

**CORAM: HER HONOUR MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT
JUDGE SITTING AT THE CIRCUIT COURT MPRAESO, EASTERN REGION ON
THE 26TH OF OCTOBER, 2023**

C5/2/22

CYNTHIA OFORI

V

ISAAC PORTUPHY

.....
.....
TIME: 11:30

PETITIONER PRESENT

RESPONDENT ABSENT

PARTIES SELF-REPRESENTED

JUDGMENT

The instant petition was filed by the petitioner in this court on the 8th of February, 2022.
The respondent entered appearance but took no other step. It appears that the petitioner

also did not pursue the case until the 29th of March, 2023, which was after a year, when she conducted a search in the registry to find out processes that had been filed by the respondent. On the 5th of April, 2023 she filed a notice of intention to proceed and after the required period had elapsed the matter was set down for hearing on the 14th of September, 2023. Thus after filing the petition on the 8th of February 2022, the first time the parties appeared before the court was on the 14th of September, 2023 after more than one and half years.

On the 14th of September, 2023 when the parties appeared and the court enquired of the respondent why he had not filed his response, he said he did not know that he had to file a response but added that the court should go ahead and grant whatever the petitioner wants to her. The court Nonetheless, gave him the opportunity to file his response and further ordered the parties to file their respective witness statements. The respondent failed to file and the court having ascertained that the petitioner has duly served the respondent with all her processes filed, proceeded to hear the petitioner.

The case of the petitioner is that she is a teacher at the St Peters' High School Nkwatia whereas the Respondent is a NADMO Officer at Nkawkaw. That they are both Ghanaian citizens and got married under the Ordinance on the 9th of December, 2006 at the Ebenezer Methodist Church Nkawkaw. The petitioner further says that after the marriage they cohabited at Nkawkaw and the marriage is blessed with two children namely Christabel Oforiwaa Portuphy and Selma Korkor Portuphy.

The Petitioner avers further that she married the Respondent under the influence of one prophetess who convinced her to marry the Respondent without knowing each other well and having no sexual attraction for the Respondent.

In further averment, the petitioner says that she got to know the attitude of the Respondent after her first pregnancy. That sometimes, the Respondent will shout at her

in public and intimidate her at the matrimonial home without any justification and also calls her a woman of satan in the presence of their children. The Petitioner further says that she told the Respondent to desist from that behaviour but the Respondent persisted. She therefore moved out of the matrimonial home to Nkwatia to avoid any further insults and likelihood of unlawful harm. That they have been separated for four years without sex and all attempts by family members and well-wishers to reconcile the parties have proved futile. The Petitioner concludes that it has become clear that she and the Respondent are not compatible.

The Petitioner therefore prayed for the dissolution of the marriage and any further orders the court may deem fit.

Upon the orders of the court, the Petitioner filed her petition but the Respondent failed to do so and also failed to appear for the trial. The case thus proceeded uncontested. The only issue the court has to determine therefore is:

ISSUE

Whether or not the marriage has broken down beyond reconciliation

A divorce petition is a civil case and as in all civil cases the party who asserts the affirmative of his or her case bears the burden to prove same on the preponderance of probabilities as required by section 12 of the Evidence Act, 1975 (NRCD 323). In the case of **Aryee v Shell Ghana Ltd [2017 – 2020] 1 SCGLR, 721-735 at page 733** the Supreme Court per Benin JSC stated as follows:

It must be pointed out that in every civil trial all what the law required is proof by a preponderance of probabilities: See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence

required to sustain the standard of proof would depend on the nature of the issue to be resolved. The law does not require that the court cannot rely on the evidence of a single witness in proof of a point in issue. The credibility of the witness and his knowledge of the subject matter are the determinant factors....indeed even the failure by a party himself to give evidence cannot be used against him by the court in assessing his case

The sole ground for the dissolution of a marriage in Ghana is that the marriage has broken down beyond reconciliation. This is provided under section 1(2) of the **Matrimonial Causes Act, 1971 (Act 367)**. To enable the court arrive at the conclusion that the marriage has indeed broken down beyond reconciliation, the law per section 2(1) of Act 367, requires the Petitioner who has brought the petition to lead evidence to the satisfaction of the court that one or more of the following have occurred in the marriage:

- a. that the respondent has committed adultery and that by 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 a 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 that 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 to the marriage have, after diligent effort, been unable to reconcile their differences.

Here, the petitioner testified that the Respondent insults her, intimidates her and maltreats her without any justification and despite her plea to him to desist from that behaviour, the Respondent persisted. According to her, this behaviour of the Respondent started sometime in 2011 until she decided to leave the matrimonial home during the latter part of 2017. According to the Petitioner, even though she left the Matrimonial home in 2017, the last time they had sex was in 2019.

The Petitioner did not call any witnesses however on the preponderance of probabilities, I have no reason to doubt the evidence of the petitioner to the effect that the Respondent maltreats the Petitioner, a conduct which led the Petitioner to leave the matrimonial home. This in my view shows that the Respondent behaved in a manner that the Petitioner cannot reasonably be expected to live with him in terms of section 2(1) (b) of Act 367.

The evidence further shows that the parties have not lived together as husband and wife since 2017 and that the last time they had sex was in 2019. As afore mentioned, the Respondent failed to participate in the trial but appeared in court on the 14th of September, 2023 and intimated that the court should grant whatever the petitioner wants. This suggests to me that the Respondent consents to the grant of divorce. Having found on the evidence that the parties have not lived together as husband and wife since 2019, I am satisfied that the parties have not lived together as husband and wife for a period of at least two years before the presentation of the petition thus bringing the petition also within section 2(1) (d) of Act 367 supra.

On the basis of the evidence before me I am satisfied that the marriage between the parties has broken down beyond reconciliation and same ought to be dissolved. The petition is thus granted. Consequently judgment is entered in favour of the petitioner as follows:

It is hereby decreed that the marriage between the parties celebrated under the marriage ordinance be and same is hereby dissolved and cancelled accordingly. There will be no order as to costs.

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGE