

IN THE CIRCUIT COURT '5' HELD IN ACCRA ON

TUESDAY THE 29TH DAY OF AUGUST, 2023

BEFORE HER HONOUR CHRISTINA EYIAH-DONKOR CANN (MRS.),

CIRCUIT COURT JUDGE

SUIT NO: C5/35/2023

JONAS KWAME TAMAKLOE ... PETITIONER 922 BURMAN

DR.

SAN JOSE, CALIFORNIA

UNITED STATES, 95111

VRS

SHIKA ABLA ABUI NUNEKPEKU ... RESPONDENT

36000 FREMONT

BLVD APT

FREMONT CA, 94536

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**JUDGMENT**

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**INTRODUCTION**

The parties were married under the Marriage Ordinance on the 4<sup>th</sup> August, 2016 at the Accra Metropolitan Assembly, Accra. By a Petition for divorce filed on the 29<sup>th</sup> August, 2022, the petitioner commenced this action averring that their marriage has broken down beyond reconciliation and prayed the court for the following reliefs:

*“ a) A dissolution of the marriage celebrated between the Petitioner and the*

*Respondent on 4<sup>th</sup> August, 2016.*

*b) Any other relief(s) that the Honourable Court deems fit.*

*c) Each party shall bear his/her legal costs.”*

The respondent filed her Answer to the Petition on the 21<sup>st</sup> April, 2023.

Since this is a matrimonial cause, it is the direct provisions of the Matrimonial Causes Act, 1971 (Act 367) which should apply.

Section 2 (2) of the Matrimonial Causes Act, 1971 (Act 367) provides that: *“On a petition for divorce it shall be the duty of the court to inquire, so far as is reasonable, into facts alleged by the petitioner and the respondent.”* The facts relied on by the parties must therefore be pleaded and placed before the court; otherwise, the court cannot perform its statutory duties under the above section of this Act. The particulars set out in detail the facts relied on by the petitioner and the respondent to establish the allegation that the marriage has broken down beyond reconciliation.

The relevant particulars of the petitioner’s Petition are as follows:

*“7. The marriage between the Petitioner and the Respondent has broken down irretrievably and all attempts made by family and friends to resolve same has proved futile.*

*8. That the Petitioner and Respondent have not lived together as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the Petition.”*

Both the petitioner and the respondent did not testify personally. Their Lawful Attorneys testified on their behalf and they each did not call any witness.

In several decided cases, the superior courts have held that there are situations where the testimony of a single witness will suffice to prove a case.

In the case of **Kru vrs Saoud Bros & Sons (1975) 1 GLR 46**, the Court of

Appeal held:

*“Judicial decisions depend on the intelligence and credit and not the multiplicity of witnesses produced at the trial.”*

Also, in the case of **Takoradi Flour Mills vrs Samir Faris (2005-2006)**

**SCGLR**, the Supreme Court held affirming the position of the law that: *“(a) A tribunal of facts can decide an issue on the evidence of one party. A bare assertion on oath by a single witness might in the proper circumstance of a case be enough to form the basis of a judicial interpretation. The essential thing is that the witness is credible by the standard set in section 80 (2) of the Evidence Act, 1975.”*

Again, in the case of **Ghana Ports and Harbours Authority vrs Captain Zavi & Nova Complex Ltd (2007-2008) SCGLR 806** the Supreme Court held thus:

*“It is true that witnesses are weighed but not counted and that a whole host of witnesses are not needed to prove a particular point.”*

The petitioner’s Lawful Attorney tendered in evidence as Exhibit “A”, the Power of Attorney given to her by the petitioner.

The respondent's Lawful Attorney also tendered in evidence as Exhibits "1", and "2" the Power of Attorney given to her by the respondent and the marriage certificate.

### **THE PETITIONER'S CASE**

The petitioner's lawful Attorney Bernice Tawiah Ahwireng testified on his behalf. According to her, the petitioner and the respondent got married at the Accra Metropolitan Assembly on the 4<sup>th</sup> August, 2016. After the marriage, they cohabited in the United States. There is no issue of the marriage and there have not been any previous court proceedings with reference to the marriage. That the marriage between the petitioner and the respondent has broken down irretrievably and all attempts made by family and friends to resolve same has proved futile. The petitioner and respondent have not lived together as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the petition. According to the petitioner's attorney, the parties do not live together anymore and both parties have no intention of resuming cohabitation and the respondent consents to the divorce being granted.

As far as the petitioner's attorney is concerned, the marriage has broken down and the petitioner would never be reconciled with the respondent. He would not go back to the respondent and no more diligent efforts at reconciliation would succeed. She therefore prayed the court to dissolve the marriage.

