

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

SUIT NO. C5/192/2022

MARY – ROSE BEDFORD

PETITIONER

VS.

DR RICHARD OWARE

RESPONDENT

PETITIONER ABSENT AND RESPONDENT PRESENT AND REPRESENTED

JUDGMENT

The Petitioner filed this suit on February 18, 2022 praying for the following reliefs;

1. That the marriage celebrated between the parties be dissolved
2. That the Petitioner be granted custody of the four children of the marriage.
3. That the Respondent be ordered to make to the Petitioner such maintenance pending the suit and after the suit as may be just.
4. That in alternative the Respondent be prepared to pay a lump sum of GHC800,000.00 to the Petitioner.
5. A declaration that the properties acquired during the subsistence of the marriage are joint marital properties and therefore should be shared equally. The properties involved are;
 - a. Mansion at Ablekuma
 - b. 3 plots of land with stores at Kasoa near Amanfo

c. 1 plot of land at Pampram.

The Respondent filed an answer and cross petition on May 12, 2022. The Respondent with the leave of the court filed an amended answer and cross-petition on August 16, 2023 and prayed as follows;

1. That the marriage between the parties be dissolved.
2. That the custody of the children be granted to the Respondent with reasonable access to the Petitioner as follows;
 - a. 2nd and 4th Saturday of every month from 8am to 2pm
 - b. Half the time of the children's vacation to be shared among the parties.
3. That the two plots of land situate at Prampram which the Respondent helped the Petitioner to acquire during the pendency of the marriage be settled on the Petitioner.
4. That the two plots of land acquired during the pendency of the marriage situate at Adjen Kotoku be settled on the Petitioner.
5. That the Respondent's interest in the apartment at Westlands be settled on the Petitioner.
6. The mansion acquired solely by the Respondent in 1996 prior to the marriage be settled on the Respondent
7. That the six plots of land with stores thereon acquired by the Respondent in 2003 be settled on the Respondent.
8. Joint maintenance of the children as the Court may order to be given an equitable share in the apartment built at Westland
9. That the parties are made to jointly maintain the children.

The suit was transferred to this court by the Chief Justice of Ghana on February 28, 2023 and for determination. At the time the case was transferred to this court the parties had filed their Witness Statement. The suit was called on April 14, 2023 and the Petitioner was absent. From the proceedings on record it shows that when the case was called on October 19, 2022 both parties were in court and they informed the court they intend to file terms of settlement and same was filed on October 24, 2022 by the Petitioner. In the

terms of settlement, the ancillary reliefs were agreed upon. The Counsel for Respondent mentioned to the court that, the Petitioner after signing the Terms of Settlement later indicated to them she no longer wants to be bound by the terms of settlement filed by her, the Petitioner had filed. The Petitioner's Counsel notified the court in writing that he no longer represents the Petitioner in the case.

The Respondent who had filed an application for reasonable access to the children of the marriage prayed to the court to withdraw it and same was withdrawn by the court. The court ordered that the Respondent be served with hearing notice on Petitioner to appear in court on the next adjourned date. Even though the Petitioner was duly served she did not appear in court to pursue the suit. The court under order **36 rule 1(2) of C.I 47 High Court Civil Procedure rules** struck out the Petitioner's petition and Witness Statement filed and considered the Respondent cross- petition. Before the judgment would be read the Respondent sought leave of the court to amend his answer to petition and cross petition. The processes were served on the Petitioner by Substituted Service but she did not file any process and did not attend court too.

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.

The Petitioner was served by Substituted Service and same was proved but the Petitioner did not file any process or come to court to pursue the petition filed. The Respondent was therefore called upon to prove his cross-petition.

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 sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under **section 2(1)(c) of the *Matrimonial Causes Act, 1971 (Act 367)*** “For the purpose of showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the court that the Respondent has deserted the Petitioner for a continuous period of at least 2 years immediately preceding the presentation of the Petition”.

Reyden defines desertion as the separation of one spouse from the other with an intention on the part of the deserting spouse to bring cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. But the physical act of departure of one spouse does not reasonably make that spouse a deserting party.

In support of the Respondent cross-petition, He stated that the parties got married under the Marriages Ordinance (CAP 127) on February 15, 2008 and tendered a copy of the parties’ marriage certificate to establish same. According to the Respondent the parties have four children from this marriage. They are Lady Grace Nhyira Yaa Boakye aged 13, Jonathan Boakye aged 11, Faith Boakye aged 10 and Jushua Boakye aged 8. The Respondent

further stated that the Petitioner is abusive and heaps abusive words on him and his family for absolutely no reason. The Respondent tendered the Petitioner abusive messages sent to him on WhatsApp and also facebook publications. The Respondent further asserts that the Petitioner abuses him verbally in front of the children and this embarrasses him. The Respondent prayed that the court dissolves that marriage on grounds that the parties have for the past 5 years not lived as husband and wife.

