

**IN THE DISTRICT COURT TDC TEMA HELD ON TUESDAY THE 20TH
DAY OF JUNE 2023 BEFORE HER WORSHIP BENEDICTA
ANTWI (MRS) DISTRICT COURT MAGISTRATE**

SUIT NO: A4/46/22

KWAME KOBIA

.... PETITIONER

VRS

RUTH KOBIA

.... RESPONDENT

JUDGMENT

By a petition filed on the 11th August 2022, the petitioner prayed for the dissolution of the marriage contracted between the parties on the 27th July 2011.

The petition was duly served on the respondent on the 16th August 2022 who filed a process titled "CONSENT TO THE PETITIONER'S PETITION" on the 30th August 2022.

On the 28th December 2022, the respondent filed another process titled "CONSENT TO PETITIONER'S PETITION" and same was served on the petitioner.

The respondent simply never showed up in court despite all the hearing notices duly served on her. This court out of the abundance of caution called the bailiff who served the petition to enquire if it was duly served on the respondent and she stated on record that she served the

respondent; a lady named Ruth Kobia personally at Tema Community 8 who appeared to be literate and even explained the contents of the petition to her and she appeared to perfectly understand same. The court thus proceeded to hear the petition and ordered the parties to file their respective witness statements.

PETITIONER'S CASE

In his petition he stated that the parties have been married for the past eleven (11) years with no children. Due to irreconcilable differences they are now living apart for the past weeks leading to the filing of this petition. He promised to pay a debt owed to the respondent in the sum of GH¢ 800.00 within six (6) months commencing from August 2022 and February 2023.

On the 23rd May 2023, petitioner testified by relying on his witness statement filed on the 10th February 2023 without any exhibit. In his evidence in chief, he stated that the respondent behaved unreasonably by insulting him in public and would sometimes lock both parties in the room and would then dare the petitioner to hit her. They stopped having sex sometime in December 2021.

There has been attempts at reconciliation at an ADR center with parents of both parties in attendance but it yielded no positive results.

There was no cross-examination and petitioner closed his case without calling any witnesses.

RESPONDENT'S CASE

The respondent did not file an answer to the petition. She rather filed what she called a consent to the petition on the 11th August 2022 and another one on the 28th December 2022. In this process, she stated that the parties have separated for some time and she has already moved on.

That the parties have settled their differences at an ADR meeting and therefore will not be contesting this petition.

BURDEN OF PROOF

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 none-existence.*

Even though the respondent never showed up in court, the petitioner in a divorce proceeding must lead sufficient evidence to satisfy the court that on a preponderance of probability the marriage has broken down beyond reconciliation. Where however, the allegations contained in the petition are admitted by the respondent, no such burden lies on the petitioner because an admission by an individual made in his personal capacity is admissible against him.

ANALYSIS AND DETERMINATION

In this one-sided hearing, the petitioner's case stands unchallenged as the respondent divested herself of an opportunity to be heard in court. This court out of the abundance of caution ensured that the respondent was served with all the processes together with hearing notices for every court sitting.

The evidence of the petitioner that the parties stopped having sex sometime in 2021 and that the respondent has behaved unreasonably therefore stands unchallenged, and the court is bound to accept same as a finding of fact.

The court will also consider the consent to the divorce filed by the respondent in light of section 6 (1) of the Matrimonial causes Act, (1971) ACT 367 which provides as follows;

“ for the purpose of section 2(1)(d) the Court shall be satisfied that a consent to the divorce has been given by the respondent only after the respondent has been given the information that will enable the other party to understand the consequences of the consent”

On two occasions the respondent filed a consent to the divorce; the first was filed on the 30th August 2022 and the second was filed on the 28th December 2022. All processes so far filed in the suit were also duly served on her personally. The court notes that even though the parties mentioned an out of court agreement reached at an ADR meeting, no

such report was tendered into court. The decision of the court will thus be based on the one-sided evidence of the petitioner.

This is what the court said in the case of **FRANCIS ASSUMING & 640 ORS VS DIVESTITURE IMPLEMENTATION COMMITTEE (2008) DLSC 6738** on one-sided hearing;

"When parties go to law, they do not expect or envisage an appearance at a pantomime. They expect a judge to read a judgment delivering a verdict buttressed with reasons. But where instead of a full blown context with submissions from both sides, there was a one sided contest or fight because one side for one reason or the other put in no appearance it was a no show. In that situation the verdict can be only one and the verdict was known even before the commencement of the show. A court placed in that context will be relieved from writing a monologue laced with reasons for a verdict."

From the consent filed by the respondent on the 28th December 2022, she stated in paragraph 7 -9 that she is no longer interested in contesting the petition and has already moved on.

This court finds that in the absence of any evidence to the contrary, the respondent has behaved unreasonably towards the petitioner. As the only relief stated on the petition is for the dissolution of the marriage the court hereby grants same.

The petitioner did not ask for any ancillary reliefs and the respondent never showed up in court. The court can therefore not make any orders

in her favor. In the case of **Dam vs J.K. Addo [1962] 2 GLR 200 SC** the court held in holding 3 as follows;

"A court must not substitute a case proprio motu, nor accept a case contrary to or inconsistent with that which the party himself puts forward whether he be plaintiff or defendant"

Flowing from the above finding that the marriage has broken down beyond reconciliation, it is hereby ordered that the marriage celebrated between the parties on the 27th July 2011 be dissolved as the said marriage has broken down beyond reconciliation.

There will be no order as to cost.

**[SGD]
BENEDICTA ANTWI (MRS)
DISTRICT MAGISTRATE**

**PARTIES:
PETITIONER ... PRESENT
RESPONDENT... PRESENT**

