

**IN THE CIRCUIT COURT 3 HELD AT ACCRA ON FRIDAY THE 10TH
DAY OF NOVEMBER, 2023 A. D. BEFORE HER HONOUR SUSANA
EDUFUL (MRS.), CIRCUIT COURT JUDGE**

SUIT NO. C5/201/2022

DR. EDWARD AKPANDJA

PETITIONER

VRS

DELASI OFFEIBEA AMPONSANAH

RESPONDENT

PETITIONER PRESENT AND REPRESENTED, RESPONDENT ABSENT

JUDGMENT

The Parties to this suit got married under the Marriages Ordinance (CAP 127) on March 1, 2003 at the St. Margaret-Mary Catholic Church, Dansoman-Accra. The Petitioner is seeking the dissolution of the marriage on the grounds that the parties have not been able to reconcile their differences.

The Petitioner per the petition filed on March 2, 2022 prayed to the court as follows;

1. That the marriage celebrated between the parties be dissolved.
2. That the Respondent be granted custody of their only child of the marriage by name Edward Kwame Akpanja aged 17 years with reasonable access to the Petitioner.

The notice of the petition was served out of the jurisdiction and service

on the Respondent was proved. The Respondent entered appearance through her lawyer. The Respondent filed her answer and cross-petition on October 14, 2022. On September 2023 counsel sought leave of the court to file their witness statement and same was granted but the Respondent did not file the process. Counsel for respondent did not file any process thereafter.

Under **order 36 rule 2(a) and (b) of the High Court (Civil Procedure rules), 2004 (C.I. 47)**, “Where an action is called for trial and a party fails to attend, the trial Judge may (a) where the Plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim; (b) where the defendant attends and the plaintiff fails to attend, dismiss the action and allow the defendant to prove the counterclaim, if any;...”

In the case of **Ankumah V City Investment Co Ltd. [2007-2008] SCGLR 1064** it was held, “The defendant after several attempts was finally served but failed to appear in court. The trial court therefore rightly adjourned the case for judgment. A court is entitled to give a default judgment, as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard.”

That party is deemed to have deliberately failed to take advantage of the opportunity to be heard. In such a situation, the *audi alteram partem* rule cannot be said to have been breached.

Petitioner filed Witness Statement and was called upon to testify as

the Respondent was absent. The court accordingly struck out the Answer and cross-petition filed by the Respondent.

Section 1(2) of the Matrimonial Cause Act, 1971 (Act 367) states that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In addition, the court before which such a petition is presented is required by law to determine as a fact that the marriage, has indeed broken down beyond reconciliation. In Support of this, Section 2(3) of Act 367 provides as follows:

Notwithstanding that 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.

Section 2(1) of Act 367 stipulates the facts which a petitioner or a cross-petitioner may rely on to prove that the marriage which is sought to be dissolved has broken down beyond reconciliation as follows;

- a. That the Respondent has committed adultery and by the reason of such adultery the Petitioner finds it intolerable to live with the Respondent; or
- b. That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; or

- c. That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or
- d. That the parties to the marriage have not lived as man 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 such 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 notwithstanding the refusal; or
- e. That the Parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f. That the parties have after diligent effort been unable to reconcile their differences.

The Petitioner prayed that the marriage between the parties be dissolved on the grounds of inability of the parties basis of unreasonable behaviour on the part of the Respondent.

ISSUES

The **main issues** for determination are as follow:

1. Whether or not the marriage celebrated between the Petitioner Dr. Edward Akpangja and the Respondent herein Delasi Offeibea Amponsah, on March 1 2003, at the St. Margaret-Mary Catholic

Church, Dansoman-Accra has broken down beyond reconciliation?

ISSUE ONE (1)

1. Whether or not the marriage celebrated between the parties on March 1 2003, has broken down beyond reconciliation?

Petitioner's evidence is that the marriage between them has broken down beyond reconciliation on grounds of the parties' inability to reconcile their differences. The Petitioner stated in evidence that Respondent never loved him as a result just two years after their marriage the respondent started looking for fault just to get out of the marriage relationship. The Respondent persistently requested the Petitioner to grant her a divorce. It is the Petitioner case that the Respondent did not cooperate with him on any issue relating to the upkeep of the household and she always had things done in her own way without considering the parties common interest. Petitioner further stated that as a result of the differences the parties for the past 10 years not lived as husband and wife. The Petitioner also denied the Respondent's claim for a parcel of land bought and development before the two got married as husband and wife. That Respondent's case that it property in issue is a marital property is false. Attempts at reconciliation according to the Petitioner proved futile. The Petitioner tendered a copy of their marriage certificate Exhibit A and an indenture of a parcel of land situate at Dunkonah New Bortiano, Accra

The Court finds from the evidence on record that the appropriate grounds necessitating the dissolution of the marriage is that which is provided for under **section 2(1)(f) of the Matrimonial Causes Act, 1971 (Act 367)**- that the parties have after diligent effort been unable to reconcile their differences. This Court finds that the grounds of unreasonable behaviour is untenable per the evidence adduced.

DECISION

1. The court hereby orders that the marriage celebrated between the Petitioner herein, Dr. Edward Akpangja and the Respondent herein Delasi Offeibea Amponsah, on March 1 2003, at the St Margaret-Mary Catholic Church, Dansoman-Accra has broken down beyond reconciliation and same is dissolved. The marriage certificated with registration number 103/2003 is hereby cancelled. A decree of divorce is hereby granted.
2. I will make no order as to cost.

LEGAL REPRESENTATION

DANIEL DUODU ASARE FOR THE PETITIONER

DAVID BOAFO FOR THE RESPONDENT

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT COURT JUDGE)**