

**CORAM: HER WORSHIP NANA ABENA ASOH OWUSU-OMENYO (MS.),
MAGISTRATE, DISTRICT COURT '1', KANESHIE, SITTING AT THE FORMER
STOOL LANDS BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR
WORKERS' COLLEGE, ACCRA ON 20TH OCTOBER 2023**

SUIT NO: A8/94/22

**ANNA YAA SERWAH NKANSAH
ACCRA**

} **PLAITNIFF**

VRS

**BARON K.B. AFFEL
ACCRA**

} **DEFENDANT**

JUDGMENT

INTRODUCTION

The petitioner married the respondent on the 18th August, 2017, at the Accra Metropolitan Assembly, Accra. The parties have no issue. The petitioner instituted this action through her attorney because she is ordinarily resident in the United Kingdom. The respondent on the other hand lives within the territory of Ghana.

CASE OF THE PETITIONER

The petitioner avers that the parties have not lived together as husband and wife since they got married in 2017. Essentially, the parties never co-habited as husband and wife. Lastly, there has not been any communication between the parties for more than 5 years now. She therefore prays this court for a dissolution of her marriage to the respondent.

CASE OF THE RESPONDENT

The respondent was initially served with the petition for divorce by substitution. After this he appeared in court once, subsequent processes were served on him personally but

he never appeared in court. The matter was thus set for trial. In the case of *Bortey v. Paresh & 2 Ors* [2018] 120 GMJ 1 @ 26-27 S.C per J.V.M. Dotse, JSC: *"We are therefore of the view that, if a party voluntarily and deliberately fails and or refuses to attend upon a court of competent jurisdiction, (such as the High Court which determined this case) to prosecute a claim against him, he cannot complain that he was not given a fair hearing or that there was a breach of natural justice."*

Once the respondent was served with all processes and he failed to appear in court this court will determine the dissolution solely on the evidence of the petitioner.

ISSUES

Whether or not the marriage between the parties has broken down beyond reconciliation.

LEGAL ANALYSIS

The petitioner in the instant action states directly that she has not lived with the respondent as husband and wife since 2017. Her narration of events is in line with section 2(1) (e) of the *Matrimonial Causes Act, 1975 (ACT 367)*. I will also remind myself that the petitioner must prove with her evidence that her marriage has broken down beyond reconciliation in accordance with section 1(2) of the *Matrimonial Causes Act 1975, (ACT 367)*.

The petitioner through her attorney informed the court by her witness statement that since the parties got married in 2017, they have not lived together. By the respondent's failure to appear in court, he has admitted the evidence of the plaintiff and he therefore admits the parties have not lived together continuously for the past 5 years. In the case of *Air Namibia (Pty) Ltd v Micon Travel and Tours & Others* [2015] 91 G.M.J. 173 @ 194, the court held that *"there is no need for plaintiff to call further or any evidence to prove allegations or assertions of fact in his claim where a defendant admits same"*.

On the totality of the evidence presented by the petitioner, I am of the opinion that the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition; and I find that the

petitioner has been able to prove that her marriage to the respondent has broken down beyond reconciliation in accordance with sections *1(2) and 2(1) (e) of ACT 367*.

FINAL ORDERS

I find that the marriage celebrated between the parties on the 18th August, 2017 has broken down beyond reconciliation and is hereby dissolved. Marriage certificate with number 1727/MC/2017, is hereby cancelled.

**NANA A. A. OWUSU-OMENYO (MS.),
(MAGISTRATE)**

