IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 9TH DAY OF DECEMBER, 2022 BEFORE HER HONOUR, AFIA OWUSUAA APPIAH (MRS) THE CIRCUIT COURT JUDGE.

SUIT NO: C5/201/2019

CHARITY MENSAH
H/N B1888/17 ASOREDANHO
DANSOMAN ACCRA **PETITIONER**

V

HERMAN MICAH
TEECOM RD, GBAWE
ACCRA **RESPONDENT**

JUDGMENT

This petition has been issued by the Petitioner against the Respondent herein praying the court for the following reliefs;

i. That the ordinance marriage between the Petitioner and the Respondent celebrated on 22nd January 2019 be dissolved.

ii. That the Respondent be made to pay alimony of Fifty- thousand Cedis to the Petitioner.

iii. Respondent be made to rent two bedroom apartment around Gbawe or Dansoman for the Petition.

iv. Any other reliefs(s) that this Honorable Court may fit and just to make the circumstances.

Under the laws of Ghana, an ordinance marriage can only be dissolved by a court and that also after it has been established that the marriage has broken

down beyond reconciliation. (See section 1(2) of the Matrimonial Causes Act, 1971 Act 367)

Respondent despite being served with the Petition and hearing notices t the failed/refused to appear in court for the conduct of the case. The Court accordingly proceeded to hear the case of Petitioner since Respondent after being duly served failed appear before the court to exercise the rights available to him as part of the civil practice in our Courts with determination of the petition fixed for today.

It is to be noted that, the failure of the Respondent to appear at trial to cross examine the Petitioner on the evidence or challenge same either in cross examination or by contrary evidence does not exonerate the Petitioner from satisfying the court that the marriage has broken down beyond reconciliation. The Standard of proof in civil case such as the present action is proof on the preponderance of probabilities. This is Statutory and has received countless blessing from the Courts of this land in plethora of authorities. See sections 11(4) and 12 of the Evidence Act, 1975, NRCD 323. Section 12(2) of NRDC 323 defines preponderance of probabilities as *"Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.* In the case of **ADWUBENG V DOMFEH (1997-98) 1 GLR 282** it was held per holding 3 as follows:

"...And sections 11(4) and 12 of NRCD 323 clearly provided that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities".

I have also taken note of the principle that, the failure of a party to deny a material averment constitute an admission of same and such implied admitted fact requires no further proof. As the Supreme Court in the case of **FORI v. AYIREBI AND OTHER [1966] GLR 627** held "when a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact".

Section 2(1) of Act 367 requires that a petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation.

Petitioner's case before the court per her Petition and her evidence on oath that parties herein got married on 22nd January 2019 at the Registrar General's Department, Accra. After the marriage, they lived together in a three bedroom self-contained apartment at CP, Gbawe, Accra. There are no issues of the marriage and there is no proceeding in any other court apart from this The marriage started to have problems just about a year and half

into the marriage when the mother of the Respondent, who is a Nigerian by birth and nationality came to stay in the matrimonial home. According to Petitioner, her mother in-law always rains insult and abusive words on her in the presence of people around the neighborhood. she further stated that after a little misunderstanding with the Respondent, her mother-in-law prevented her from entering the matrimonial home and she became the person who directs all the happenings in the matrimonial home to the extent that the Respondent listened to whatever decision the mother takes. Petitioner stated again that Respondent only took advice from the mother and decided not to plan any meaningful marriage life with her and that ended the marriage from July 2021 till date. As a result, they have not even share the matrimonial bed for over one year and still counting and I cannot be reasonably expected to remain married to the Respondent. As a result, the Respondent had become disrespectful to her, displaying arrogance and often resort to telling all manner of lies to common friends. She contended that she has suffered a lot of emotional, physical pain, stress and imbalance as a result of the behavior of the Respondent which is affecting her health on daily basis

Petitioner relies on unreasonable behavior of Respondent as a ground for the dissolution of the marriage. Subsection (1 b) of section 2 of Act 367 provides that where the respondent has behaved in a way that the

petitioner cannot reasonably be expected to live with the respondent same suffice as proof of the break down of the marriage beyond reconciliation.

Hayfron-Benjamin in the case of **Mensah v Mensah [1972] 2 GLR 198** held that "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 Cassanova's Charter. The test is objective".

