

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON 29TH DAY OF
SEPTEMBER, 2023 BEFORE HER HONOUR KIZITA NAA KOOWA QUARSHIE,
CIRCUIT COURT JUDGE

SUIT NO. C5/181/2023

SARAH ODOI YEMOH = PETITIONER
ACCRA ABD BRESCUA, ITALY
SUINNG PER LAWFUL ATTORNEY
ALFRED ANETTEY ABBEY, ACCRA

VS

MICHAEL FIASE KWAME SENYO = RESPONDENT
ACCRA AND VIA SAN GIOVANINI BOSCO 96
MODENA, ITALY

JUDGMENT

Per a divorce petition filed on the 23/2/2023 the Petitioner Sarah Odoi Yemoh prayed the Honourable Court for a dissolution of the marriage between Petitioner and Respondent. Michael Fiase Kwame Senyo.

The said marriage had been contracted at the Principal Registrar Office, Accra on the 5/1/2012.

Due to the fact that the parties to the marriage are domiciled outside the jurisdiction of Ghana, the Petitioner gave power of attorney to Alfred Anettey Abbey dated 1/12/2022.

The attorney subsequently with leave of the Honourable court served all relevant processes on the Respondent via DHL courier services in Italy.

On the 18th of April, 2023 after Respondent had failed to cause an appearance to be entered on his behalf, the Lawful Attorney filed an application to set the matter down for trial.

The parties were ordered to file pre-trial checklists and witness statements and the Attorney did same on the 19/1/2023. Case management conference was done on the 22nd of June, 2023.

On the 10th of August, 2023, the court swore the Lawful in and admitted the witness statement of the Petitioner in evidence.

Petitioner's case

It is petitioner's case that the marriage celebrated between herself and the Respondent was done on the 5th of January, 2012 under the marriage Ordinance Cap 127.

She is a businesswoman as is the Respondent. She says after their marriage they co-habited in Accra and she Petitioner later left for Italy. She says they have had several misunderstandings and quarrels between them which rendered the matrimonial home unpeaceful. She said on the 24/10/2021 Respondent who had joined her in Italy, left the marital home and neither family nor friends have been able to bring the parties together.

Petitioner says they have lived separately and the marriage between the parties has broken down beyond reconciliation.

Respondent's case

Respondent as stated previously Respondent neither caused an Appearance to be entered on his behalf nor responded to the petition through the Lawful Attorney.

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 afore-mentioned 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 DEVINE 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 on 30th July, 2011 is 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 Petitioner is brought under section 2(1) b, c, and d of Act 367.

From the facts both presented by Petitioner and unopposed by Respondent the parties ceased to live as man and wife since 2021.

Again despite several attempts by family and friends as evidenced by paragraph 7 of Petitioner’s petition attempts at reconciling the parties failed.

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 that led to the breakdown of the marriage.

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 Petitioner at paragraph 11 of her witness statement filed on the 19th of January, 2023 said the following:

“Several misunderstandings and quarrels arose which later rendered the matrimonial home not peaceful”.

Paragraph 12. The Respondent kept disgracing the Petitioner to friends and family for issues that can be resolved peacefully between the two.

Paragraph 13. Family and friends tried several times to mediate in the issue but failed to bring the parties together.

Paragraph 14. That due to the safety and continuous quarrelling with the Respondent, he left the house in 2021 and has not returned until now

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 of 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”.

In the book entitled *Pride and Prejudice* chapter 5 page 188 Jane Austin the British novelist wrote that “Happiness in marriage is entirely a matter of chance. As this game of chance yielded no happiness to the parties, the best available choice for their peace of mind no doubt is to leave with the legal stamp of approval of the court.

DECISION

After a careful evaluation of the facts on record and the evidence presented by the Petitioner was unopposed by the Respondent, the court notes that the marriage celebrated between the parties on the 5th of January, 2012 at the Principal Registrar of Marriage Office has broken down beyond reconciliation.

BY COURT: It is hereby decreed that the marriage celebrated between the parties be dissolved this 29th day of September, 2023.

The Marriage Certificate Number RGM025/12 with License No. AMA 10052/2011 is hereby cancelled.

There is no order as to costs.

(SGD)

H/H KIZITA NAA KOOWA QUARSHIE

CIRCUIT COURT JUDGE