IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2', ACCRA ON THURSDAY, 5TH OCTOBER, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

SUIT NO.: C5/127/2022

EMMANUEL QUARTEY ------- **PETITIONER**
H/No. D714/1
Akotolante
Accra

VRS

BERNICE BOSOMPRAH ------- **RESPONDENT**
James Town
Accra

PETITIONER PRESENT

RESPONDENT ABSENT

JUDGEMENT

On the 7th December, 2021, the Petitioner commenced this action with a Petition seeking against the Respondent, the following reliefs:

a) That the Honourable Court should dissolve the marriage celebrated between the parties.
b) The custody of the issues of the marriage should be given to the Petitioner with reasonable access to the Respondent.
c) That Petitioner has a highly decent apartment where the children already in the custody of the Petitioner and are already assured of proper accommodation.

The Respondent entered Appearance on the 13th December, 2021 through her then lawyer, G.N.K. Phixon-Owoo, Esq. On the 6th January, 2022, the Respondent filed an Answer and cross petitioned for the following reliefs:

a. A Declaration that the Ordinance Marriage celebrated between the parties on the 16th September, 2017 has broken down beyond reconciliation.
b. An Order for Dissolution of the said marriage.
c. Custody of the two (2) issues of the marriage with reasonable access to the Petitioner.
d. An Order directing the Petitioner to provide Hall and Chamber Apartment at a decent place for the Respondent and her children.
e. An Order directing the Petitioner to maintain the children on monthly basis.
f. An Order directing the Petitioner to pay the School fees, provide uniforms and pay medical bills of the children.
g. An Order for the Petitioner to pay a lump sum of money to the Respondent.
h. Cost including legal fees.

The matter was set down for trial on the 12th May, 2022 and the parties complied with the order of the Court to file Witness Statements and Pre-Trial Check Lists. Case Management Conference was undertaken on the 3rd November, 2022. In the course of the litigation and just when the trial was about to start, the Respondent's lawyer withdrew his representation. The Respondent refused to participate in the trial notwithstanding the service of several Hearing Notices and Court Notes on her. A defaulting defendant takes the blame for failing to appear in Court to defend an action against him. In the case of *Republic vrs High Court* (*Fast Track Division*), *Accra*; *Ex Parte State Housing Co. Ltd* (No. 2) (*Koranten-Amoako Interested Party*) [2009] SCGLR 185, the venerable Chief Justice Wood CJ observed that if a party like the Defendant herein, who has been served with notices to appear in court to be heard, fails to attend court, he cannot later turn around and accuse the court of a breach of natural justice. See also *Republic vrs High Court*, (*Human Rights Division*), *Accra, Ex parte Josephine Akita* (*Mancell-Egala & Attorney General Interested Parties*) [2010] SCGLR 374 @ 384 per Brobbey JSC; *Republic vrs Court of Appeal, Accra, Ex Parte East*

Dadekotopon Development Trust, Civil Motion No. J5/39/2015, dated 30th July 2015 and *Baiden vrs Solomon* [1963] GLR 488 at page 495.

Fortified with the above authorities, the Court proceeded to take the evidence of the Petitioner.

THE CASE OF THE PETITIONER

The parties got married under the Ordinance on the 16th September, 2017 at the FAYEF NEW LIFE INTERNATIONAL CHURCH at James Town, Accra. There are two (2) issues of the marriage. The parties lived together as husband and wife after the marriage until in the year 2009 when the Respondent put up a hostile behaviour towards the Petitioner. The Respondent would rain insults on the Petitioner and threaten to stab him with a knife. The Respondent verbally abused the Petitioner leading him to go through emotional pain, distress, imbalance and the Respondent alleging that the Petitioner was in a relationship with a certain woman. The Petitioner states that he has a decent apartment which the children are assured of accommodation. The Respondent is not in good talking terms with the Petitioner's mother. That the Respondent has caused the Petitioner, worry, stress and anxiety such the Petitioner cannot reasonably be expected to remain married to the Respondent.

At the end of the trial, the following issues emerged for determination:

i. Whether or not the marriage has broken down beyond reconciliation to warrant the court to decree a divorce.

ii. Whether or not the Petitioner is entitled to have custody of the two (2) issues of the marriage.

The Respondent did not show up in Court to cross examine the Petitioner. This means that the evidence of the Petitioner has not been contested or challenged. In the case of *Ghana Ports and Harbours Authority & Captain Zeim vrs Nova Complex Ltd*. [2007-08] SCGLR 806 and *Takoradi Flour Mills vrs Samir Faris* [2005-06] SCGLR 882, the Supreme Court held that:

"Where the evidence led by a party is not challenged by his opponent in cross examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial court." See also *Omaboe vrs Kwame* [1978] 1 GLR 122, *Republic vrs High Court (Human Rights Division)*, Accra; Ex Parte Akita [2010] SCGLR 374; *Republic vrs High Court, Accra; Ex Parte State Housing Co. Ltd* (No. 2) [2009] SCGLR 185; *Republic vrs High Court (Fast Track Division), Accra, Ex Parte Ayikai (Akosoku IV Interested Party)* [2015-2016] 1 SCGLR 289.

