

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE  
HELD AT THE DIVORCE & MATRIMONIAL COURT "2" ON 16<sup>TH</sup> OCTOBER 2023  
BY HER LADYSHIP JUSTICE MAVIS AKUA ANDOH (MRS).

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SUIT NO: DM/0113/2023

BETWEEN

MICHAEL PEASAH YEBOAH                   =====                   PETITIONER

AND

DANIELETTE PAGE                         =====                   RESPONDENT

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*PARTIES:*                                    *PETITIONER PRESENT.*

*RESPONDENT ABSENT.*

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## JUDGMENT

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### *BACKGROUND*

On 31<sup>st</sup> October 2022, the Petitioner herein filed a motion ex-parte for leave to serve a Petition for divorce, which was to be served on the Respondent outside the jurisdiction. Leave was granted the petitioner on the 14<sup>th</sup> of November 2022 to issue the Petition and serve Notice of the Petition on the Respondent outside the jurisdiction.

The Court further made an order that all subsequent processes in respect of this matter should be served on the Respondent via DHL Courier service.

Subsequently, on the 16<sup>th</sup> of December 2022 the Notice to appear, the petition and all processes were duly served on the Respondent via DHL Courier services at her address in the United States of America.

### ***Brief facts***

The parties were married under the Marriage Ordinance on 2<sup>nd</sup> June 2012 at the marriage office of the Accra Metropolitan Assembly. The Petitioner is a retired Accountant and the Respondent is a Nursing assistant in the United States of America (USA). The parties after the marriage cohabited briefly as man and wife at Adentan before relocating to Maryland in the USA from 2014- 2020, when the Petitioner retired and relocated to Ghana for good, leaving the Respondent in the USA. There are no issues of the marriage and the Petitioner says that, the marriage has broken down beyond reconciliation and so it should be dissolved. The Petitioner sought the following relief;

- a) An order that the Ordinance marriage celebrated at the marriage office of the Accra Metropolitan Assembly on the 2<sup>nd</sup> day of June 2012 be dissolved, since same has broken down beyond reconciliation.

The Petition was duly served on the Respondent via DHL courier service as ordered by the Court. Despite the fact that the Petition was duly served personally on the Respondent on 2<sup>nd</sup> May 2023, she failed to enter appearance neither did she file an Answer to the Petition. After case management conference, the suit was subsequently set down for trial on 8<sup>th</sup> May 2023.

Even though, the Respondent was served with every process and hearing notices to apprise her of court proceedings, the Respondent did not file any processes to contest the suit.

This Court having satisfied itself that the Respondent had been given the opportunity to be heard but failed and or refused to take part in this matter, went ahead on 31<sup>st</sup> July 2023

to take the evidence of the Petitioner to satisfy itself that the marriage had indeed broken down beyond reconciliation as claimed by him.

### ***ISSUE***

The Court set down for its consideration, the issue of whether or not the marriage between the Parties has indeed broken down beyond reconciliation necessitating its dissolution.

### ***ANALYSIS.***

It is trite learning that he who asserts must prove. *In Ababio V Akwasi 111 (1994-95) 2 GBR, @ 774* it was held that the general principle of law is that; “it is the duty of a Plaintiff to prove his case, that is he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it...”

This principle of law finds a correlation in the statutory expression in the relevant Sections of the Evidence Act, (NRCD 323) Specifically Sections 11, 12 and 14 of the Act.

In *Bisi V Tabiri [1987-88] 1 GLR 360*, it was held that “The standard of proof required of a Plaintiff in a civil action, was to lead such evidence as should tilt in his favour the balance of probabilities on a particular issue”.

At the trial, the Petitioner gave evidence via his witness statement. He testified on oath that, after the marriage the parties relocated to the USA from 2014 to 2020 until he retired from work, and the Respondent even though had initially agreed after his retirement to relocate to Ghana with the Petitioner, informed the Petitioner through a phone call that she had decided not to relocate to Ghana with him again, but would continue to remain in the US.

The Petitioner further testified that, there was an already existing tension between the parties and after the Respondent’s decision not to relocate to Ghana, the rift intensified

to the extent that communication between the parties became nonexistent. The Petitioner further testified that, since 2020 the parties have not had any intimacy and have since ceased to live as man and wife physically.

