

**IN THE DISTRICT MAGISTRAT COURT TDC TEMA HELD ON  
TUESDAY THE 18<sup>TH</sup> DAY OF APRIL 2023 BEFORE HER WORSHIP  
BENEDICTA ANTWI (MRS) DISTRICT COURT MAGISTRATE**

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**SUIT NO: A4/49/21**

**JUSTICE EGBLORGBE                      .... PETITIONER**

**VRS**

**BLESS AMEKUDZI                      .... RESPONDENT**

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**JUDGMENT**

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**FACTS**

Petitioner initiated this divorce proceedings against the respondent on the 31-8-2021. He claimed per his reliefs that the marriage celebrated between the parties on the 23<sup>rd</sup> March 2012 be dissolved as per the grounds stated in his summary for divorce.

The respondent upon service of the petition on her and after several attempts of service of hearing notices served on her finally filed her response on the 13-9-22 in which she admitted all the claims of the petitioner and added that the customary marriage between the parties has already been dissolved and she wholly consents to the dissolution of the marriage. From the pleadings before the court, there were no children nor matrimonial properties in issue between the parties.

Thus on the 20<sup>th</sup> September 2022, the court differently constituted ordered the parties to file their witness statements and adjourned to 18/10/22 for hearing.

On the adjourned date the petitioner brought a letter for adjournment of the suit to January 2023 and the court struck the matter out for want of prosecution as the respondent was also not in court to take a date.

On the 7<sup>th</sup> of February 2023 when the matter first came before me, it was for re-listment of the suit by the petitioner. Same was served on the respondent on the 16<sup>th</sup> of January but she was absent from court. The court after satisfying itself that the respondent has been duly served granted the application and restored the suit back on record. And adjourned to the 28-3-23 for hearing.

### **Petitioner's case**

Petitioner testified on the 28<sup>th</sup> March 2023 and relied on his witness statement as his evidence in chief.

In the evidence in chief of the petitioner he testified that the parties were married for eleven years with no child. He subsequently lost interest in the marriage as the respondent committed adultery and exhibited disrespectful behavior towards him. both parties have lived apart for the past three years as the traditional marriage has already been dissolved.

The respondent refused to cross-examine him and the petitioner closed his case without calling any witnesses.

## **Respondent's case**

Respondent also testified on the same day and relied on her witness statement filed on the 24<sup>th</sup> February 2023 as her evidence in chief. The petitioner cross-examined her briefly as follows;

*Q: You committed adultery.*

*A: Yes. We lived for so many years and there was no child so I went out to see if I can get a child.*

*Q: I am standing on this to divorce you*

*A: Yes. Divorce me*

That was the entirety of the cross-examination by petitioner. The respondent also closed her case without calling any witness.

## **Burden of proof**

In a petition for divorce, the sole ground for granting the petition is that the marriage has broken down beyond reconciliation. This provision can be found in Section 1(2) of the Matrimonial Causes Act, 1971 ACT 367. Section 12(2) of the Evidence Act (1975) NRCD 323 also provides that the party who asserts usually has the burden of proving same on a preponderance of probabilities. 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 on the respondent to lead sufficient evidence in rebuttal otherwise the respondent risks being ruled against on that issue.

However, where a party to the suit makes admissions as to facts then that fact has been conceded and it is no longer in contention.

The latin maxim "*semper necessitas probandi incumbitei qui agit*" which means "*the necessity of proof always lies with the person who lays the charges*" places the burden of producing evidence on the petitioner to lead 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" .

The issues that come to fore in this suit are:

- 1. Whether or not the respondent has committed adultery**
- 2. Whether or not the marriage has broken down beyond reconciliation**

### **ISSUE 1: Whether or not the respondent committed adultery**

The petitioner's main grounds for filing the instant petition are that the respondent has committed adultery and the claim of the wife's disrespect towards him.

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 has occasioned and as a result the marriage has broken down beyond reconciliation.

