

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. A4/14/22

EMMANUEL OBISAW
COMMUNITY 5, G 31
TEMA

PETITIONER

VRS

SUZZY OBISAW
COMMUNITY 5, G 31
TEMA

RESPONDENT

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 committed adultery and also 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 26th February 2015 at the T.M.A. Marriage Registry in Tema. That after their marriage they cohabited at Nungua and had two children namely Derrick, five years and Randy four years. The Petitioner continued that he set up a business for the Respondent but she did not concentrate on the work but rather she prefers to be travelling to her hometown each and every weekend for funerals and events. That their main misunderstanding was on her work for which she does not want to do. That the Respondent refused to work after the birth of their second child whilst he was taking care of her and her sick mother, her junior sister and the children as well. That since the Respondent refused to work she did not support him to pay any bill in the house and does not also cook for the children in the house. That he lost the affection he had for the Respondent as a result of her laziness; and all attempts at reconciliation were not successful. That the behavior of the Respondent has caused him a lot of depression and pressure. That the marriage between them has broken down beyond reconciliation as he is no longer interested in the marriage due to her conducts and misbehaviour. He prayed for the custody of the children and to maintain them.

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 the Petitioner set up a business for her but she had to halt it to take care of the children and also to recuperate from

child birth by Caesarean Section. That she decided to combine both household chores and operate the salon Petitioner opened for her that is why she was not always seen at the shop but quickly goes to the shop to attend to clients when she is notified of a client's arrival. That due to her hard work she was able to make purchases of items needed for the shop including a television set and also assisted in the care of the home. That their marriage was peaceful until the Petitioner reported her to the wife of their pastor that he had had enough of her and was fed up with their marriage. That the Petitioner's attitude changed thereafter and there no communications between the parties. The Respondent continued that at a family meeting to attempt reconciliation, the Petitioner again informed persons gathered that he had had enough of her and was fed up with the marriage as she had a bad attitude towards work. That the subsequent actions and conduct of the Petitioner made her know that the marriage is indeed over. That the Petitioner's conduct has caused her great distress, emotional and psychological trauma, sleepless nights and shame that she cannot continue to be married to the Petitioner. She prayed the Court for the dissolution of the marriage as having been down beyond reconciliation. She prayed per her reliefs sought.

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 17th August 2022 on the ancillary reliefs. Same will be adopted as consent judgment on the ancillary reliefs, in addition to the judgment of the Court on the dissolution of the marriage.

At the end of the hearing, the legal issue to be determined by this Court is 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 their main misunderstanding was on the Respondent's work which she did not want to do. That since the Petitioner refused to work she did not support him to pay any bill in the house and does not also cook for the children in the house. That he lost the affection for the Respondent as a result of her laziness; and all attempts at reconciliation were not successful.

The Respondent in her answer to the petition and evidence before this Court denied the allegations by the Petitioner against her and stated that she decided to combine both household chores and operate the salon Petitioner opened for her that is why she was not always seen at the shop but quickly goes to the shop to attend to clients when she is notified of a client's arrival. That due to her hard work she was able to assist in the care of the home among others.

The Petitioner therefore had a legal burden to prove his allegations against the Respondent but he could not establish his allegations. Consequently, the Court hereby dismisses those allegations against the Respondent as unsubstantiated. Moreover, the Petitioner did not adduce any evidence on his allegation of adultery being one of the grounds for his divorce petition. Given that the

Petitioner failed to establish his assertions after same were denied by the Respondent, I find on the first issue that there was no unreasonable behaviour on the part of the Respondent such that the Petitioner cannot reasonably be expected to live with her.

Nevertheless, 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 made several attempts at reconciliation but all were unsuccessful.

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

In view of the above, 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 26th February, 2015 is hereby dissolved; and the Terms of Agreement signed by the parties herein on 17th August 2022 is hereby adopted and entered as consent judgment of the Court on the ancillary reliefs.

There will be no order as to costs.

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H/H AKOSUA A. ADJEPONG (MRS)
CIRCUIT COURT JUDGE
15TH DECEMBER 2022