

IN THE HIGH COURT OF JUSTICE ADENTAN BEFORE HER LADYSHIP JUSTICE  
ENYONAM ADINYIRA ON TUESDAY THE 21<sup>ST</sup> DAY OF NOVEMBER 2023.

---

SUIT NO. C5/39/2023

TIME: 12:44 p.m.

**AZONG CHARITY** ... **PETITIONER**  
(A.K.A) AKELISIYINE CHARITY  
DIGITAL ADDRESS CG-1534-9496  
KASOA NYANYANO

**VERSUS**

**AKELISIYINE STEPHENSON AKOLOGO** ... **RESPONDENT**  
DIGITAL ADDRESS CG-1534-9496  
KASOA NYANYANO

---

---

**PARTIES**

Petitioner present

Respondent present.

**REPRESENTATION**

Both Parties are unrepresented

---

**JUDGMENT**

---

On the 4<sup>th</sup> of September 2023 the Petitioner filed the instant Divorce Petition for the dissolution of the marriage contracted between the Parties on 23<sup>rd</sup> July 2005 under the **Marriages Act, 1884-1985 (Cap 127)**.

**Petitioner's Case**

The Petitioner stated her case as follows:

1. That she is a trader resident of Nima Accra and ordinarily resident in the matrimonial home with Digital Address as provided CG-1534-9496.

2. The Respondent is a Security Officer and also resident in the same matrimonial home as mentioned supra.
3. The Petitioner stated that she got married to the Respondent customarily and later solemnized the said marriage under the Ordinance on the 23<sup>rd</sup> day of July 2005 at the St. Kizito Catholic Church, Nima in Accra.
4. The Petitioner adds that they were issued with marriage identification number 14/K12/2005 with License Number AMA3213/2005 and a photocopy is attached to this petition.
5. The Petitioner continued that after the solemnization of the marriage, she joined her husband in the matrimonial home and they both cohabited in the matrimonial home happily.
6. Then Petitioner added that her maiden name is Azong Charity but soon after the solemnization of the marriage, she changed her maiden name and adopted her husband's family name to read AKELISYINE CHARITY and same name appears in her passport and on her Ghana card (Ecowas Identity Card)
7. The Petitioner confirmed that the marriage is blessed with five children namely:
  - i. Akelisiyine Teni Jackie – 26 years.
  - ii. Akelisiyine Anapoka Priscilla – 19 years
  - iii. Akelisiyine Nsoh Brew Desmond – 17 years
  - iv. Akelisiyine Akolobila Stephenson - 11 years
  - v. Akelisiyine Nyinemi Aiden - 3 years.
8. It is the case of the Petitioner that soon after her last delivery, the Respondent started behaving in a strange manner at home and that the level of communication as a family reduced drastically to the point that if she the Petitioner does not ask a question the Respondent will not talk.
9. The Petitioner also argued that she has since been denied sex and all other intimate relationships to the extent that the Respondent sometimes will not even eat her food, let alone sleep with her.
10. The Petitioner asseverated that she decided to conduct an investigation into the sudden change of Respondent's behaviour, and it emerged that her husband had lost his job but was refusing to let the family know about it.

11. The Petitioner contended that this explained the reason why the Respondent could no longer maintain the family as expected and all the burden of maintaining family rested on her shoulders.
12. The Petitioner argued that she had tried all means to put the relationship together but to no avail and not even family members could help solve the issues.
13. From the foregoing the Petitioner prayed the court for the dissolution of the marriage between the Petitioner and the Respondent and a further order granting custody of the children to the petitioner.

### **Respondent's Case**

The Respondent did not file an Answer but rather filed an Affidavit of Consent dated 15<sup>th</sup> September 2023 and deposed as follows:

1. That the Petitioner sued him for Divorce claiming as endorsed in her petition and he had been duly served by the Bailiffs of the Court.
2. Respondent further stated that he had no qualms with the decisions of the Petitioner since the marriage had already been dissolved customarily.
3. That the Petitioner and the children who were already in her custody had taken over the matrimonial home to which he was not opposed.
4. That the Petitioner was already taking care of the younger children all by herself but the older ones were on their own.
5. Responder further deposed that he was financially not placed to handle such responsibilities due to loss of his job. That he had planned to travel up north to start farming but the Petitioner was not prepared to move up north with the children.
6. That he had no other choice than to accept the Petitioner's position and move on.
7. That even though they were separated customarily, the Petitioner continued to insist that the marriage be dissolved in Court since it was celebrated under the Ordinance.

