IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 6TH DAY OF JUNE, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/81/22

FRANCIS DONKOR **PETITIONER**

VRS

DORCAS DANKWAH **RESPONDENT**

PETITIONER IS PRESENT AND SELF REPRESENTED
RESPONDENT IS ABSENT

JUDGMENT

The petitioner filed a petition for divorce at the registry of this court on 11th August, 2022 against the respondent for the following reliefs:

a. Dissolution of the ordinance marriage between the parties.
b. That custody of the child be granted respondent with reasonable access to the petitioner during weekends and vacations
c. Any further order as the honourable court may deem fit.

The respondent filed an answer to the petition on 11th October 2022 and gave her consent to the dissolution of the parties' marriage as according to her the marriage has broken down beyond reconciliation

When the case was called for hearing, even though the respondent was served with a hearing notice to attend court as evidenced by the affidavit of service of a hearing notice on the court's docket, for unexplained reasons, she failed or refused to attend court.

The court proceeded without her pursuant to Order 25 r 1(2) (a) of the District Court Rules 2009, C.I 59 which provides as follows;

"*Where an action is called for trial and a party fails to attend, the trial magistrate may where the Plaintiff attends and the Defendant fails to attend, dismiss the counterclaim if any and allow the Plaintiff to prove the claim*"

In **ANKUMAH V CITY INVESTMENT CO LTD [2007-2008] 2 SCGLR 1064**, Baffoe Bonnie JSC held at page 1076 as follows;

"A court is entitled to give judgment in default as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard."

At the end of the pleadings, the issues that were set down for determination was whether or not the marriage contracted between the parties has broken down

beyond reconciliation and whether or not custody of the issues of the marriage should be granted to the respondent with reasonable access to the petitioner.

THE CASE OF THE PETITIONER

The case of the petitioner is that parties got married under the ordinance at Mountain Arafat Church at Amasaman in Accra on 22nd October 2011. He tendered the marriage certificate in evidence and same was admitted and marked as Exhibit A.

It is his further case that parties cohabited at New Abirem and are blessed with one issue of the marriage namely Roselyn Danquah aged 9 years old.

He added that the marriage between the parties has broken down beyond reconciliation as respondent has behaved in an unreasonable manner and he cannot reasonably be expected to live with her as a husband.

He particularised the unreasonable behaviour of the respondent to the extent that respondent's attitude towards him has changed. According to him, respondent is in the habit of shouting to the hearing of their neighbours that she does not like the petitioner and that marriage was not by force. She often laid on a mattress in their porch to show the neighbours that she was not interested in the marriage which is very embarrassing to him. He added that respondent returns home as late as 9pm from choir rehearsal and sometimes comes home the following day and tells him he has no right to question her whereabouts.

He stated that all attempts at reconciliation has proved futile as respondent has packed out of the matrimonial home and has returned drinks and rings to his family to dissolve the customary law marriage.

He prayed for the dissolution of the parties' marriage.

BURDEN OF PROOF

A party who asserts assumes the burden of proof. The requirements in sections 11,12 and 13 of the Evidence Act, 1975 (NRCD 323) on the burden to adduce evidence and burden of persuasion which together constitute the burden of proof was explained in **YORKWA V DUAH [1992-93] GBR 272** as follows;

"I am of the view that the expression burden of persuasion should be interpreted to mean the quality, quantum, amount, degree or extent of evidence the litigant is obliged to adduce in order to satisfy the requirement of proving a situation or fact. The burden of persuasion differs from the burden of producing evidence…the burden of producing evidence means the duty or obligation lying on a litigant to lead evidence. In other words, these latter sections cover which of the litigating parties should be the first to lead evidence before the other's evidence is led. Therefore it is the plaintiff who will lose first who has the duty or obligation to lead evidence in order to forestall a ruling being made against him."

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

In the case of **RE ASHALLEY BOTWE LANDS; ADJETEY AGBOSU V KOTEY [2003-2004] SCGLR 420,** it was held as follows;

"It is trite learning that by the statutory provisions of the Evidence Decree 1975 (NRCD 323) the burden of producing evidence in a given case is not fixed but shifts from party to party at various stages of the trial depending on the issue(s) asserted.

ISSUE ONE

In divorce cases, 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 again provides 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(3) provides that although the court finds the existence of one or more of the facts specified in (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.

His Lordship Dennis Adjei J.A reiterated the position of the law in the case of **CHARLES AKPENE AMEKO V SAPHIRA KYEREMA AGBENU (2015) 99 GMJ 202,** thus;

"The combined effect of sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a court to dissolve a marriage, the court shall satisfy itself that it has been proven on the preponderance of probabilities that the marriage has broken down beyond reconciliation. That could be achieved after one or more of the grounds in Section 2 of the Act has been proved."

In **ADJETEY V ADJETEY [1973] 1 GLR 216**, it was held;
" On a proper construction of the Act, the court can still refuse to grant a divorce even when one or more of the facts set out in section 2(1) has been established. It is therefore incumbent on a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion that the marriage has broken down will not be enough."

From the evidence, the Petitioner based his allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent in accordance with section 2(1)(b) of Act 367 and the fact that he cannot reasonably be expected to live with her as a husband.

At pages 308 and 309 of the book, "**The Law On Family Relations In Ghana**" **by William Cornelius Ekow Daniels**, the learned author on test of unreasonable behaviour states;
"all that the petitioner is required to do in this context is to give particulars of the extent of the behaviour of the respondent which has necessitated the presentation of the petition. Thereafter he is required to establish that as a result of that particular behaviour, he cannot reasonably be expected to live with the respondent."

He concluded that "whatever test is applied, justice demands that the court should have regard to all the relevant matters appertaining to the marriage and the individual spouses before it as well as to their individual perceptions of each other in order to determine what is reasonable."

From the evidence, the respondent was not in court to cross examine the petitioner on his 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

I therefore find and hold that the petitioner has been able to prove on a balance of probabilities that the respondent has behaved unreasonably and he cannot reasonably be expected to live with her as a husband.

I therefore proceed under Section 47 (1)(f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Francis Donkor and Dorcas Dankwah celebrated at Mountain Arafat Church at Amasaman on 22nd October, 2011 is hereby dissolved.

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

ISSUE TWO

In resolving custody of the child of the dissolved marriage, I find from the evidence that the female child of the parties is a minor aged 9 years.

I hold that as a young child, it is in her best interest that custody be granted to her mother, the respondent pursuant to sections 2 and 45 of the Children's Act, 1998 (Act 560) with reasonable access to the petitioner.

Accordingly custody of Roselyn Dankwah is granted to the respondent with reasonable access to the petitioner.

Having considered the affidavit of means filed by the petitioner and respondent on 27th April 2023 and 28th April 2023 respectively, Petitioner is ordered to maintain the child with the sum of GHC700.00 monthly. He is ordered to pay her medical bills as well as her school fees and all items needed for her education as and when payments of these bills fall due.

There will be no order as to costs.

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H/W RUBY NTIRI OPOKU (MRS.)
(DISTRICT MAGISTRATE)