### **THE RESPONDENT'S CASE**

The respondent testified through her lawful attorney Fafa Ama Nunekpeku. According to the respondent's attorney, the respondent lawfully married the petitioner on the 4<sup>th</sup> August, 2016 at the Accra Metropolitan Assembly, Accra. After the marriage, both parties relocated to the United States of America and cohabited

peacefully as husband and wife. It is the evidence of the respondent's attorney that the marriage between the respondent and the petitioner has broken down beyond reconciliation and all attempts by family and friends to resolve same have proved futile. The respondent's attorney testified further that the parties have not lived together as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the petition and the parties do not live together anymore and have no intention of resuming cohabitation and the respondent consents to the dissolution of the marriage.

### **FINDINGS OF PRIMARY FACTS**

From the evidence on the record, the following facts are not in dispute:

1. That the parties were married under the Marriage Ordinance (Cap 27) at the Accra Metropolitan Assembly, Accra on the 4<sup>th</sup> August, 2016.
2. That there are no issues in the marriage.
3. That both parties agree to the dissolution of the marriage.

### **ISSUES FOR DETERMINATION**

The **main issue** for determination is as follow:

*Whether or not the marriage contracted between Jonas Kwame Tamakloe the Petitioner herein and Shika Abia Abui Nunepkeku the Respondent herein on the 4<sup>th</sup> August, 2016 at the Accra Metropolitan Assembly, Accra has broken down beyond reconciliation?*

### **ANALYSIS OF THE RELEVANT SECTIONS OF THE MATRIMONIAL**

#### **CAUSES ACT, 1971 (ACT 367)**

Before I deal with the only issue, I now wish to set out the relevant sections of the Matrimonial Causes Act, 1971 (Act 367) namely sections 1

(2), 2 (1), and 2 (3).

The only ground upon which a marriage may be dissolved is where the petitioner proves that the marriage has broken down beyond

reconciliation.

Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367) provides thus: *“The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.”*

The grounds upon which a marriage would be said to have broken down beyond reconciliation are six (6) and the proof of one or more of them to the satisfaction of the Court may be a valid ground to the dissolution of the marriage. The six grounds are provided in section 2 of the Matrimonial

Causes Act, 1971 (Act 367). They are as follows:

*“2 (1) For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one of the following facts:*

- a) That the respondent has committed adultery and 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 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, 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.*

Under section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367):

*“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.”*

### **BURDEN ON THE PETITIONER**

It is a general principle of law that he who asserts must prove. This general principle has been given both statutory expressions at section 10 (1) and (4) of the Evidence Act, 1975 (NRCD 323), and judicial pronouncements.

In the case of **Ababio v. Akwasi 111 (1995) 2 GBR 774**, the Court held

that:

*“The general principle of law is that it is the duty of the plaintiff to prove his case, i.e. he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue*

*essential to the success of the case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this he wins: if not he loses on that particular issue."*

See also: **Bisi v Tabiri [1987-1988] I GLR 360**

**Ackah v. Pergah Transport Limited & Others [2010] SCGLR 732.** In a petition for divorce, the burden that is cast on a petitioner is to lead sufficient evidence to enable a finding of those facts in issue to be made in his favour as required by sections 10 and 14 of the Evidence Act, 1975

(NRCD 323).

See: **Dzaisu v Ghana Breweries Limited [2009] 6 GMJ 111 S.C**

Sections 11(4) and 12(1) of the Evidence Act, 1975 (NRCD 323) provides that the standard burden of proof in all civil matters is proof by the preponderance of probabilities and there is no exception to it except where the issue to be resolved in the civil suit borders on criminality such as fraud and forgery.

The Supreme Court also in the case of **Adwubeng v Domfeh [1996-97] SCGLR 660** unambiguously resolved the question of standard burden of proof.

In the case of **African Mining Services v Larbi [2010-2012] GLR 579**, the Court held that the burden of persuasion in civil matters requires the person who has the evidential burden to discharge, to produce sufficient evidence such that a reasonable mind, such as this Court, will come to the conclusion that the existence of the fact is more probable.



It is therefore the petitioner's duty as required by law to produce the evidence of the facts in issue such that a reasonable mind, such as this Court, will come to the conclusion that from the existence of the facts, it is more probable that the marriage has broken down beyond reconciliation and that duty must be satisfactorily discharged.

Furthermore, the ground upon which the petitioner herein seeks the dissolution of the marriage contracted between himself and the respondent is not living together as husband and wife for a continuous period of two (2) years. Therefore, the onus is on the petitioner to lead cogent and credible evidence in proof of his allegation.

### **ANALYSIS OF THE EVIDENCE ON RECORD**

#### **ISSUE**

*Whether or not the marriage contracted between Jonas Kwame Tamakloe the Petitioner herein and Shika Abia Abui Nunepkeku the Respondent herein on the 4<sup>th</sup> August, 2016 at the Accra Metropolitan Assembly, Accra has broken down beyond reconciliation?*

From the pleadings and the evidence, the applicable grounds relied upon by the petitioner for the dissolution of the marriage is: Parties not having lived together as husband and wife for a continuous period of at least two

(2) years.

