IN THE CIRCUIT COURT, 28TH FEBRUARY ROAD ACCRA SITTING ON THURSDAY THE 7TH DAY OF SEPTEMBER 2023 BEFORE HER HONOUR ELLEN OFEI-AYEH(MRS) CIRCUIT COURT JUDGE

SUIT NUMBER : C5/253/2023

HENRY NII BOYE QUAO

AMANFROM KASOA

V

MARY TACKIE

UNNUMBERED H/NO

BORTIANOR HILL, KASOA.

REPRESENTATION:

Dzifa Davidson (Esq.) for the petitioner.

Respondent is absent

JUDGMENT

In his Notice to Appear and accompanying amended petition filed on 7/7/2023 all the petitioner seeks for are the following reliefs;

i. An order that the marriage celebrated between the parties on the 26th day of October 2018 be dissolved.
ii. An Order that all parties bear their own costs incidental to this suit
iii. And any other relief(s) that this honourable court deems fit.

The petitioner has averred in his petition that he cannot be expected to continue with the marriage .

Throughout the hearing of this action, despite repeated hearing notices and due service, the respondent failed to avail herself to either cross-examine the petitioner or to mount a defence where applicable. Pursuant to Order 36 Rule 1 (2) (a) of High Court Civil Procedure Rules, C.I 47 as amended, the court heard the case of the petitioner in the absence of the respondent herein. Guided by the decision of Republic v High Court (Fast track Division); Exparte State Housing Co. Ltd. (No.2) Koranteng Amoako; Interested Party (2009) SCGLR 185 at 190, the Supreme Court per Wood CJ, (as she was then), stated authoritatively that,' *A party who disables himself or herself from being heard in any proceedings cannot later turn around and accuse an adjudicator of having breached the rules of natural Justice.'* .

Thus, the respondent cannot now say that the audi alteram partem rule has been breached as she was given ample opportunity to be heard. The sole issue to determine is whether the marriage celebrated by the parties has broken down beyond reconciliation.

Section 11(4) of the Evidence Act; NRCD 323, states that the burden of producing evidence is discharged when a party produces "sufficient evidence so that on the entire evidence reasonable mind could conclude that the existence of the fact was more probable than its non-existence." In FOSUA v ADU-POKU MENSAH (2009) SCGLR 312, the Supreme Court held as follows:

"Section 11(4) of the Evidence Act 1973 (NRCD 323) put the obligation in civil proceedings like the present, of producing evidence on 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."

This in my humble opinion means that the decision of the court should be based on the balance of probabilities. The petitioner bears both the burden of persuasion and the evidential burden to prove that what she alleges is true. See the decision in ACKAH v. PERGAH TRANSPORT Ltd & ORS [2010] SCGLR 728. Thus, both parties have a burden to prove to discharge their respective burdens as the respondent has also counter petitioned. See holding (b) of the decision in Rev. Daniel Okpotiokertchiri v Eddie Nelson (2016) 101 GMJ 138

On the 1st issue, Section 2 of the matrimonial Causes Act, Act 367 provides that;

(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:

(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 differences.

Petitioner testified that they were married on 26th October 2018, and after the marriage the respondent refused to clean, sweep wash etc. and for that matter he reported the matter to his aunty which didn't go well with her. Eventually she packed out of the matrimonial home three months after the marriage was celebrated. He testified that his aunty Charlotte Tackie attempted to resolve their differences, as well as two friends all of which failed.

The evidence is undisputed and unchallenged. I find as a fact that the parties have not lived together for no less than 3 years. I also find as a fact that attempts have been made at reconciliation but same has failed. It is my humble view thst by leaving the matrimonial home, in the absence of any explanation that constitutes as unreasonable behaviour. By reason of these findings of fact, I find upon the balance of probabilities that the marriage between the parties has broken down beyond reconciliation,

I therefore dissolve the Ordinance marriage between the parties. The marriage certificate is cancelled.

There are no further orders.

……………sgd…………….

Ellen Ofei-Ayeh(Mrs.)