8. The Respondent further averred that he gives his consent to the dissolution of the marriage without asking for any conditions to be imposed on anyone.

### **Analysis of the Court**

**Francois J.A 9 (as he then was) in Clerk v Clerk [1975] DLCA 373** quoted with approval the following statement in the English Law Commission Report entitled **Reform of the Ground of Divorce: The Field of Choice, para. 15 (Cmnd. 3123)**, where the authors stated this desideratum:

*“when, regrettably, a marriage has irretrievably broken down, [attempts should be made] to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation.”*

By virtue of **Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367)**, the sole ground for the grant of a decree of divorce is that the marriage has broken down beyond reconciliation. **Section 2 (1) of Act 367** prescribes facts, one or more of which a Petitioner must establish for the purposes of showing that the marriage has broken down beyond reconciliation and they are as follows:

- a) *that the Respondent has committed adultery and that by reason of such adultery the Petitioner finds it intolerable to live with the respondent; or*
- b) *that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent: or*
- c) *that the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or*
- d) *the parties to the marriage have not lived as man 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 such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal; or*

*e) 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; or*

*f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.”*

**Section 2 (3) of Act 367 provides:**

*“Notwithstanding that 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 Knusden v Knusden [1976] 1 G.L.R 204** it was held that:

*The behavior of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of one act if it is of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse but the cumulative effect of all taken together would so.*

**Also in Mensah v Mensah [1972] 2 G.L.R 198** it was stated in holding 3 as follows:

*“In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behavior including the*

*history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Casanova's Charter. The test is objective.*

The above points are confirmed in current cases such as: **Adjei v Akwerter [2023] GHAHC 31, 31/07/2023** and **Arthur v Arthur [2023] GHAHC 67, 18<sup>th</sup> July 2023**.

Per sections 10 and 11 of the **Evidence Act, 1975 (NRCD 323)**, the standard that is required in proof of allegation in civil cases such as this one is proof by preponderance of probabilities. Thus, in the case of **Ackah v Pergah Transport Ltd. &Others [2010] SCGLR 728**, the Supreme Court held that:

*“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 claims may fail. This is a requirement of the law of Evidence under sections 10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975(NRCD 323)”.*

From the evidence adduced during the hearing and the filed processes, the marriage between the Parties has been dissolved customarily. What is left is the dissolution of the Ordinance marriage which can only be done by a Court of Law. Upon enquiry from the parties in court, they both confirmed the marriage had indeed broken down and all attempts at resolving their differences had proved futile. The Parties also confirmed that they had not lived as husband and wife for three (3) years.

All of the foregoing satisfies sections **1(2), 2(1) d and f of Act 367** that the marriage has broken down beyond reconciliation as the parties have not lived together as man and wife for a continuous period of at least 2 years and there is no indication now or in the future that either party will be willing to seek a reconciliation.

Thus, on the totality of the evidence, the Petitioner has satisfied the evidential burden required in sections **10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975(NRCD 323)** to prove that the marriage has broken down beyond reconciliation for which reason the court shall dissolve same.

During the trial, the Respondent confirmed that he now had a job and would provide monthly maintenance of GHC 2500 and pay the educational expenses of the children who were still in school. Based on the foregoing, the court declares as follows:

1. The marriage, celebrated between the parties under the **Marriages Act, 1884-1985 (Cap 127)** on 23<sup>rd</sup> July 2005 at St Kizito Catholic Church, Nima Accra, with **Certificate Number 14/K12/200** and **Licence Number AMA 3713/2005** is dissolved and the said Marriage Certificate is hereby cancelled. A copy of the Divorce Certificate should be served on the Registrar of Marriages by the parties for the amendment of the records thereof.
2. Joint Custody of the three (3) minor children is given to both Parties. As the children live with the Petitioner, the Respondent should be granted visitation access to the children every two (2) weeks on Saturday from 3:00 p.m. to 6:00 p.m. The Respondent shall come to the home of the children to either pick them out or spend time with them.
3. The Parties shall share equally the educational and medical expenses of the children.
4. The Respondent shall provide GH¢2,500.00 each month to the Petitioner as maintenance for the children.

**Given under my hand and seal this seal this 21<sup>st</sup> day of November 2023.**

**SGD  
JUSTICE ENYONAM ADINYIRA  
HIGH COURT JUDGE**