

IN THE CIRCUIT COURT 3 HELD AT ACCRA ON FRIDAY THE 4TH DAY OF
NOVEMBER, 2022 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.),
CIRCUIT COURT JUDGE

SUIT NO. C5/28/2017

AUGUSTINA HATTOW

PETITIONER

VRS

STEPHEN JOHNSON

RESPONDENT

PETITIONER PRESENT AND REPRESENTED; RESPONDENT ABSENT

JUDGMENT

Per the Petition filed on May 3, 2017, the Parties to this suit married under the Marriage Ordinance (cap 127) on December 7, 2013 at the Airport Residential Area with a Representative from the Registrar General's Office present. The Petitioner prayed to the court to dissolve the marriage between them on the grounds of unreasonable behaviour on the part of the Respondent. The Petitioner also prayed the court to adopt the terms of settlement filed on January 1, 2022.

The Respondent was served with the Petition and also served with hearing notice and court notes but the Respondent did not enter appearance or come to court.

Under order **36 rule 2(a) and (b) of the High Court (Civil Procedure rules), 2004 (C.I. 47)**, “Where an action is called for trial and a party fails to attend, the trial Judge 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; (b) where the defendant attends and the plaintiff fails to attend, dismiss the action and allow the defendant to prove the counterclaim, if any;

In the case of **Ankumah V City Investment Co Ltd. [2007-2008] SCGLR 1064** it was held that: “The defendant after several attempts was finally served but failed to appear in court. The trial court therefore rightly adjourned the case for judgment. A court is entitled to give a default judgment, 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.”

That party is deemed to have deliberately failed to take advantage of the opportunity to be heard.

In such a situation, the *audi alteram partem* rule cannot be said to have been breached.

The Petitioner was therefore called upon to proof her claim before this court.

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under section 2(1)(b) of the Matrimonial Causes Act, 1971 (Act 367) "For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. The Petitioner would have to prove that the Respondent's behaviour is such that a reasonable spouse in the circumstances and environment of these spouses could not be expected to continue to endure"

Under section 4 of Act 367, in determining whether the Petitioner cannot reasonably be expected to live with the Respondent, the court shall disregard any period or periods not exceeding six months in the aggregate during which the parties to the marriage lived with each other as man and wife after the date of the occurrence of the final incident relied on by the petitioner and proved to the court in support of his allegation."

At the close of the trial, the legal issue that fell for determination by the Court was

1. Whether or not the marriage celebrated between parties on December 7, 2013 had broken down beyond reconciliation.

The Petitioner tendered in evidence Exhibit A which is the marriage certificate of the parties to prove that she was in fact married to the Respondent. According to the Petitioner there is one issue of the said

marriage, Fabio Johnson, however each party has one child from their previous relationship. According to the Petitioner, the Respondent's unreasonable behaviour made it intolerable to continue in the marriage relationship. It is the evidence of the Petitioner that the Respondent is a heavy smoker and screams at the Petitioner at the least provocation or without any provocation whatsoever. The Petitioner told the court that in the course of the marriage that the Respondent decided to be a rapper and subsequently operated a recording studio under the name and style Black Beats Entertainment but the Petitioner was against this decision because this activity brought a lot of strangers to the matrimonial home which breached the privacy of their home. The Petitioner found the situation unbearable and so rented a different accommodation at Wetlands Legon. Shortly after the relocation of the Petitioner the Respondent moved to his mother's house. The Petitioner prayed the court to dissolve the marriage as the parties have not lived as husband and wife for the past one and half years.

Gollins v Gollins 1963 2 ALL ER 966 Lord Pearce said: "it is impossible to give comprehensive definition of cruelty, but when reprehensible conduct or departure from normal standard of conjugal kindness causes injury to health or an apprehension of it, it is, I think, cruelty if a reasonable person, after taking due account of the temperament all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called to endure it"

After taking the evidence of the Petitioner as a whole the Courts finds the behaviour of the Respondent of use the matrimonial home for activities which disturbs the privacy in the matrimonial is unreasonable and unbearable and no reasonable person can tolerate that behaviour.

Even though the Courts desire to maintain the sanctity of the marriage bond some situations warrant the granting of the divorce. In my opinion and on the strength of the evidence before this Court, the Parties should not be compelled to stay in the relationship.

The Court therefore finds that the marriage celebrated between the parties herein has broken down beyond reconciliation and same is dissolved.

DECISION

1. The marriage celebrated between the Petitioner herein, Augustina Hattow and the Respondent, Stephen Johnson on December 7, 2013 at the Airport Residential Area with a Representative from the Registrar General's Office present has broken down beyond reconciliation and same is dissolved. The marriage certificate No. RGM 4125/2013 is hereby cancelled and a Decree of Divorce is hereby issued.

On the ancillary reliefs, the parties filed on January 26, 2022, as stated below it is adopted as consent judgment of the parties.

2. That the Petitioner shall have the custody of the child of the marriage and the Respondent shall have reasonable access to of the child on weekends, holidays, vacations and on days that the Petitioner travels out of town.
3. I will make no order as to cost.

LEGAL REPRESENTATION

BEN SEVOR FOR THE PETITIONER

H/H SUSANA EDUFUL (MRS)

(CIRCUIT JUDGE)