In the case of Knudsen v Knudsen [1976] 1GLR 204, Amissah JA

stated that "the question therefore is whether the Petitioner established that the Respondent behaved in such a way that he could not reasonably be expected to live with her. Behaviour of a party, which would lead to this conclusion, would range over a wide variety of acts. It may consist of one act if 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.",

Per the unchallenged evidence on record, Respondent after the marriage was maintained and housed by Petitioner for almost two years after he lost his job but he failed to help Petitioner pay for the renewal of the tenancy of their matrimonial home here in Accra when same elapsed though he was then working in a bank Koforidua. Respondent refused to visit Petitioner in Accra

or permit her to visit him in Koforidua contrary to their agreed arrangement, changed the lock of his room at Koforidua without informing Petitioner or giving her a copy of the key to the new lock, refused to see her when she called and informed him she was in Koforidua house to visit him and chose instead to entertain another woman in his room, refusing to heed to calls by his uncle for reconciliation to be attempted, threatening her with adultery accusations after she moved out of the matrimonial home to a new place due to Respondent's failure to pay for the renewal of the tenancy, going to Petitioner's church to make noise are series acts which cumulatively is so grave and weighty unreasonable and unexpected of a spouse. The court therefore finds the behavior of Respondent unreasonable to expect the Petitioner to continue to live with the Respondent as husband and wife.

Further unchallenged evidence on record also discloses that parties have and not lived as husband and wife for over 7 years now. **Section 2(1e) of Act 367** provides that where 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 same suffices as prove of the breakdown of the marriage beyond reconciliation. In the case of **KOTEI V KOTEI [1974] 2 GLR 172, Sarkodee J** held as follows, "The sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. But the petitioner is also obliged to comply with section 2 (1) of the Matrimonial

Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that section. The petitioner in this case has set out to prove (1) (e), namely, "that [he and the respondent] have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition. "Subsection (3) contains an important provision which brings into focus the general scheme of the Act, which is to encourage reconciliation as far as may be practicable. Thus section 8 enjoins the petitioner or his counsel to inform the court of all attempts made to effect a reconciliation and gives the court power to adjourn the proceedings at any stage to enable attempts at reconciliation to be made if there is a reasonable possibility of reconciliation. It is, however, wrong, in my view, to say that proof of total breakdown of the marriage and the possibility of reconciliation should be taken "disjunctively." This, counsel for the respondent explained, meant that there is a burden to prove separately that the marriage has broken down and even when it is proved that it has broken down that there should be the further proof that it is beyond reconciliation. It is accepted that proof of one or more of the facts set out in section 2 (1) is essential and that proof of one of them shows the marriage has broken down beyond reconciliation. It is also conceded that notwithstanding proof the court can refuse to grant the decree of dissolution on the ground that the marriage has not broken down beyond reconciliation. It will be noted that the discretion given to the court is not a discretion to grant but to refuse a decree of dissolution. This means that

once facts are proved bringing the case within any of the facts set out in section 2 (1) a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that special

grounds exist justifying the exercise of the court's power. Once he or she comes within any one of the provisions in section 2 (1) (e) and (f), the presumption is in his favour; proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation. Proof of five years' continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage."

In the present case, the parties have not lived as husband and wife for a period of over 7 years immediately preceding the presentation of this petition. Under section 2 (1e) of Act 367, it is irrelevant whether or not there has been any wrong doing on the part of the Respondent. The most important fact to be considered is whether or not the court is satisfied that for a period of at least five years preceding the petition, the parties have not lived together as husband and wife. The consent or otherwise of the Respondent is not required.

The record discloses further that Petitioner's family on 24/11/2015 returned the head drink to the family of Respondent who accepted same and this customarily signifies the dissolution of a marriage. Though the return of the customary drink by Petitioner's family to Respondent's family, its acceptance by the latter's family and the customary connotation to this act amounts to dissolution of the marriage, the marriage existing between the parties being an ordinance marriage, this said action by the families of the parties does not

amount to a dissolution of the marriage but can be relied on as support, corroboration or prove that attempts at reconciliation has been futile and the breakdown of the marriage beyond reconciliation.

The court is therefore satisfied per the evidence on record that the marriage celebrated between the parties on 23/2/2010 at Principal Registrar of Marriages Office, Accra has broken down beyond reconciliation due to the unreasonable behavior of Respondent and/or failure of the parties to live together as husband and wife for a period of at 7 years immediately preceding the presentation of this petition.

The court accordingly hereby decrees the said marriage dissolved this day, 7th day of August 2020.

PETITIONER PRESENT.

RESPONDENT ABSENT.

MR ANDREW K. VORTIA FOR PETITIONER PRESENT

SGD
H/H AFIA OWUSUAA APPIAH (MRS)
CIRCUIT COURT JUDGE