

**IN THE CIRCUIT COURT 'B', TEMA, IN THE GREATER ACCRA REGION HELD**  
**ON FRIDAY THE 22<sup>ND</sup> DAY OF SEPTEMBER, 2023 BEFORE H/H KLORKOR**  
**OKAI-MILLS**

SUIT NO: C5/31/23

**BERNARD ASANE MENSAH**

**PETITIONER**

**VRS**

**GIFTY ASARE**

**RESPONDENT**

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**PARTIES**

**PRESENT**

**ALFRED SETORWU BUATSI, ESQ FOR PETITIONER PRESENT**

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**JUDGMENT**

The Petitioner on the 25<sup>th</sup> day of October, 2022 initiated divorce proceedings averring that the marriage which was celebrated on 24<sup>th</sup> November, 2018 between the parties has broken down beyond reconciliation on the grounds of irreconcilable differences and unreasonable behaviour on the part of the Respondent. Petitioner contends that Respondent has made false statements concerning the parents of the Petitioner, which has the potential to cause confusion and hatred in the family, that the parties have not had sexual relations for the past six (6) months and several attempts by family members, friends and parties themselves to reconcile have proved futile. He therefore petitioned the court for dissolution of the marriage and prayed for the following reliefs:

- a. That the marriage celebrated between the parties on 24<sup>th</sup> November, 2018 be dissolved.
- b. Each party to bear their own costs
- c. Any other reliefs that this Honorable Court may deem fit.

Respondent never entered appearance nor filed any process in court, even though Respondent was served on 25<sup>th</sup> October, 2022 with hearing notices to be in court. Petitioner further served

Respondent the divorce petition via substituted service. The case was set down for trial on 20<sup>th</sup> July, 2023, Hearing Notice issued and same served on Respondent. Petitioner filed his witness statement and pre-trial check list on 3<sup>rd</sup> July, 2023. On 10<sup>th</sup> August, 2023, strangely, the respondent appeared in person but still did not enter appearance. The Court proceeded to hear case of the petitioner and took his evidence-in-chief. The Court gave leave to Respondent to enter appearance, file her witness statement and pre-trial check list and serve same on the Petitioner before the next adjourned date. At the next adjourned date, both parties were present again. Respondent had still not entered appearance or filed any processes. The petitioner accordingly closed their case and same was adjourned for judgment.

## **ISSUE**

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

On the burden of proof in civil cases, it is trite law and a general rule that the party who in his pleadings or writ raises issues essential to the success of his case assumes the onus of proof. Thus, a Plaintiff has the duty and / or obligation to prove his case on a balance of preponderance of probabilities and that no weakness in the Defendant's case can avoid him this obligation. **[Zabrama v Segbedzi (1991) 2 GLR 221].**

The onus of proof in civil cases is on a balance of preponderance of probabilities. This is laid down in section 12(1) and (2) of the Evidence Act, 1975 (NRCD 323).

## **ISSUE 1: WHETHER OR NOT THE MARRIAGE BETWEEN THE PARTIES HAS BROKEN DOWN BEYOND RECONCILIATION?**

Petitioner told the court that the Petitioner and the Respondent got married on 24<sup>th</sup> November, 2018 in Ghana. He testified in his witness statement that the Respondent abuses him both physically and verbally at the least opportunity and the latter is fond of telling lies and faking stories, almost all the time. He added that because of Respondent's behavior, he has deserted the marriage and has not had sexual relations with Respondent for well over six (6) months as at the time he petitioned the court in late 2022. The Petitioner also states that the respondent has made false statements concerning the parents of the Petitioner which has the potential to

cause confusion and hatred in the family. Petitioner testifies that communication between the parties has completely broken down due to their irreconcilable differences. All attempts at reconciliation by the families, friends and parties themselves have failed and Petitioner therefore prays the court to dissolve the marriage. He tendered the marriage certificate and they were admitted without any objections and marked as exhibits A and B respectively.

Witness was discharged after his testimony since Respondent had failed to appear to cross-examine him or put her case across by failing to enter appearance.

### **ANALYSIS OF THE EVIDENCE**

From the evidence on record, it is a fact that the parties were married under the ordinance on 24<sup>th</sup> November, 2018. The parties have not lived together as man and wife, nor had any sexual relations at least since May 2022 as Petitioner testifies that he has deserted the marriage at least six (6) months prior to filing the petition in October 2022. The Respondent's conduct of both physically and verbally abusing the Petitioner at the least opportunity amounts to unreasonable behavior. Several attempts have also been made by the parties themselves, friends and family at reconciliation but same failed.

Under section 1 of the **Matrimonial Causes Act, 1971 (Act 367)** the sole ground for granting a divorce is that the marriage between the parties has broken down beyond reconciliation. In order to prove that the marriage has broken down beyond reconciliation, the Petitioner has to prove to the court that the Respondent has committed adultery and that by reason of such, the Petitioner finds it intolerable to live with the Respondent; the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; the Respondent has deserted the Petitioner for a continuous period of at least two (2) years immediately preceding the presentation of the Petition; the parties to the marriage have not lived as man and wife for a continuous period of at least two (2) years immediately preceding the presentation of the petition and the Respondent consents to the grant of the decree of divorce; the parties to the marriage have not lived as man and wife for a continuous period of at least five (5) years immediately preceding the presentation of the petition or the parties to the marriage have after diligent effort been unable to reconcile their differences. (See section 2 of Act 367)

From the evidence on record, I find as a fact that the marriage between the parties has broken down beyond reconciliation on the grounds of the irreconcilable differences between the parties; unreasonableness on the part of Respondent. For these reasons, the parties cannot be reasonably expected to continue the marriage contracted on 24<sup>th</sup> November, 2018.

I also find Respondent's behaviour of not responding to the Petition even though she was served with every process and hearing notices as an indication that she consents to the grant of the divorce and has nothing to say to the allegations raised in the petition against her. It is well settled that when a party is given the opportunity to lead evidence in support of his stand or in defence of the allegations against him but fails to avail himself of that opportunity, the court will be entitled to proceed with the trial to conclusion and make findings on the basis of the evidence adduced at the trial. This was the holding of the court in the case of **In re West Coast Dyeing Industry Ltd; Adams v Tandoh [1984 – 1986] 2 GLR 561.**

### **Conclusion**

In conclusion, I hold that the cap marriage celebrated between the Petitioner and the Respondent on 24<sup>th</sup> November, 2018 has broken down beyond reconciliation. Accordingly, the petition of the Petitioner for dissolution is granted. I hereby enter judgment in the following terms:

- 1) The ordinance marriage celebrated and contracted on 24/11/2018 between the parties at the Full Gospel Church International, New Town, Tema, herein is hereby dissolved.
- 2) The Petitioner shall present the original copy of the marriage certificate to the registrar of the court for cancellation.
- 3) No order as to costs.

**H/H KLORKOR OKAI-MILLS  
CIRCUIT COURT JUDGE**

JUDICIAL SERVICE