

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 25TH DAY OF JULY, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/80/2023

ABIGAIL QUARTEY

PETITIONER

VRS

JOSEPH KINGSLEY EDUSAH

RESPONDENT

LAWFUL ATTORNEY OF PETITIONER IS PRESENT AND REPRESENTED BY FRANCIS MENSAH WENDLE ESQ. HOLDING BRIEF FOR YVONNE AMEGASHIE ESQ.

RESPONDENT IS ABSENT

JUDGMENT

BRIEF FACTS

The parties both citizens of Ghana were married under Part III of the Marriages Act 1884-1985 (CAP 127) on 15th April 2017 at the Church of Pentecost, Ashaiman Lebanon District in Accra. After the marriage, parties cohabited at petitioner's mother's house at Ashaiman Lebanon in Accra before Petitioner relocated to live in the United States of America whilst respondent moved to live at Weija in Accra. Parties have two issues of the marriage namely Nana Kwadjo Eshun aged 10 years old and Abena Aseda Edusah aged 9 years old.

The Petitioner filed a petition at the registry of this court on 2nd June 2023 and prayed for the dissolution of the parties' marriage on the ground that same has broken down beyond reconciliation due to the unreasonable behaviour of the respondent. She also prayed for custody of the issues of the marriage with reasonable access to the respondent.

Even though there is proof of service of the petition and a hearing notice on the court's docket, for unknown reasons, respondent failed or refused to attend court to contest the petition. The court therefore proceeded without him pursuant to Order 25 r 1(2)(a) of the District Court Rules 2009, C.I. 59 which reads as follows;

“Where an action is called for trial and a party fails to attend, the trial magistrate may

- (a) Where the plaintiff attends and the defendant fails to attend dismiss the counterclaim if any and allow the plaintiff to prove the claim.

ISSUES

The court set down the following issues for determination;

1. Whether or not the marriage between the parties has broken down beyond reconciliation.
2. Whether or not custody of the two issues of the marriage should be granted to the petitioner with reasonable access to the respondent.

THE CASE OF THE PETITIONER

The ground upon which the petitioner has brought the instant petition is that the marriage between the parties has broken down beyond reconciliation due to the conduct of the respondent and she cannot reasonably be expected to live with him as a wife.

She sued through her lawful attorney Juliana Eshun who tendered a Power of Attorney filed at the registry of this court on 2nd June 2023 as evidence of the capacity in which the action has been brought before this court. Same was admitted and marked as Exhibit A.

She also tendered the marriage certificate of the parties with licence number TMA/R11/315/2012 as proof of the parties' marriage. Same was admitted and marked as Exhibit B.

It is the case of the petitioner's attorney that the parties' marriage was characterised by frequent misunderstandings and quarrels such that there was no happiness in the matrimonial home. It is her further case that the respondent subjected the petitioner to emotional and physical abuse leading to the petitioner suffering a lot of emotional pain and anguish.

She added that petitioner had the opportunity to travel to the United States of America five years ago and since then she has been a resident of that country. She averred that respondent has been very neglectful of the petitioner and is in no way concerned about the welfare of the issues of the marriage and as a result the lawful attorney lodged a complaint against the respondent at DOVVSU where custody of the two issues were granted to her with reasonable access to the respondent.

According to the lawful Attorney of the petitioner, respondent has refused or failed to maintain the two issues of the marriage and petitioner has been solely responsible for their upkeep. She averred that all attempts at reconciliation has proved futile and parties have been separated for more than five years now.

She averred further that respondent is cohabiting with another woman and this has caused petitioner much emotional pain and stress such that it would be unreasonable for petitioner to continue to stay with respondent as a wife.

She prayed for the dissolution of the marriage between the parties.

BURDEN OF PROOF

It is trite that sections 12(1) and (2) of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

In the case of **ACKAH V PERGAH TRANSPORT LTD [2010] SCGLR 728 AT PAGE 736**, Sophia Adinyira JSC (as she then was) delivered herself as follows;

“It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail.”

This position of the law was re-echoed by Benin JSC in the case of **ARYEE V SHELL GHANA LTD & FRAGA OIL LTD [2017-2020] 1 SCGLR 721 AT PAGE 733** as follows;

“It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved.”

THE COURT’S ANALYSIS AND OPINION

Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2 (1) of Act 367 explains that for the purpose of showing that the marriage has broken down beyond reconciliation, the petitioner shall satisfy the court of one or more of the following facts:

- (a) That the Respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the Respondent
- (b) That the Respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent
- (c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition
- (d) That the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of

the petition and the respondent consents to the grant of a decree of divorce provided that the consent shall not be unreasonably withheld and where the court is satisfied that it has been withheld the court may grant a petition for divorce under this paragraph despite the refusal

- (e) That the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition
- (f) That the parties after a diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also provides that 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 **GILBERT ANYETEI V SUSANNA ANYETEI, CA/J4/67/2021 DATED 2/3/2023**, Pwamang JSC held as follows;

“The law is that the only ground on which a court would order the dissolution of a marriage is that the marriage has broken down beyond reconciliation particulars of which are required to be specifically pleaded and proved by evidence adduced in court. It is therefore not sufficient for a judge to grant a divorce just because both parties endorsed that relief on their pleadings.”

The petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the respondent and the fact that she cannot reasonably be expected to live with him as a wife.

At page 307 of the book “**The law on family relations in Ghana**” by **William Cornelius Ekow Daniels**, the learned author on unreasonable behaviour states as follows;

“Behaviour in this context includes most of the ingredients of acts or omissions which amounted to legal cruelty under the old law without the need to establish injury or apprehension of injury to life, limb or health and constructive desertion. It means more than that. Under Act 367, the emphasis is on the behaviour of the respondent. The popular meaning of the word can be found in the concise oxford dictionary which defines “behaviour” to include deportment, manners, way of conducting oneself, moral conducting, treatment shown to or towards others in response to stimulus. The Act did not use the adjective “unreasonable” to qualify it, for it has been said it is not the behaviour that needs to be unreasonable but the expectation of cohabitation.”

Respondent was not in court to cross examine the petitioner on her assertions.

In **QUAGRAINE V. ADAMS [1981] GLR 599** it was held that in a situation where a witness testifies and his opponent fails to cross-examine him, the court may consider the witness’s testimony as admitted by his opponent

Accordingly, from the totality of the evidence, I find that the marriage between the parties has indeed broken down beyond reconciliation by reason of the fact that the parties have not lived as husband and wife for more than five years due to the unreasonable behaviour of the respondent.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Abigail Quartey and Joseph Kingsley Edusah

celebrated at the Church of Pentecost, Ashaiman Lebanon District at Ashaiman on 25th February 2012 is hereby dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

ISSUE TWO

From the evidence, petitioner continued to have custody of the two issues of the marriage after the separation of the parties. For continuity in the care and control of the two issues, I find that it is in their best interest that petitioner continues to have custody of them with reasonable access to the respondent.

Parties shall be responsible on a 50/50 basis for the maintenance of the two issues, their medical bills and school fees when such payments fall due.

I make no order as to costs.

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H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE