

**IN THE DISTRICT COURT TDC TEMA HELD ON TUESDAY THE 25TH
DAY OF JULY 2023 BEFORE HER WORSHIP BENEDICTA
ANTWI (MRS) DISTRICT COURT MAGISTRATE**

SUIT NO:A4/01/23

HARRIET OFORI

.... PETITIONER

VRS

AKEEM SUMAILA

.... RESPONDENT

JUDGMENT

FACTS

On the 4th October 2022 petitioner filed a petition seeking the following reliefs:

- a) Dissolution of the marriage
- b) Custody of the children
- c) Maintenance
- d) Payment of school fees and medical bills
- e) Any further orders the court may deem fit.

The said petition was served on the respondent by substitution. Thereafter, the respondent caused his lawyer to file an answer and cross-petition on the 15th February 2023. The parties thereafter attempted settlement on the ancillary reliefs and filed their terms of settlement on the 25th April 2023.

PETITIONER'S CASE

Petitioner states in her pleadings that she is banker and a businesswoman. She met respondent sometime in 2009 and the parties started dating. The respondent helped her through part of her education and they eventually got married after six (6) years of dating. There are two children in the marriage. The first child was conceived prior to the celebration of the marriage and the second child was born after the marriage. She states that in the course of the marriage, the respondent moved into a hotel with his mistress and abandoned the family. Upon confrontation at the said hotel, the respondent admitted that the lady was indeed his girlfriend. Respondent refused to pay the rent upon expiration of same and petitioner had to look for another apartment to rent on her own.

Despite this, the respondent will sometimes sneak into the apartment to relax and sleep. She states that the respondent sold the house they built together without informing her and has refused to maintain the children and pay their school fees. The respondent enjoys free medical facilities at the expense of the petitioner. The marriage has broken down as the parties have not had sex for the past three years leading to the petition.

RESPONDENTS CASE

Respondent's case is that his principal business is to sell land with his business partners. Litigation over some of the land resulted in an injunction which required him to refund monies he did not have at that time. He therefore vacated the matrimonial home for some time to avoid the embarrassment. That he swapped the marital property with the his friend to raise money to enable him send the petitioner to the United

Kingdom to deliver their baby. He only gave the title deeds to his business partner and not the house. That the said property has been rented out by the petitioner for the past six (6) who collect the proceeds to maintain the home. He states that since his financial woes started, the petitioner does not respect him which led to the breakdown of the marriage. He agrees that the marriage should be dissolved and counter-claims for the following reliefs;

- a. That the marriage be dissolved
- b. That custody be granted to petitioner with reasonable access to the respondent
- c. That all decisions in respect of the children be jointly made by both parties.

BURDEN OF PROOF

The person who asserts usually has the burden of proving same on a preponderance of probabilities. Preponderance of probabilities, according to section 12(2) of the Evidence Act, 1975 (NRCD 323) means:

*"... that degree of certainty of belief in the mind of the tribunal of fact or the Court **by which it is convinced that the existence of a fact is more probable than its non-existence.**"*

Where the petitioner or the plaintiff has been able to lead sufficient evidence in support of his case, then it behoves upon the defendant to lead sufficient evidence in rebuttal otherwise the respondent or the defendant risks being ruled against on that issue or issues. Under Section 11(4) of NRCD 323, a party discharges the burden of producing evidence

when the party produces "... ***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***".

In a petition for divorce the sole ground upon which the court will dissolve a marriage is that the marriage has broken down beyond reconciliation. This is provided for under sections 1(2) and section 2(3) of the Matrimonial Causes Act, 1971 Act 367. Section 2(3) of the Act provides as follows;

"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"

In proving that the marriage has broken down beyond reconciliation, the petitioner must satisfy the court that one or more of the facts under **section 2 (1) of Act 367** *supra* has occasioned and as a result the marriage has broken down beyond reconciliation.

It is also the law that the party who asserts usually has the burden of proving same on a preponderance of probabilities in accordance with **section 12(2)** of the Evidence Act **1975 (NRCD 323)**. Preponderance of probability according to this section means:

"... that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than it's non-existence"

Where the petitioner has been able to lead sufficient evidence in support of its case then it behooves upon the respondent to lead sufficient evidence in rebuttal otherwise the respondent risks being ruled against on that issue.

Section 11 (4) of the Evidence Act, 1975 (Act 323) further provides that; *(4) 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.*

Issue for determination

The parties filed their terms of settlement on the 25th April 2023 on the ancillary reliefs.

The sole question then left for the determination by the court is;

whether or not the marriage has broken down beyond reconciliation

Summary of Evidence

Both parties gave evidence on the 20th June 2023. The petitioner relied on her witness statement filed on the 14th March 2023 as her evidence in chief. The respondent declined to cross-examine her and the lawyer for respondent informed the court that both parties agreed not to cross-examine each party as the reliefs being sought has been amicably settled. The petitioner did not call any witnesses and thereafter closed her case and was discharged.

The respondent also gave evidence by relying on his witness statement filed on the 22nd March 2023. Petitioner did not cross-examine the respondent and he closed his case without calling any witnesses.

Analysis and Conclusion

Both parties have by their pleadings admitted to the sole issue stated above, that the marriage has broken down beyond reconciliation and have gone ahead to file their terms of settlement on the ancillary relief.

In **Homenya vrs the Republic (1992) 2 GLR 305-319**, Aquah J stated as follows;

"I think it is too elementary a proposition requiring no authority in support, that where a contention of a party in a trial is admitted by the opposing party, it is improper for the trial judge to disbelieve and reject that contention."

Upon consideration of the totality of evidence on record, I find that the marriage celebrated between the parties on the 25th September 2015, has broken down beyond reconciliation

The court will adopt the terms of settlement filed by the parties on the 25th April 2023 and accordingly hold that the marriage celebrated between the parties on the 15th September 2015 be dissolved as same has broken down beyond reconciliation with the following orders.

The terms of settlement filed by the parties on the 25th April 2023 is hereby adopted as part of the judgement of the court with the following final orders of the court.

FINAL ORDERS

1. Custody of the two children to remain with the petitioner with reasonable access to the Respondent. Reasonable access means every fortnight on weekends from 9am to 5pm. The respondent shall have the children during holidays, mid-terms and vacation from 9am-5pm. As per the terms of their own settlement.
2. Respondent shall pay the school fees and all educational expenses of the children.
3. Respondent shall pay any additional medical bills not borne by petitioner's medical insurance.
4. Respondent shall pay a monthly maintenance of GH¢ 1,500.00 to petitioner for the general upkeep of the children
5. That none of the parties shall travel outside the jurisdiction without informing the other party. All decisions in respect of the children shall be made by both parents.
6. Both parties shall bear the cost of transportation to school and the respondent's property at Golf City Tema shall be rented and the proceeds used to offset his part of the transportation till the children complete junior high school.

7. Petitioner shall provide accommodation for the children.

8. Each party to bear his own cost.

[SGD]
BENEDICTA ANTWI (MRS)
DISTRICT MAGISTRATE

COUNSEL:

Sarah Coleman for Respondent

PARTIES:

Petitioner ---- PRESENT
Respondent --- PRESENT

