence be led on that averment. See Kusi & Kusi v Bonsu {2010} SCGLR 60

The Court as set out from the very beginning noted that Respondent failed/refused to defend the case.

Petitioner at all material times served Respondent with Hearing Notices and even Court notes to no avail. The Court can therefore conclude that Respondent agrees that the marriage between herself and Petitioner be dissolved by the Honourable Court.

BY COURT: After evaluating the facts on record and analyzing the evidence the Court notes that the marriage celebrated between the parties on the 30th off September, 2016 at the St. Joseph the Worker Catholic Church, Community 8, Tema has broken down beyond reconciliation.

The Court makes an order for the marriage to be dissolved this 20th day of October, 2023.

The Petitioner is to apply for the full judgment and the divorce certificate and serve the entry of judgment on the Respondent Harriet Adobea Yeboah. Marriage Certificate number JWC13/2016 is hereby cancelled.

STEVEN BATSE ESQ. FOR THE PETITIONER

(SGD)

H/H KIZITA NAA KOOWA QUARSHIE

CIRCUIT COURT JUDGE