IN THE TDC DISTRICT COURT HELD AT TEMA ON THURSDAY, THE 15TH DAY OF DECEMBER 2022 BEFORE HER HONOUR AKOSUA ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS AN ADDITIONAL MAGISTRATE

SUIT NO. A4/15/22

ANTHONY AMOFA ----------
PETITIONER
KUBEKROM NO.2
ATADEKA – ASHAIMAN

VRS

JACYNTHA QUAO ----------
RESPONDENT
NUNGUA

PARTIES: PRESENT

COUNSEL: NO LEGAL REPRESENTATION FOR THE PARTIES

JUDGMENT

The Petitioner prays for dissolution of his marriage with the Respondent on the ground that their marriage has broken down beyond reconciliation; that the Respondent has behaved in a way that he cannot reasonably be expected to live with her. The Petitioner further says that all attempts at reconciliation have proved futile.

THE CASE OF THE PETITIONER

In his petition and evidence to the Court, the Petitioner stated that the parties got married under the Ordinance on 17th June 2016 at Ledzokuku-Krowor Municipal Assembly Marriage Registry in after the customary rites. He tendered the marriage certificate as exhibit 'A'. That after their marriage they cohabited at Atadeka, Ashaiman and had two children namely Ohene Edu Amankwa, five years and Abena Sewaah who is yet to be named. The Petitioner continued that just two months after the marriage and during the cohabitation of the parties, the Respondent behaved on several occasions in extremely unreasonably manner towards him. That the Respondent during a quarrel between them hit his head with a bottle and also pulled his manhood which ended him in hospital for two days. He tendered a picture of his head injury as exhibit 'B'. According to the Petitioner, the Respondent does not show any respect to him and insults him with unprintable words in both private and public thereby putting him into public ridicule. He tendered exhibit 'C' being the pen drive of the insult. That the Respondent extended this behavior to his church and has led to the collapse of his church. The Petitioner further told the Court family, church elders and prominent people in society have tried several times to settle their differences but the Respondent has refused to abide with the terms reached at the settlements. That since attempts at reconciliation have proved futile, the marriage between the parties has broken down beyond reconciliation. He prayed for the dissolution of the marriage, custody of the children be granted to Respondent with access to him and also to continue to maintain the children.

The Petitioner did not call witness and thereafter closed his case.

THE CASE OF THE RESPONDENT

The Respondent in her answer to the petition and evidence confirmed the fact that the parties got married under Ordinance on the said date and venue as stated by the Petitioner. She confirmed that there are two issues of the marriage but stated that the Petitioner has not even seen their second child since birth and that his claim per the name Abena Sewaah is invalid as the child has not been named in due manner. The Respondent denied the allegations of the Petitioner and stated that the Respondent was not performing his responsibilities as a husband and father which always raised quarrels whenever she approached him. She further told the Court that she got physically abused often and in an event whiles she acted in self-defense whilst in her eighth month pregnancy state, and injured the Petitioner. That she never had the intention to take photos of her injuries to make claims against the Petitioner. That the Petitioner in most cases after their misunderstandings would leave the matrimonial home and stay out for weeks and months avoiding her calls. That whilst she was still eight months pregnant with the second child, the family of the Petitioner came to her that they no longer need her in the Petitioner's house so she should leave. According to the Respondent, she had to leave the house for safety reasons after the Petitioner threatened to kill her if she fails to leave his house as advised by his family. That there were several approaches to resolve their issues by elders of his church, their families and other people but they proved futile due to the reason that the Petitioner is not interested in the marriage. The Respondent explained her reasons for the recording the Petitioner did that he started it by calling police officers on her after she went to ask for money for antenatal and baby items. That she agrees for the Petitioner to be granted access to the children. She prayed per reliefs in her answer to the petition.

The Respondent thereafter closed his case without calling witness.

I deem it necessary to mention that before the hearing of the petition, the parties were referred to the Court Connected Alternative Dispute Resolution (CCADR) and the mediator submitted their Terms of Agreement signed on 11th November 2022 on some of the ancillary reliefs. Same will be adopted as consent judgment on the ancillary reliefs settled, in addition to the judgment of the Court on the dissolution of the marriage and the other ancillary reliefs.

The legal issues to be determined by this Court are:

a. *Whether or not there is unreasonable behavior on the part of the Respondent such that the Petitioner cannot reasonably be expected to live with her.*
b. *Whether or not the marriage has broken down beyond reconciliation.*

In every civil case, the general rule is that the burden of proof rests upon the party, whether Petitioner or Respondent, who substantially asserts the affirmative of his or her case.

In the case of ***Adwubeng v. Domfeh*** **[1996-97] SCGLR 660**, the Supreme Court held that in all civil actions, the standard of proof is proof by preponderance of probabilities, and there is no exception to that rule.

Also, in the case of ***Yorkwa v. Duah*** **[1992-93] GBR 281**, the Court of Appeal decision per Brobbey J.A. (as he then was) stated that:

> "*The provisions of the Evidence Decree, NRCD 323, require that in a case like the instant one, the obligation to adduce evidence should first be placed on the plaintiff*".

Section 11(4) of the Evidence Act explains the burden of proof in civil cases as follows:

> *"In other circumstances, the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact was more probable than its non-existence*".