Whether or not the marriage has broken down beyond reconciliation to warrant the court to decree a divorce.

Sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) reads:

1. Petition for divorce

(1) A petition for divorce may be presented to the Court by either party to a marriage.

(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

2. Proof of breakdown of marriage

(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.

(2) On a petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

(3) Although the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation.

In the case of *Mensah v. Mensah* [1972] 2 GLR 198, Hayfron-Benjamin J. (as he then was) held that:

"…….. it is therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough …..…"

Furthermore, even though the court may find in existence more of the facts specified in the provisions above, the law do not require the court to decree divorce unless it was satisfied, on all the evidence, that the marriage has indeed broken down beyond reconciliation.

To this principle I cite *Mariam Partey v William Partey* [2013] JELR 65563 (CA) where the court held that:

"Our legislation seems to state that proof of one of the facts show that the marriage has broken down beyond reconciliation, and yet the court can decline to grant the decree because it is not satisfied that the marriage has broken down beyond reconciliation. The Act seems to draw a distinction between appearance and reality. The petitioner after providing one of the enunciated facts would be held to have shown that the marriage has broken down beyond reconciliation. The court is then to find out whether in truth it has done so. Here, the court is directed to conduct an inquiry as far as reasonable into the facts relied on by the parties. The court is then to consider all the evidence, that is, including what it has found on its inquiry, and if satisfied that the marriage has really broken down beyond reconciliation, decree a divorce."

This instant petition is based on Section 2(1)(b) and (c) of Act 367, i.e. unreasonable behaviour on the part of the Respondent and desertion. The Petitioner alleged desertion and this can be found at paragraph 14 of the Petition as follows:

"*The Petitioner and the Respondent do not now live together, since the Respondent deserted the matrimonial home*."

In the case of *Arnold Adjei Kuffour v Michelle Lesette Pijuan* (2017) JELR 107488 (HC) dated 19 May 2017, the Court defined desertion as:

"*The unjustified withdrawal from cohabitation without the consent of the other spouse and with the intention of remaining separated permanent*."

In the case of *Kotei vrs Kotei* [1974] 2 GLR 172 the Court held that:

"*Once the facts are proved bringing the case within any of the facts set out in 2(1) a decree of dissolution should be pronounced unless the Court thinks otherwise. In other words, the burden is on the petitioner to show that special grounds exist justifying the exercise of the court's power. Once he or she comes within any one of the provisions in section 2(1)(e) and (f), the presumption is in his favour; providing one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation*."

Also, in the case of *Hughes v Hughes* [1973] 2 GLR 342, the Court also held that:

"*For the conduct of the wife to amount to desertion, the Court had to be satisfied that it was an unjustifiable withdrawal from cohabitation and that she had the intention of remaining separated from him. But where a spouse had agreed to the other departing he could not complain that the other was guilty of desertion as separation was by consent*."

From the totality of the evidence adduced at the trial, the conduct of the Respondent proves that he does not intend to continue with the marriage hence the total withdrawal from cohabitation.

In the case of *Georgina Appiah-Amponsah vrs Godfred Amponsah* (2016) JELR 107611 (HC) dated 15 June 2016, the Court held due to the irreconcilable differences the marriage has broken down beyond reconciliation.

Also, in the case of *Mensah v Mensah* [1972] GLR 198, the Court held to the effect that *the parties had been unable to reconcile their differences and therefore the marriage had broken down beyond reconciliation*.

Based on the above analysis, I hold that the marriage between the parties has broken down beyond reconciliation.

Whether or not the Petitioner is entitled to have custody of the two (2) issues of the marriage

In determining whether to grant custody to the Petitioner or Respondent, it is said that the welfare of the child should be the fundamental or paramount consideration. This principle has been given statutory backing in all the statutes relating to children in this country and case laws including *Gray v Gray* [1971] 1 GLR 422 and *Beckley v. Beckley* [1974] 1 GLR 393.

Also, in the case of *Attu v. Attu* [1984-86] GLR 745, Brobbey J (as he then was) held as follows:

"*In this country, there can be no permanent or immutable order of custody because the Matrimonial Causes Act, 1971 (Act 367), per section 27 (1) empowers the court to rescind or vary any order of custody of any child as it thinks fit. There is no precondition on the rescission or variation, save that it should be made in the best interest of the child concerned*".

As I have already stated in this judgement, the evidence of the Petitioner is unchallenged. In the circumstances, I hold that the Petitioner is entitled to have custody of the two (2) issues of the marriage.

Consequently, I enter judgement in favour of the Petitioner as follows:

a. The Ordinance Marriage celebrated between the parties on the 16th September, 2017 is hereby dissolved. Accordingly, Marriage Certificate with Licence Number AMA/01705/91/2017 is cancelled.

b. Custody of the two (2) issues of the marriage namely VICTORIA QUARTEY and ALVIN QUARTEY is given to the Petitioner with reasonable access to the Respondent when school is on recess.

c. No order as to costs.

…..……..

ISAAC ADDO

CIRCUIT JUDGE

5TH OCTOBER, 2023