It is the Petitioner's further claim that, all these facts, lack of communication, refusal to relocate to Ghana on the part of the Respondent, tension between the parties have all gradually led to the breakdown of the marriage which has to be dissolved which is the sole prayer of the Petitioner.

The Respondent did not partake in the trial.

Counsel for the Petitioner filed her written address to address the Court on some matters that she wanted the Court to consider.

#### *Legal position of the law regarding the dissolution of marriages in Ghana?*

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

Section 2(1) of the said Act, stipulates 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 grounds set out in Section 2(1) (a-f).

Section 2 1 (b) stipulates that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent or

That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition or that, 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 the 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 subsection notwithstanding the refusal.

On a petition for divorce, it shall be the duty of the Court to inquire so far as is reasonable into the facts alleged by the Petitioner and the Respondent.

Section 2 (3) of Act 367 supra, stipulates 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”.

The Petitioner has the onus of proving that the marriage has broken down as he has asserted in his petition. He has testified that the Respondent’s refusal to relocate to Ghana to join him as expected of a wife so they continue their marriage in Ghana as well as the lack of communication between the parties, and the fact that they have not lived as man and wife since 2020 are the reasons the marriage has broken down. I have considered the circumstances plaguing the marriage and from the evidence adduced, the Court is of the view that these complaints are not mere trivialities.

In the case of *Knusden v Knusden* [1976] 1 GLR 204 it was held that; “*The behavior of a party which would lead to this conclusion would range over a wide variety of acts. It may consist of one act 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 do so*”.

From the Petition filed and from the evidence adduced at the trial by this Court, it is evident that the Respondent has deserted the marriage and has resolved to remain in the United States of America thereby denying the Petitioner of the necessary consortium in marriage and also depriving the Petitioner of the much needed companionship in a wife now that he is on retirement. This Court is satisfied that the marriage has broken down

beyond reconciliation as the Petitioner has been able to prove that the marriage ought to be dissolved since the parties according to the Petitioner have not lived together as man and wife since 2020 a period of about 3 years now giving the clear indication that the Respondent has deserted the marriage and has no intention of staying married any longer.

Thus, on the totality of the evidence adduced by this Court, I am satisfied that the marriage has broken down beyond reconciliation based on the evidence adduced at the trial and the Petitioner is right in coming to Court to have the marriage dissolved as it does not appear that, the parties are likely to come together to continue the marriage after this hiatus as the parties have not lived together as man and wife for about 3 years thus satisfying the conditions stipulated under Sections, 1(2), 2(1), (d) of Act 367.

**CONCLUSION**

Accordingly, as it does not seem that the parties would reconcile now or in the near future, it is hereby decreed that the marriage celebrated between the Petitioner and the Respondent on 2<sup>nd</sup> June 2012, at the Marriages Office of the Accra Metropolitan Assembly with certificate number 1931/mc/2012 and license Number AMA 4577 **BE AND IS HEREBY DISSOLVED** forthwith and the said marriage Certificate is cancelled.

A copy of the divorce Certificate when obtained should be served on the Registrar of marriages by the Petitioner for the amendment of the records thereof.

**(SGD)**

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**MAVIS AKUA ANDOH (MRS)**

**JUSTICE OF THE HIGH COURT**

**DIVORCE & MATRIMONIAL COURT "2"**

**COUNSEL:**

**AKU SHIKA DADZIE FOR THE PETITIONER.**

**NO LEGAL REPRESENTATION FOR THE RESPONDENT.**

**AUTHORITIES:**

1. *ABABIO V AKWASI* 111 (1994-95) 2 GBR, @ 774
2. SECTIONS 11, 12 AND 14 OF THE EVIDENCE ACT, (NRCD 323)
3. *BISI V TABIRI* [1987-88] 1 GLR 360
4. SECTION 1 (2) OF THE MATRIMONIAL CAUSES ACT OF GHANA, (1971) ACT 367
5. SECTION 2(1) (A-F) OF THE MATRIMONIAL CAUSES ACT OF GHANA, (1971) ACT 367
6. SECTION 2 1 (B) F THE MATRIMONIAL CAUSES ACT OF GHANA, (1971) ACT 367
7. *KNUSDEN V KNUSDEN* [1976] 1 GLR 204