

**IN THE CIRCUIT COURT 'B', TEMA, ACCRA HELD ON FRIDAY THE 13TH DAY
OF OCTOBER, 2023 BEFORE H/H KLORKOR OKAI-MILLS (MRS)**

SUIT NO: C5/82/23

SOPHIA GIFTY TEIMLEY NARH

PETITIONER

VRS

ALFRED MARTEY

RESPONDENT

PETITIONER

ABSENT

RESPONDENT

ABSENT

AKOSUA GYAMFI DUAMROH, ESQ FOR PETITIONER PRESENT

JUDGMENT

The parties entered into an ordinance marriage on 05/04/2019 at the St Paul Methodist Cathedral, Tema, and cohabited as husband and wife afterwards for two weeks after which Respondent returned to the United Kingdom, where he is ordinarily resident. Both parties are Ghanaians and there are no issues in the marriage. The Petitioner on the 23rd day of January, 2023 initiated divorce proceedings after seeking leave to issue it and serve a notice of it on Respondent because he is resident outside the country. She avers that the marriage between her and the Respondent has broken down beyond reconciliation on the grounds of unreasonable

behaviour on the part of Respondent, such that the Petitioner cannot be expected to stay married to him. Petitioner contends Respondent is an unreasonable person, fond of arguing and using insulting language against Petitioner and has repeatedly slept outside the marital home. Petitioner further avers that when Respondent returned to Ghana unannounced, he moved into a separate room and informed their church counsellor in Petitioner's presence that he wants Petitioner out of the marital home; he does not want to stay married to Petitioner again. Subsequently, Respondent packed Petitioner's items into the living room, after threatening to beat her. It was upon this that Petitioner moved out of the house. The parties have since 2022 not lived as man and wife and several attempts by family members to reconcile them have proved futile. She therefore petitioned the court for dissolution of the marriage.

Respondent failed to enter appearance, file a response and / or contest the case even though he was validly served with all the processes and several hearing notices.

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 in her statement and testimony told the court that the Petitioner and the Respondent got married in Ghana on 5th April, 2019 and they cohabited in Tema for two weeks after which the Respondent left for the United Kingdom, where he is ordinarily resident. She told the court that the Respondent is abusive towards her and would insult and accuse her of cheating when he calls her from the UK and she is not able to respond. She added that as a couple, she and Respondent had tried unsuccessfully to have a child as she visited various medical facilities seeking help, only to discover that it was rather Respondent who had a medical issue. She added that the Respondent, during the pendency of the marriage, would not eat food she cooked at home, but would rather go to his mother's house to eat and she, on occasion has had to throw away a whole pot of food.

She testified again that the Respondent is an unreasonable person who is fond of arguing, and insulting her at the least opportunity and treats her as if she is a child. Respondent took the original copy of their marriage certificate with the understanding that he was going to process travel documents for her to enable her join him in the United Kingdom, but this never materialized. On at least two occasions, the Respondent has failed to sleep at the marital home and lied about his whereabouts. Due to these occurrences, Petitioner and Respondent have not lived as man and wife since 2022. Petitioner prays the court to dissolve the marriage because of Respondent's unreasonable behavior and their irreconcilable differences since all attempts at reconciliation has proved futile.

ANALYSIS OF THE EVIDENCE

As recounted by the court supra, the Respondent was afforded every opportunity to appear and / or defend the action but he ignored every process served on him. He did not challenge or contest the allegations made against him by the Petitioner. The law is settled that where the evidence led by a party is not challenged by his opponent in his 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 same accepted by the trial court. [see **Takoradi**

Flour Mills v Samir Farms (2005 – 2006) SCGLR 882 and Dzaisu v Ghana Breweries Ltd (2007 – 2008) SCGLR 539].

Also, 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.**

At the close of Petitioner's case, there was no evidence to contradict what she had said. The court is thus bound to accept the flawless evidence of the Petitioner and make its findings and draw its conclusion.

From the evidence on record, it is clear and a fact that the parties have not lived together as man and wife since 2022. I find Respondent's behavior of persistently insulting Petitioner, accusing her of infidelity, threatening to beat her up and abandoning their bedroom by moving into a separate room in the house to be abusive towards the Petitioner and an unreasonable behavior on the part of the Respondent which has contributed to the irreconcilable differences between the parties.

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 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 2 years immediately preceding the presentation of the petition and the Respondent consents to the grant of the decree of divorce. From the evidence, the Respondent adduced has behaved in an unreasonable manner towards the Petitioner and indeed the Petitioner cannot be expected to live with him, coupled with the fact that the parties to the marriage have not lived as man and wife for a continuous period of at least 1 year 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 ground of the irreconcilable differences between the parties, due to unreasonableness on the part of Respondent.

I also find Respondent's behavior of not responding to the Petition even though he was served as an indication that he consents to the grant of the divorce and has nothing to say to the allegations raised in the petition. For these reasons, the parties cannot be reasonably expected to continue the marriage contracted on 5th April, 2019 (05/04/2019).

Accordingly, I hold that:

- 1) The ordinance marriage celebrated and contracted on 5th April, 2019 (05/04/2019) between the parties is hereby dissolved on grounds that it has broken down beyond reconciliation.
- 2) Petitioner shall present the original copy of the marriage certificate to the registrar of the court for cancellation.
- 3) Petitioner is to bear her cost.

H/H KLORKOR OKAI-MILLS (MRS)

CIRCUIT JUDGE, TEMA