I shall address the ground below.

#### **PARTIES HAVE NOT LIVED TOGETHER AS HUSBAND AND WIFE FOR**

##### **A PERIOD OF TWO (2) YEARS**

The petitioner pleaded in his Petition that he and the respondent have not lived together as husband and wife for a continuous period of two (2) years.

In her evidence-in-chief, the petitioner's attorney testified to this fact and further testified that the petitioner and the respondent have not lived as man and wife for a continuous period of two (2) years.

The respondent's attorney also testified to the effect that the parties to the marriage have not lived together as husband and wife for a continuous period of two (2) years immediately preceding the presentation of the petition.

From the evidence on record, it is evident and not in dispute that the parties herein have not lived together as husband and wife for a continuous period of two (2) years immediately preceding the presentation of the petition and there is therefore no need to lead any evidence in proof of that fact. One of the grounds for the dissolution of marriage is *"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."*

I am satisfied that the petitioner proved his case by the preponderance of probabilities that he and the respondent have not lived as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the petition; as provided under section 2 (1) (c) of the Matrimonial Causes Act, 1971 (Act 367) and this court holds same.

In my opinion the petitioner has proved that the marriage has irretrievably broken down beyond reconciliation because the couple have not lived together as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the petition.

The next question to consider is the requirement of section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367) that is, whether the marriage between the petitioner and the respondent has broken down beyond reconciliation.

On a proper construction of this sub-section of the Act, the court can still refuse to grant a decree even when one or more of the facts set in section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367) have been established. 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 party that the marriage has broken down will not be enough.

**See: Dictum of Bagnall J in the case of Ash v. Ash [1972] 1 ALL ER 582 at page 586.**

From the evidence on record, there is no indication that the parties are prepared or willing to cooperate once again to find a solution to their differences. The court finds that the marriage has broken down and there is no hope of reconciliation at this stage as the parties themselves have told this court and it is better for this court to dissolve this marriage so that the parties can go their separate ways and be put out of their miseries.

To insist that the petitioner and the respondent continue to live together as man and wife would be turning a contract of marriage into one of slavery regardless of the psychological and emotional trauma on the parties or one of them and allowing this marriage to strive on hopelessly, helplessly, and lack of trust. This is because matrimonial causes are unique because they involve two persons who are physically, emotionally and spiritually involved with each other unlike other causes of action like land cases, contract, constitutional, chieftaincy etc. which do not

involve intimacy between two people. No doubt the Bible declares the unique relationship as the two becoming one flesh.

I cannot but agree with *Osei-Hwere J (as he then was)* in the case of

**Donkor v. Donkor (1982-83) GLR 1156 at page 1158** as follows:

*“The Matrimonial Causes Act (1971) Act 367 does not permit spouses married under the Ordinance to come to pray for dissolution of a marriage just for the asking. Where the court is satisfied from the conduct of the parties that the marriage has in truth and in fact broken down beyond reconciliation it cannot pretend and insist that they continue as man and wife. To do so would be turning a contract of marriage into one of slavery regardless of the psychological effect on the parties or one of them.”*

I find and hold that from the totality of the evidence on record that, the marriage contracted between Jonas Kwame Tamakloe the petitioner herein and Shika Abia Abui Nunepkeku the respondent herein on the 4<sup>th</sup> August, 2016 at the Accra Metropolitan Assembly, Accra has broken down beyond reconciliation and the justification is that from the evidence the parties to the marriage have not lived together as husband and wife for a period of at least two (2) years immediately preceding the presentation of the Petition.

I am satisfied that regarding the burden of persuasion, the petitioner produced sufficient evidence to persuade me to come to the conclusion per the existence of the fact that the marriage had broken down beyond reconciliation.

Thus, a *prima facie* case has been made by the petitioner that warrants the dissolution of the marriage. The requirements of section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367) has thus been met by the

petitioner.

I hereby declare the marriage contracted between Jonas Kwame Tamakloe the Petitioner herein and Shika Abla Abui Nunepkeku the Respondent herein on the 4<sup>th</sup> August, 2016 at the Accra Metropolitan Assembly, Accra dissolved.

### **CONCLUSION**

The marriage solemnized on the 4<sup>th</sup> August, 2016, between Jonas Kwame Tamakloe the Petitioner herein and Shika Abla Abui Nunepkeku the

Respondent herein at the Accra Metropolitan Assembly, Accra is dissolved.

Each party is to bear his or her own cost.

### **COUNSELS:**

**BENEDICTA MAWUSI FIANOO FOR THE PETITIONER PRESENT**

**POKUA ALLEN-KOUFIA FOR GODFRED ANIM-NYARKO FOR THE  
RESPONDENT PRESENT**

**(SGD)**

**H/H CHRISTINA EYIAH-DONKOR CANN (MRS.)**

**(CIRCUIT COURT JUDGE)**