

IN THE CIRCUIT COURT 'B', TEMA, IN THE GREATER ACCRA REGION
HELD ON THURSDAY THE 19th DAY OF OCTOBER, 2023 BEFORE H/H
KLORKOR OKAI-MILLS (MRS)

SUIT NO: C5/130/23

CHRISTIANA MISSADGE

PETITIONER

VRS

KENNETH NYASEMBI

RESPONDENT

PETITIONER

PRESENT

RESPONDENT

ABSENT

NO LEGAL REPRESENTATION

JUDGMENT

The petitioner on the 7th day of July, 2023 initiated divorce proceedings averring that the marriage which was celebrated on 19th March, 2010 under the ordinance Cap 127, Registrar Peace Assembly of God Church, Community 12, Tema, between the parties has broken down beyond reconciliation on the grounds of unreasonable behavior on the part of the respondent. Petitioner therefore petitioned the court for dissolution of the marriage and prayed for the following relief:

Dissolution of the marriage celebrated between the parties at the Peace Assembly of God church, Community 12, Tema in the Tema Municipality of the 19th of March, 2010.

Respondent entered appearance on 25th July, 2023 and filed a Notice of consent to the divorce petition on 25th July, 2023. The case was set down for trial on 15th September, 2023 and same was served on the respondent via Hearing Notice issued and same served on respondent on 21st August, 2023. Petitioner filed her witness statement and pre-trial check list on 18th September July, 2023 and served respondent on 27th September, 2023. The respondent has failed to file his witness statement and Pre-Trial Check list though he is on Notice. On 6th October, 2023, the Court, after Case Management Conference, proceeded to hear the case of the petitioner and took her evidence-in-chief. Given that respondent was not present to cross-examine petitioner on her witness statement, there was no cross-examination. Petitioner accordingly closed her 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).

Petitioner told the court that the petitioner and the respondent got married on 19th March, 2010 at the Peace Assembly of God church in the Tema Municipal Assembly under the marriage ordinance Cap 127. Petitioner indicated that after the marriage, they co-habited at Community 12, Tema for some time before relocating to Community 25, Tema in the same year, 2016. There are three issues adopted by petitioner in the marriage. Petitioner testified that the respondent would constantly insults and attacks her. Petitioner also averred that after respondent helped her start her business, respondent would accuse her of having affairs with men when she got home late from her shop, though the only reason she got home late was due to heavy traffic. Petitioner averred that she supported respondent to jointly acquire a plot of land near Prampram for the couple to build their house.

Petitioner testified that in December 2022, respondent subjected her to a severe beating and insults at her shop, accused her of being a prostitute, a scene which was witnessed by members in the community. She further testified that in January 2023, the respondent physically attacked her friend, pushing the alleged visitor down the stairs and

accused her of being the one who was connecting petitioner with men. In an attempt to rescue her visitor from the beatings at the hands of the respondent, respondent mercilessly beat up petitioner and threatened her life, after which she reported the incident to the Community 25 Police. Petitioner avers that even from within the cells of the police station, he continued to make threats on her, and as a result, the police advised her to relocate and she did relocate out of the house. All attempts at reconciliation by the families, friends and parties themselves have failed and petitioner therefore prays the court to dissolve the marriage.

Witness was discharged after her testimony since respondent had failed to appear to cross-examine her or put his case across, though he was on Notice of the hearing.

ANALYSIS OF THE EVIDENCE

From the evidence on record, it is a fact that the parties were married under the ordinance Cap 127 on 19th March, 2010. 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 is

required to establish at least one of the facts stipulated under **section 2(1)** of Act 367, namely, adultery, unreasonable behavior, desertion, failure to live as husband and wife for a continuous period of at least 2 years immediately preceding the presentation of the petition, failure to live as man and wife for a continuous period of five years immediately preceding the presentation of the petition and lastly, irreconcilable differences. **Section 2(3)** of Act 367, enjoins the court to inquire into the facts alleged in support of the dissolution. The court shall refuse to grant dissolution of the marriage notwithstanding the fact that any of the facts are proved if there is a reasonable possibility for reconciliation. Petitioner, in her divorce petition stated that the basis for her petition is that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

From the evidence on record, petitioner testified that respondent smokes weed and each time he smokes, he subjects her to severe beatings and insults. She also testified that without any basis, respondent always accuses of her seeing other men when she returns home late from her shop – a clear indication that there is no trust in the marriage. According to petitioner, after one instance where he beat her up at her shop, he started insulting her at the top of his voice which attracted a lot of people to the scene where he proceeded to accuse her of being a prostitute in the presence of the crowd who had gathered; - to my mind, any spouse who behaves in such manner is deliberately disgracing their spouse publicly. It is not possible for a man who loves his wife to behave like respondent did in public towards petitioner.

Indeed, no marriage is perfect; however, in this case where respondent essentially hijacked basic house items such as cooking utensils, gas cooker and cylinder, bed and mattress and the television set, items which Petitioner indicates belong to her, it will in all honesty, be unreasonable to expect petitioner to continue to stay married to the respondent. There is no stronger manifestation of unreasonable behavior on the part of the respondent than when petitioner testified in her witness statement that *“The respondent took my underwear and beads and went round the neighborhood telling people and his mother that I have gone for spiritual beads and underwear from India to sell in my shop.”* No man who wants to protect the sanctity of his marriage and the dignity of his wife and by extension, his, would engage in conduct which is clearly intended to embarrass and disgrace the woman he claims is his wife. The fact that the respondent hastily entered appearance, filed consent to the divorce and pulled out of the divorce proceedings a clear indication of how bad the marriage has become. 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 19th March, 2010.

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**. Respondent has not entered to deny any of the allegations made by petitioner in her witness statement though petitioner served respondent personally on 27th September, 2023 with Hearing Notice and her Witness statement. The Court therefore maintains that the statements in petitioner's witness statement are true.

Conclusion

In conclusion, I hold that the marriage ordinance cap 127 celebrated between the petitioner and respondent on 19th March, 2010 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 19/03/2010 between the parties at the Assembly of God Church, Tema, is hereby dissolved.
- 2) The marriage certificate with license number TMA/RM/341/2016 is hereby cancelled.
- 3) The Petitioner shall present the original copy of the marriage certificate to the registrar.
- 4) All parties shall jointly care for the issues in the marriage.

5) No order as to costs.

(SGD)

H/H KLORKOR OKAI-MILLS

CIRCUIT COURT JUDGE