



also asked that powder be sprinkled on her to signify a customary dissolution of their marriage. He prays for a dissolution of his marriage to the respondent since she has shown no intentions of returning to the marriage.

### **CASE OF THE RESPONDENT**

The respondent on the first date set appeared in court when she was ordered to file a response to the petition. She however failed to file a response and she also failed to return to court even after various hearing notices were served on her.

The petitioner was thus ordered to file his witness statement which was also served on the respondent and a date for trial was set. The matter was thus heard only on the evidence of the petitioner based on the authority of the case of *Ankumah v. City Investment Co. Ltd* 2007-2008 1 SCGLR 1064 where the supreme court held that *"a court is entitled to give a default judgment to, if a party fails to appear after notice of the proceeding has been given to him. For then it would be justifiable to assume that he does not wish to be heard."*

### **COURT ANALYSIS**

A reading of the petitioner's petition makes it clear that he seeks a dissolution of his marriage to the respondent because the respondent has refused to come return to the matrimonial home after she left as a result of accommodation challenges the couple faced. He says that even after he resolved the issues with accommodation the respondent has refused to return to the home. An analysis of the petitioner's narration of events suggests desertion on the part of the respondent.

The petitioner thus has the burden of proving that his marriage to the respondent has broken down beyond reconciliation in accordance with **Section 1(2) of the Matrimonial Causes Act, 1971 (ACT 367)**.

To prove that the marriage has broken down beyond reconciliation, the petitioner must by his evidence show that in accordance with section 2(1)(c), *the respondent has*

*deserted the petitioner for at least a continuous period of two years immediately preceding the presentation of the petition.*

To satisfy myself that the petitioner's evidence is sufficient to prove desertion, I refer to the definition of desertion as found in the case of *Frowd v. Frowd [1904]*, where *desertion is defined as the cessation of cohabitation brought about by the fault or act of one of the parties.*

William Ekow Daniels in his book *the law on family relations in Ghana* at page 309. List the three factors that must be considered to establish desertion, these are:

- a. *The fact of separation.*
- b. *The intention to desert.*
- c. *Lack of consent by the deserted partner.*

There is no doubt that the parties are in fact separated. The petitioner in his evidence makes it clear that at the time the respondent was leaving the matrimonial home he was aware and even consented to same looking at the circumstances they found themselves in. The consent was however clearly revoked when he asked the respondent to return home and she refused.

I can confidently say at this point that the intention to desert on the part of the respondent became clear.

My opinion is that the evidence as presented by the petitioner satisfies all these three assumptions on the part of the respondent and he has been able to show that his marriage to the respondent has indeed broken down beyond reconciliation.

### **Custody and Maintenance**

The petitioner prayed this court for custody of his children with the respondent. in view of the fact the respondent did not appear in court knowing full well there were children involved and also considering the fact that the children are currently in the custody of the petitioner; based on the provisions of **section 22(1) of (ACT 367)**, I will

grant the petitioner his prayer for custody of the two issues of the marriage with reasonable access to the respondent.

**FINAL ORDERS**

1. The marriage celebrated between the parties on the 15<sup>th</sup> November 2014 at the Church of Pentecost, North Kaneshie has broken down beyond reconciliation and is hereby declared dissolved.
2. Marriage certificate with number 0026082 is hereby cancelled.
3. The petitioner is hereby granted custody of the two issues of the marriage with reasonable access to the respondent. She is to have them every other weekend and during the long vacations.
4. Petitioner is to bear all expenses consequential to the education of the children.
5. Petitioner is also to bear all medical expenses of the children.
6. Each party is to bear their own cost.

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