

CORAM: HER WORSHIP MRS ADWOA AKYAAMAA OFOSU, MAGISTRATE,
DISTRICT COURT ACHIMOTA, ACCRA ON FRIDAY, 18TH NOVEMBER, 2022

SUIT NUMBER A4/8/22

BELIEVE ANANI - PETITIONER

V

ROBERT GABRIEL - RESPONDENT

.....
.....

TIME: 11:00

PARTIES PRESENT

PARTIES SELF-REPRESENTED

JUDGMENT

The petitioner filed the instant petition on the 2nd of November, 2021 praying the court for the following reliefs:

- 1. An annulment of the marriage celebrated on April 1, 2013*

2. An order directed at the respondent to take care of the issues of the marriage, payment of medical bills, school fees and maintenance of GHC800.00 a month towards the children

The petitioner's case is that she and the respondent got married under the Ordinance at C.A.C Alajo Accra on April 1, 2013 and they have three issues. That prior to their marriage, the petitioner was working with the Women's World Bank and the respondent is an aluminium fabricator. According to the petitioner, the respondent has neglected his responsibility as a husband and maltreats, molests and assaults the petitioner to the extent that in June 2015, the respondent assaulted her and she had to leave the matrimonial home.

The petitioner further says that the respondent does not take care of the children and does not pay their school fees, utility bills and medical bills. The respondent does not see to her well-being and does not take her to the hospital when she is sick. That due to the respondent's unreasonable behaviour, she has moved out of the matrimonial home with the three children without any support from the respondent. In September 2021, the respondent visited the children at where she is currently living with them at Amrahia and assaulted her and caused harm to her.

The respondent filed an answer to the petition on the 31st of January, 2022 and denied the assertions of the petitioner. He averred that he has never molested or maltreated the petitioner in any way but as for insults, they have been exchanging words which he considers as normal. That it is the petitioner who always throws objects at him and on one occasion while trying to defend himself from the petitioner pouring a bowl of water on his head, had to hit the petitioner but he has never intended to assault her.

According to the respondent, they were living at Abeka when the petitioner got a job at Amrahia and they all agreed that in order not to spend so much on transportation, the petitioner should rent an accommodation there. One day when he had gone to work, the petitioner took GHC1,000.00 from his pocket and took another GHC1,000.00 from his brother and used that amount to rent a place at Amrahia. That the petitioner never discussed anything with him and took the children to Amrahia without his knowledge. He was peeved but he continued to send monies to the petitioner and the children for their upkeep.

The respondent concluded that before they left for Amrahia, he had already paid for school fees at the school the children were attending and the money is not refundable. That it is the petitioner's unruly behaviour that is not making the marriage work. That he is not ready for dissolution of the marriage and so the court should allow them to settle the matter out of court.

The parties were ordered to file their witness statements which they complied with. The respondent filed a supplementary witness statement as well.

Before I proceed with the analyses, I would like to remark that, having read the pleadings and having heard the parties, the relief of annulment that the petitioner seeks is misplaced. The right relief the petitioner should seek for is dissolution of the marriage and not an annulment. Although both annulment and dissolution of marriage are modes of terminating a marriage, the incidents are not the same. In view of the fact that the petitioner who seeks that relief is not legally represented, I will consider the substance over form and proceed to determine the matter as if the relief being sought is dissolution of marriage. From the pleadings *the only issue to be determined is whether or not the marriage has broken down beyond reconciliation.*

The position of the law on the dissolution of marriages in Ghana is that the sole ground under which a marriage can be dissolved is that the marriage has broken down beyond reconciliation.

This principle is provided under **Section 1(2)** of the **Matrimonial Causes Act, 1971 (Act 367)** as follows:

“The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”

Further to the above, the court before which such a petition is presented, is required by law to determine as a fact that the marriage, in respect of which the petition has been presented, has indeed broken beyond reconciliation.

In support of this, **Section 2(3)** of **Act 367** *supra* 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.”

In order to demonstrate this fact as provided under **Section 1(2)** of **Act 367** *supra*, the petitioner must provide evidence that must establish any one or more of the facts listed under **Section 2(1)** of the Act in order to succeed. These are as follows:

“(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 the Petitioner finds it intolerable to live with the Respondent;

- b. That the Respondent has behaved in such 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 lived apart for continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to a decree being granted.*
- e. That the parties to the marriage have lived apart 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 efforts been unable to reconcile their differences."*

As in all civil cases, it is the party who alleges that has the burden to prove what he alleges against the other party. The standard of proof is *"proof by a preponderance of probabilities"* as provided for under section 12(1) of the evidence Act 1975 (NRCD 323). Proof by a preponderance of probabilities is explained in section 12(2) as *"that degree of certainty of belief in the mind of a tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non – existence"*

The petitioner in the instant case thus had the onus to lead sufficient evidence to the required standard of proof to prove what she asserts against the respondent.

The petitioner herein grounds her petition on unreasonable behaviour of the respondent claiming that the respondent assaults her, maltreats and molests her to the extent of causing harm to her and she left the matrimonial home. In addition, the respondent is irresponsible because he does not take care of her and the children. He does not pay the children's school fees, utility bills and medical bills.

The respondent stoutly denied all these allegations and asserted that it is rather the petitioner who is abusive and the only incident that happened where he hit the petitioner was when he tried to defend himself when the petitioner tried to pour a bowl of water on his head.

The position of the law is that where a party makes an allegation and same is denied by the opponent, the party does not prove the case by mounting the witness box and merely repeating the averments in his or her pleadings.

In the instant case all the allegations made were capable of proof and so the petitioner who made those assertions and who had the burden of proof is required to produce sufficient evidence in proof of her case thus in **Klah v Phoenix Insurance Co. Ltd [2012] 2 SCGLR 1139** the court held that:

“Where a party makes an averment capable of proof in some positive way example by producing documents, description of things, reference to other facts instances and his averment is denied he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true”

(See also the case of **MAJOLAGBE V LARBI & OTHERS [1959] 190 AT 192**)

In the instant case the petitioner did not produce any such evidence or a witness to corroborate her assertions thus failing to discharge the burden on her to prove her assertions.

The respondent on the other hand contended that he is a responsible man and he tendered exhibit 1 which is his mobile money transaction history showing that she remits some amounts of money to the petitioner at regular intervals although in most of the

transactions the amounts involved are small. The defendant also contended that the marriage has not broken down beyond reconciliation and that the respondent got a job at Amrahia and it was agreed between them that she should go and stay at Amrahia to ease the burden on transportation cost and so that was why she left Abeka where they were residing.

The respondent was not cross examined on this issue. The position of the law is that *when a party has made an averment and that averment was not denied, no issue was joined and no evidence need to be led on that averment.*

(See: **Ayirebi v Fori (1966) GLR 627 SC**)

I therefore find on the evidence that the petitioner did not leave the matrimonial home because she was assaulted by the respondent but based on a mutual agreement.

On the whole the petitioner failed woefully to lead evidence to the satisfaction of the court that the respondent has behaved in a manner that she cannot reasonably be expected to live with him.

Furthermore, the evidence shows that the petitioner has not availed herself for any mediation to take place in an attempt to have them reconcile their differences.

On the entirety of the evidence, it is my view that the petitioner has not been able to satisfy the court that the marriage between the parties has broken down beyond reconciliation. Consequently, the petition thus fails and same is hereby dismissed.

SGD

ADWOA AKYAAMAA OFOSU (MRS)

DISTRICT MAGISTRATE