

**IN THE CIRCUIT COURT '3' SITTING IN ACCRA ON FRIDAY THE 3<sup>RD</sup> DAY  
OF NOVEMBER 2023 BEFORE HER HONOUR SUSANA EDUFUL (MRS.)  
CIRCUIT JUDGE,**

**SUIT NO. C5/345/2023**

**VICTORIA KUHAMEH**

**PETITIONER**

**VS.**

**GODSAVE KWAKU AMEDZAKE**

**RESPONDENT**

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**PETITIONER PRESENT AND REPRESENTED: RESPONDENT ABSENT**

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**JUDGMENT**

The Parties to this suit got married under the Marriages Ordinance (CAP 127) on December 17, 2007 at the Nungua Zimmermann Presbyterian Church Accra. The parties are married for about 15 years and have one child from this union. The Petitioner is seeking the dissolution of the marriage on the grounds of unreasonable behaviour on the part of the Respondent. She prayed the court to order the following ancillary relief(s);

1. That the custody of the child, Sarah Amedzake aged 15 of the marriage be granted to the Petitioner with reasonable access to the Respondent.
2. An order to the Respondent to pay maintenance fee for the up keep of the child as well as payment of school fees.
3. An order directed at the Respondent to pay lump sum financial provision to the Petitioner.

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 Respondent was served with the petition and same was proved but the Respondent did not enter appearance. He also did not appear in court to defend the suit. The Petitioner was therefore called upon to prove her claim. The Petitioner waived her claim for financial provision and filed Witness Statement to prove the other relief(s).

**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 basis of unreasonable behavior on the part of the Respondent.

## **ISSUES**

The **issues** for determination are as follows:

1. Whether or not the marriage celebrated between the Petitioner herein, Victoria Kuhameh and the Respondent herein, Godsave Kwaku Amedzake on December 17, 2007, at the Presbyterian Church of Ghana, Zimmermann Accra has broken down beyond reconciliation?
2. Whether or not the Petitioner is entitled to custody of the issues of the marriage?
3. Whether or not the court can order Petitioner to pay to the Respondent maintenance fees to the upkeep of the child and also pay school fees of the child.

### **ISSUE ONE (1)**

- 1. Whether or not the marriage celebrated between the parties on November 18, 2007, has broken down beyond reconciliation?**

Petitioner's evidence is that the Respondent's behavior is unreasonable and therefore she is unable to continue in the marriage. The Petitioner tendered exhibit A the marriage certificate as a proof of their marriage. According to the Petitioner after their marriage she got to know that the Respondent had been co-habiting with another woman Stacy Yayra Kwabey for 18 years but the Respondent did not inform her before getting married to her. In other words, the Petitioner's evidence is that she got married to the Respondent under deception. Again, after some years into their marriage she got to know that the Respondent has two other children with another woman by name Anastasia Yaa Lewu. The Respondent did not deny having amorous relationship with the women mentioned when the Petitioner confronted him about the issue. The Petitioner prayed the court grants her petition, as she can no longer remain in the marriage with the Respondent. Also attempts at reconciling the parties by the two families have also proved futile.

The Petitioner did not call any Witness.

Having considered the evidence before the court as a whole, the court finds that the Petitioner has been able to prove her relief of unreasonable behaviour on the part of the Respondent in accordance with law. It is unreasonable for a man married under the Ordinance Married CAP 127 to have other women and also have other children outside their marriage. If the Petitioner has indicated she can no longer live with the Respondent the court will not restrain her from doing so.

The case of **Addo V Addo 1973 2 GLR 103** it stated per incuriam thus “I think the court should come to her aid and offer her a relief. For it is better: when regrettably, a marriage has irretrievably broken down to enable the empty legal shell to be destroyed with the maximum fairness and the minimum bitterness, distress and humiliation”. This court hereby finds that marriage between the parties have broken down beyond reconciliation and same is dissolved.

### **ISSUES (2) & (3)**

#### **Whether or not the Petitioner is entitled to custody of the children and the Respondent be responsible for the maintenance of the child?**

The Petitioner is praying the court to grant custody of the issue of the marriage to him with reasonable access to the Respondent. The Respondent did not come to court or file any process to contest the Petitioner’s claim. In making an order regarding the custody of the children, the court is guided by what is in their best interest. **Section 2(2) of the Children’s Act, 1998 (Act 560)** states that the best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child. In **Braun v Mallet [1975] 1 GLR 81-95**, it was held that in questions of custody it was well-settled that the welfare and happiness of the infant was the paramount consideration.

In **R v. Gyngall [1893] 2 QB 232 at 243, CA the Court of Appeal per Lord Esher MR** stated further:

“The Court has to consider, therefore, the whole of the circumstances of the case, the position of the parent, the position of the child, the age of the child, the religion of the child ... and the happiness of the child.”

**Under section 45(1) of the Children’s Act 1998 (Act 560)**, “A Family Tribunal shall consider the best interest of the child and the importance of a young child being with the mother when making an order for custody or access.”

**Under section 45(2) (d) of Act 560**, the Family Tribunal shall take into consideration the fact that it is desirable to keep siblings together. The Petitioner’s claim for custody of the child stands uncontested. The court accordingly grants custody of the child to the Petitioner and the Respondent is granted reasonable access to the Respondent.

The court accordingly orders Respondent to continue paying the school fees of the child. In making the order for maintenance the court finds that there is no evidence of means of the parties. The court has arrived at this amount as reasonable, after consideration of the economic situation in Ghana and what it takes an average person to do given the economic situation in this country. The Respondent is ordered to pay GHC1,000.00 a month to the Petitioner as maintenance fees for the child. The Petitioner is to cater for all other fees relating to the upkeep of the child in her custody.

## **DECISION**

1. The court hereby order that the marriage celebrated between the Petitioner herein, Victoria Kuhameh and the Respondent herein, Godsave Kwaku Amedzake on December 17, 2007, at the Presbyterian Church of Ghana, Zimmermann Accra has broken down beyond reconciliation and same is dissolved. A decree of divorce is hereby granted.
2. Custody of the child Sarah Amedzake aged 15 is granted to the Petitioner. The Respondent is to have reasonable access to the child.

3. The Respondent is ordered to pay the school fees of the child and also pay the amount of GHC1,000.00 a month to the petitioner for the maintenance of the child. To be reviewed whenever the economic situation demands so.
4. I will make no order as to cost.

**LEGAL REPRESENTATION**

**PETER ANTONIO FOR THE PETITIONER**

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