

**IN THE DISTRICT COURT TDC TEMA HELD ON TUESDAY THE 6TH
DAY OF JUNE 2023 BEFORE HER WORSHIP BENEDICTA
ANTWI (MRS) DISTRICT COURT MAGISTRATE**

SUIT NO: A4/42/22

MATTHEW BAIDOO

PETITIONER

V

JOYCE KORANKYE

RESPONDENT

JUDGMENT

By a petition filed by the petitioner on the 22nd July 2022 he prayed for the dissolution of the marriage celebrated between the parties on the 10th December 2011.

The petition was served on the respondent on the 27th July 2022 but she failed to appear in court on the hearing date. The court therefore out of the abundance of caution ordered the petitioner to serve another hearing notice on the respondent for the next adjourned date. The respondent was again absent on the next adjourned date and the court gave orders for witness statements to be filed on or before the 6th of December 2022 and adjourned the suit.

In short, the respondent never showed up in court despite the repeated hearing notices duly served on her personally by the court.

The court thus proceeded to hear petition.

PETITIONER'S CASE

Petitioner testified on the 24th January 2023 by relying on his witness statement together with an exhibit he later tendered into court. His case simply was that, after the celebration of the marriage, the parties settled at Ashaiman New town into a cozy and enjoyable life. However there was no child in the marriage.

He therefore had an issue with another woman outside the marriage which greatly offended the respondent. Out of remorse he apologised and followed it up with pacification which the respondent accepted. However on one occasion he had cause to suspect that the respondent had mixed his meal with substances which made the food change colour as he was praying.

When he questioned the respondent, she reluctantly told him that their pastor gave her communion wine to prepare the meal. He confronted the pastor at church who denied ever giving the respondent any such communion oil. Petitioner proceeded to report the matter to respondent's family but the only response he got from her family to share whichever properties they have acquired together. For the above reasons, he was no longer interested in the marriage and prayed the court to dissolve same.

In the course of the petitioner's evidence in chief, he mentioned that he had witnesses and evidence he wanted to tender into court. The court

thus granted him time to produce same and also gave an order for hearing notice to be served on the respondent for the next adjourned date.

He later tendered **Exhibit "A"** which is criminal court proceedings before the Ashaiman District Court in suit number CC 416/19.

The petitioner did not call any witnesses and proceeded to close his case.

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.*

The court is also mindful of one of the cardinal duties of a court in evaluating evidence led during trial which is for the court to assess all the evidence on record in order to determine in whose favour the balance of probabilities should lie. Some cases in point are **Adwubeng v. Domfeh [1996-97] SCGLR 660** and **Takoradi Flour Mills v. Samir Faris [2005-2006] SCGLR 882**. In the celebrate case **Majolagbe vrs. Larbi & Ors. [1959] GLR 190, 192** it was held that *"proof in law is the establishment of facts by proper legal means, in other words, the establishment of an averment by admissible evidence"*

The petitioner in a divorce proceeding must therefore lead sufficient evidence to satisfy the court that on a preponderance of probability the marriage has broken down beyond reconciliation.

ANALYSIS

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 exhibit "A" tendered by the petitioner is a criminal proceedings dated 17th April 2019 with the respondent herein named as complainant. The brief facts stated therein are that; the accused, the petitioner herein called the complainant on the 8th April 2019 to buy bread and lipton for him. The petitioner arrived home at about 10:pm and realized that the respondent had neglected to buy the bread and lipton as he requested. The petitioner pounced on the respondent and beat her up mercilessly.

The respondent managed to escape and took refuge at he uncle's house. She later lodged a complaint at the domestic violence office at Ashaiman and police medical report was issued to respondent. the petitioner was arrested and cautioned and later put before the Ashaiman District Court.

The petitioner pleaded guilty on his first arraignment and was convicted on his own plea and sentenced to a fine of forty (40) penalty units and in default three (3) months imprisonment. He was also ordered to sign a bond of good behaviour for twelve (12) months and in default six (6) months imprisonment IHL. Petitioner was then given up to the 30th April 2019 to pay the sum of GH¢ 250.00 into court towards the medical expenses of the respondent herein.

It is safe to say that after the conviction of the petitioner, the marriage was forever strained as petitioner considered his circumstances the fault of the respondent.

After carefully considering the petition before the court together with exhibit "A" the court finds the existence of the facts as provided under **section 2(1) (b)**; *that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the her.*

This court finds that in the absence of any evidence contradicting that of the petitioner, his evidence stands unimpeached and his reliefs ought to be granted.

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. "

This court finds that the marriage celebrated between the parties has broken down beyond reconciliation.

CONCLUSION

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.

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 10th December 2011 be dissolved as same has broken down beyond reconciliation.

There will be no order as to cost.

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

PARTIES:

Petitioner ... PRESENT

Respondent ... ASENT