Generally, admissions made in pleadings determine the incidence of the burden of proof. Such that the party in whose favor the admission is made is relieved from proving the admitted fact.

Admission has been is defined by the Black's Law Dictionary 7 Edition as a voluntary acknowledgment of the existence of facts relevant to an adversary's case. In the book, Essentials of Ghana Law of Evidence at page 112 the learned author explained admissions to mean "a fact or issue which has been conceded and is no longer in contention".

In **Fynn v Fynn [2013-2014] SCGLR 727** at 738, the supreme court speaking through Wood (Mrs) C.J quoted with approval the case of **In re Asere Stool; Nikoi Olai Amontai IV (Substituted by) Tafo Amon II vrs Akotia Owirsika III (Substituted by) Laryea Ayiku III [2005-2006] SCGLR 637 at 656** which laid down the principle on admission as thus;

*"Where an adversary has admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than by relying on such admission, which is an example of estoppel by conduct."*

This salutary rule has further been quoted in **Joshua Emuah Kofie v Dorcas Toffery Bonyere & the Electoral commission of Ghana (2022) DLHC 11799** as follows; *"there cannot be any better proof than*

*an adversary admitting a fact in contention. Thus, where a matter is admitted, proof is dispensed with and it no longer becomes an issue for determination by the court”.*

The respondent herein admitted all the claims of the petitioner including that of adultery. She further admitted the allegation of adultery under cross-examination and explained that she committed the act because she wanted to try for a child outside the marriage as they had been married for so long without any children.

In **Adjetey v Adjetey (1973) 1 GLR 216 H C** it was held that adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability.

In the present case, the petitioner need not lead any evidence to prove the allegation of adultery, as same has been admitted by the respondent. The court therefore finds on the authority of **Joshua Emuah Kofie v Dorcas Toffery Bonyere & the Electoral Commission of Ghana** (*supra*) that the admitted fact of adultery by the respondent weighs in favour of the petitioner and I accordingly find that the respondent has committed adultery as per her own admission.

## **ISSUE 2: Whether or not the marriage has broken down beyond reconciliation**

Section 2(3) of Act 367 provides that a court shall not grant a petition for divorce unless it is satisfied on all the evidence that the marriage has broken down beyond reconciliation. This places a burden on the court to

satisfy itself that irrespective of the claims of the parties, the court must make a positive finding from the evidence presented by the parties that the marriage has indeed broken down and ought to be dissolved by the court.

The petitioner pleaded that the parties have not lived together as husband and wife for the past three years as the respondent left the matrimonial home to an unknown place. During the cross examination of the respondent by the petitioner, he stated that in he is "standing on the adultery of the respondent to dissolve the marriage".

This court notes that even though both parties are self-represented they understood that adultery is one of the grounds for the dissolution of a marriage. The respondent tacitly admitted to committing adultery and wholly consented to the grant of the divorce both in her answer and also during trial. The court further had the benefit of observing the parties during the trial and the respondent per her conduct and response to the The respondent further stated in her evidence that the customary marriage has already been dissolved and she has long left the matrimonial home.

The court thus makes a finding that from the totality of the evidence before the court, coupled with the tacit admissions of the respondent to all the allegations of the petitioner, the marriage celebrated between the parties has broken down beyond reconciliation. As the parties themselves did not ask for any ancillary relieves, this court will not make any orders to that effect.

In conclusion, the court is satisfied, that the marriage celebrated between the parties has broken down beyond reconciliation.

Accordingly, the petition is granted with the following orders;

- i. That the marriage celebrated between the parties on the 23<sup>rd</sup> March 2012 be dissolved as the marriage has broken down beyond reconciliation.
- ii. No order as to cost.

SGD

**BENEDICTA ANTWI (MRS)**  
**DISTRICT MAGISTRATE**

PARTIES:

Petitioner PRESENT

Respondent PRESENT