The Respondent did not call any Witness

ISSUE

The **main issue** for determination is;

Whether or not the marriage celebrated between the parties on February 15, 2008, at the District Court Cape Coast in the Central Region of the Republic of Ghana has broken down beyond reconciliation?

Having considered the evidence before the Court as a whole, the Court finds that the Respondent's evidence supports the grant of divorce. The court rather finds from the evidence that it does not support the ground of unreasonable behaviour on the part of the Petitioner. The evidence on record rather supports that marriage between the parties have broken done beyond reconciliation on grounds that the parties have been unable to reconcile their differences as provided under **section 2(1)(f) of the Matrimonial Causes Act, 1971 (Act 367)** that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

In the circumstances, I hold that the marriage between the parties have broken down beyond reconciliation. A decree of divorce is granted.

On the ancillary relief(s) the Petitioner filed the terms of settlement on October 24, 2022. The Counsel for Respondent has indicated orally to this court that

the Petitioner reneged from the terms of settlement filed. This is the terms of settlement filed by the Petitioner herself which is a documentary evidence of her intention. Examination of the terms of settlement shows that the Respondent has signed the said document. The Petitioner after filing the said terms of settlement has not done anything to show that she does not want to be bound by the said terms of settlement. The oral statement of the Respondent cannot be used to override the documentary evidence of the Petitioner.

It is trite, that documentary evidence where there is documentary evidence is against oral evidence, that is where oral evidence conflict with unimpeached documentary evidence, documentary evidence will surifice. I refer to the case of **Duah v Yorkwa [1993-94] 1 GLR 217-24** it provides “Whenever there was a written document and oral evidence in respect of a transaction, the court would consider both the oral and the documentary evidence and often lean favourably towards the documentary evidence, especially where the documentary evidence was found to be authentic and the oral evidence conflicting. In the instant case, although both parties relied on exhibit 1 whose authenticity was not in doubt, the oral evidence relied on by the Respondent to prove her claim that the transaction was a pledge, was conflicting and inconsistent in material respects. Accordingly, the court would lean favourably towards the documentary evidence in exhibit 1 which supported the case of the Appellant that the transaction was a sale and not a pledge.”

I also refer to the case of *Amidu and Another V Alawiye and others* J4/54/2018 2019 unreported SC.

I refer to the case of **Jones V S.R Anthracite Collieries Ltd. (1920) 90 LJKB 1315 at p. 1317**; “the whole duty of this court and every court should be to bring justice between the parties” the court will therefore reject the oral statement of the Respondent that the Petitioner abandoned the terms of settlement she herself filed.

In this case the court is of the opinion that it will be just and equitable to adopt the terms of settlement filed, I will not restrain myself from doing so. The terms of settlement is accordingly adopted as consent judgement.

DECISION

1. The marriage celebrated between the Petitioner herein, Mary-Rose Bedford and the Respondent Richard Kofi Boakye Owoare on February 15, 2008, at the District Court Cape Coast in the Central Region of the Republic of Ghana has broken down beyond reconciliation and same is dissolved. The marriage certificate No. 6/2008 is hereby cancelled. A Decree of Divorce is hereby granted.
2. On the ancillary reliefs, the court adopts the terms of settlement filed on October 24, 2022 as stated below as Consent Judgement.
 1. That custody of the children of the marriage be given to the Petitioner and access be given to the Respondent as follows;
 - a. As long as the Respondent lives with his mother he shall have access to the children on the 2nd and 4th Saturdays of every month from 8:00am to the following day at 2:00pm.
 - b. When the Respondent acquires a place of his own, the parties agree that the Registrar of this court shall inspect the said premise to ascertain whether or not the Respondent owns the premises. After the said ascertainment, the Respondent shall have access to the children half the time of their vacation as well as every weekend and public holidays.
 2. That the following properties be settled on the Petitioner absolutely;
 - a. The two plots of land acquired at Prampram during the pendency of the marriage.
 - b. The two plots of land acquired at Adjen Kotoku during the pendency of the marriage.
 - c. The Respondent's interest in the apartment at Westland and that the Respondent abandons his prayer for an equitable share in the said property.
 3. That the following properties be settled on the Respondent.

- a. The mansion acquired by the Respondent in 1996.
- b. The six plots of land with stores thereon acquired by the Respondent in 2003.
4. That the Petitioner abandons her prayer for financial provision of any sort.
5. That both parties would bear with own legal cost.

LEGAL REPRESENTATION

GODFRED NYAKO HOLDING JUSTINE AMENUVOR'S FOR THE RESPONDENT

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