

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 13<sup>TH</sup> DAY OF DECEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE**

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SUIT NO. G/WJ/DG/A4/66/2022

**REGINA AFOAKWA**

**PETITIONER**

**VRS**

**KWASI AFOAKWA**

**RESPONDENT**

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**PARTIES ARE PRESENT AND SELF REPRESENTED**

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### **JUDGMENT**

The petitioner filed a petition for divorce on 29<sup>th</sup> June, 2022 against the respondent for the following reliefs:

- a. That the marriage celebrated between the parties be dissolved.
- b. An order directed at the respondent to open the doors for petitioner to pick her items from the matrimonial home.
- c. Any further order(s) as the honourable court may deem fit.

The Respondent failed to file an answer even though he was ordered to file same.

#### **THE CASE OF THE PETITIONER**

The Petitioner testified by herself and called no witness.

It is the case of the petitioner that parties got married under the ordinance at the Ga South Municipal Assembly on 5<sup>th</sup> March 2019. Parties cohabited at Modex, Weija after the marriage and have no issue of the marriage. According to petitioner, the marriage has broken down beyond reconciliation by reason of the unreasonable behaviour of the Respondent. She particularised the unreasonable behaviour of the Respondent as follows;

1. That the Respondent often abused petitioner verbally thus traumatizing her.

2. That the mere presence of the Respondent causes Petitioner's BP to rise.
3. That Respondent does not care about her well-being even when she is sick.

Petitioner stated that all attempts at reconciliation by her pastor has yielded no fruits and as a result parties have been separated since 3<sup>rd</sup> October 2020. Petitioner prays the court to dissolve the parties' marriage and grant her reliefs.

### **THE CASE OF THE RESPONDENT**

It is the case of the respondent that the marriage contracted between the parties on 5<sup>th</sup> March, 2019 at the Ga South Municipal Assembly has broken down beyond reconciliation by the unreasonable behaviour of the petitioner. It is his further case that he cooks and washes his own dishes and clothes because petitioner says that she is not interested in the marriage as she was forced to enter same by her siblings. Respondent adds that petitioner is secretive and not transparent. According to respondent, petitioner told him that she was an ulcer patient and as a result she does not eat palm nut soup, beans, cabbage, food prepared with maize, rice cooked in rice cooker and foods warmed in microwave. According to him, he has heard rumours that petitioner eats all these foods in his absence. He stated that on Thursday 20<sup>th</sup> August 2020, he saw a bowl of kenkey hidden in the kitchen by petitioner and when he confronted her, she said she was eating it little at a time.

It is the case of the respondent that on 9<sup>th</sup> September 2020, petitioner reported a heart problem to him and decided to go to the hospital. It is the further case of the respondent that he gave her GHC50.00 to pay for her hospital bills which generated into a quarrel because petitioner said the money was inadequate. He added that on Friday 2<sup>nd</sup> October 2022 at exactly 4:35pm, the father of the petitioner came to the matrimonial home in the company of petitioner's sister saying that the elder sister of petitioner suffered from high blood pressure in her marriage and ended up being paralysed and that they wanted

petitioner to end her marriage with him. Respondent stated that he gave his consent for them to take the petitioner out of the matrimonial home and on Thursday 21<sup>st</sup> July 2022 at 9:49 am, the petitioner's father brought him a bottle of schnapps to dissolve the customary law marriage. He prayed the court to grant the petition for divorce.

### **ISSUE SET DOWN FOR DETERMINATION BY THE COURT**

The issue set down for determination by the court is whether or not the marriage contracted between the parties has broken down beyond reconciliation.

### **BURDEN OF PROOF**

It is trite that sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

In **NARTEY V MECHANICAL LLOYD ASSEMBLY PLANT LTD [1987/88] 2 GLR 314 at 344, Adade JSC** reiterated the position of the law cited supra by stating:

*"A person who comes to court no matter what the claim is must be able to make a case for the court to consider otherwise he fails."*

In **ABABIO V AKWASI IV [1994-1995] GBR 774, AIKINS JSC** delivered himself thus;

*"The general principle of law is that it is the duty of a plaintiff to prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins if not he loses on that particular issue."*

## THE COURT'S ANALYSIS AND OPINION

Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2 (1) of Act 367 explains that 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 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
- (f) That the parties after a diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also provides that although 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.

His Lordship Dennis Adjei J.A stated this position of the law in **CHARLES AKPENE AMEKO V SAPHIRA KYEREMA AGBENU (2015) 99 GMJ 202**, thus;

“The combined effect of sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a court to dissolve a marriage, the court shall satisfy itself that it has been proven on the preponderance of probabilities that the marriage has broken down beyond reconciliation. That could be achieved after one or more of the grounds in Section 2 of the Act has been proved.”

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent.

At page 315 of the book, “The Law on Family Relations in Ghana by William Cornelius Ekow Daniels, the learned author states as follows;

“In cases involving behaviour, the burden of proof will lie on the petitioner to prove that the respondent has behaved in such a way that he cannot reasonably be expected to live with the respondent. It will be a good defence for the respondent to seek to prove that he has not behaved wholly or in the manner alleged. This defence will go to the establishment of the truth of the statement concerning the behaviour. The second defence will relate to the question whether the extent of respondent’s behaviour is that the petitioner cannot reasonably be expected to live with the respondent.”

From the evidence, the petitioner was unable to lead any evidence to prove unreasonable behaviour on the part of the respondent. It is obvious however from the evidence before this court that the marriage between the parties has indeed broken down beyond reconciliation by reason of the fact that the parties have been separated since 3<sup>rd</sup> October 2020 and the respondent gives his consent to the grant of the divorce petition. I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Regina Afoakwa and Kwasi Afoakwa celebrated at the Ga South Municipal Assembly on 5<sup>th</sup> March 2019 is hereby dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

I make no order as to costs.

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**H/W RUBY NTIRI OPOKU (MRS.)**  
**(DISTRICT MAGISTRATE)**