Before I examine the evidence adduced at the hearing, it is essential to set out the relevant sections of the Matrimonial Causes Act, 1971 (Act 367) namely; sections 1(2), 2(1) and (3) which provide as follows:

> *"1(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.*
>
> *2(1) For the purpose of showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the Court of one or more of the following facts:- ...*
>
> *(a) that the Respondent has committed adultery and that 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 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 the 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 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.

(3) 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."

In the instant case the burden is therefore on the Petitioner to prove that the marriage has broken down completely; proof of one or more of the facts under section 2(1) of Act 367 is/are necessary.

From the evidence adduced by the parties at the hearing, I made the subsequent observations and findings:

The Petitioner told the Court that after their marriage the Respondent behaved extremely unreasonably towards him on several occasions. That the Respondent physically and verbally assaulted him which led him to the hospital. That her behavior also made his church collapse.

The Respondent in her answer to the petition and evidence before this Court denied the allegations by the Petitioner against her therefore there was a burden on the Petitioner to prove his allegations against the Respondent.

The Petitioner did not lead any evidence to buttress his allegation that the Respondent's behavior led to the collapse of his church. He only repeated his assertions when he was given the opportunity to adduce evidence in support of his claim. In view of the evidence before this Court, I do hereby dismiss the said claim as unsubstantiated.

The Petitioner tendered a picture of his head injury as exhibit 'B' which is a picture of his head and that was to support his allegation of physical abuse by the Respondent. In her answer the Respondent told the Court that she got physically abused often and so that was when she acted in self-defense but she did not take pictures of her injuries to make claims against the Petitioner. The Petitioner also tendered a pen drive as exhibit 'C' and that is a recording of insults by the Respondent. On that, the Respondent answered that, it is the Petitioner who triggered that and made her angry after he called police on her that she is a threat to him but she only went to him to ask for money for antenatal and for baby items.

From the evidence before this Court, the Petitioner has been able to establish that the Respondent physically and verbally assaulted him. The Respondent could however not substantiate her assertions in her answer that the Petitioner abused her often, and that the Petitioner called police on her that she is a threat to him. For lack of evidence, the Court hereby dismisses those assertions by the Respondent as the basis for physically and verbally assaulting the Petitioner.

In ***Mensah v Mensah [1972] 2 GLR 198***, Hayfron-Benjamin J. held that:

> *"… one point is clear and it is that the conduct complained of must be sufficiently grave and weighty to justify a finding that the Petitioner cannot reasonably be expected to live with the Respondent…"*

Flowing from the above, threats of actual personal violence constitute unreasonable behaviour; therefore for the Respondent to have physically assaulted the Petitioner amounted to unreasonable behaviour.

I accordingly find from the evidence before this Court on the first issue that, there was unreasonable behavior on the part of the Respondent such that the Petitioner cannot reasonably be expected to live with her.

From the evidence of both parties, they have separated for some time now as they could not reconcile their differences therefore they could not stay together as husband and wife in their matrimonial home.

After a careful examination of the petition and the answer to same as well as the evidence of both parties, it is not in doubt that the parties to the marriage have, after diligent effort, been unable to reconcile their differences. Accordingly, I find it as a fact that the parties have been unable or failed to live together as husband and wife for more than two years now and the Respondent consents to the grant of a decree of divorce.

In ***Knudsen v. Knudsen [1976] 1 GLR 204 CA***, the Court of Appeal per Amissah JA stated as follows:

> *"… Of course, in a state of affairs where the duty is placed upon the Petitioner to show that the marriage has broken down beyond reconciliation, common prudence indicates that attempts at reconciliation be made whenever possible and that where such attempts have been made without success evidence of these be given to help the Court arrive at the desired conclusion ."*

Both parties told the Court in their evidence that their families, church elders and other well-wishers made several attempts at reconciliation but all were unsuccessful.

Having considered the fact that several attempts at reconciliation by the families of the parties including other people have proved futile, I consequently find on the second issue that the marriage between the parties has broken down beyond reconciliation.

Section 20 (1) of Act 367 provides that:

> *"The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable."*

Having carefully considered the entire evidence adduced by the parties herein as well as their standard of living; and relying on *section 20(1) of Act 367* in light of

justice and equity, I find that the Respondent is entitled to some financial provision upon the dissolution of the marriage.

From the foregoing, I conclude that the marriage between the parties has broken down beyond reconciliation and in the circumstances; I do hereby grant the Petitioner's prayer for dissolution of the marriage. The marriage celebrated between the parties on 17th June 2016 is hereby dissolved; and the Terms of Agreement signed by the parties herein on 11th November 2022 is hereby adopted and entered as consent judgment of the Court on the settled ancillary reliefs.

The following orders apply to the ancillary reliefs in which settlement was not successful at the CCADR:

1. Custody of the children of the marriage namely, namely Ohene Edu Amankwa, five (5) years old and Abena, one (1) year old is hereby granted to the Respondent with reasonable access to the Petitioner.
2. The Petitioner is ordered to pay a monthly maintenance of GH¢800.00 towards the upkeep of the said two children.
3. The Petitioner is ordered to enroll the second child in school when she is due to attend school and pay her school fees and other related bills.
4. Clothing for the said children shall be provided by both parties.
5. The Petitioner is ordered to pay an amount of GH¢10,000.00 as financial provision to the Respondent.
6. The parties shall bear their own cost of the suit.

SGD

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H/H AKOSUA A. ADJEPONG (MRS)

CIRCUIT COURT JUDGE

15TH DECEMBER 2022