

**IN THE CIRCUIT COURT HELD AT ACHIMOTA, ACCRA ON FRIDAY,  
THE 31<sup>ST</sup> DAY OF MARCH, 2023 BEFORE HER HONOUR AKOSUA  
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE**

**SUIT NO. C5/01/23**

**ELIZABETH OKANTAH NTSIFUL** -----

**PETITIONER**

**WESTLANDS AVENUE**

**GE-297-04079**

**ACCRA**

**VRS**

**DENNIS NTSIFUL** -----

**RESPONDENT**

**27 NAA SHIKA STREET**

**GE-279-8240**

**HAATSO, ACCRA**

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**PARTIES:   PETITIONER PRESENT  
              RESPONDENT ABSENT**

**COUNSEL:   ALEX GYAMFI, ESQ. FOR THE PETITIONER PRESENT  
              NO LEGAL REPRESENTATION FOR THE RESPONDENT**

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**JUDGMENT**

The Petitioner prays for dissolution of her marriage with the Respondent on the ground that their marriage has broken down beyond reconciliation; that the Respondent has behaved in a way that she cannot reasonably be expected to live

with him. The Respondent also cross petitioned on the ground of unreasonable behaviour.

The parties were married thirteen (13) years ago. The Petitioner, Elizabeth Okantah Ntsiful is a Librarian working with the University of Ghana at the Statistics and Actuarial Science Department whilst the Respondent, Dennis Ntsiful is an engineer working on his own. Both parties after the marriage cohabited at Haatso, Accra and started living apart for about two years now. There are four issues of the marriage namely Keziah Ntsiful, fourteen (14) years old, Dennis Ntsiful, twelve (12) years old, Delvin Ntsiful, eight (8) years old and Dyllis Ntsiful, four (4) years old.

I deem it necessary to mention that before the hearing of the petition, Counsel for the Petitioner informed the Court that, the parties had filed their Terms of Settlement and prayed the Court to adopt same as consent judgment.

Being a divorce petition, as provided in *section 2(3) of the Matrimonial Causes Act, 1971 (Act 367)*, 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.

Relying on the above authority, the Court directed the parties to lead evidence on the dissolution of the marriage to enable the determination that the marriage has broken down beyond reconciliation whilst the parties' settlement on the ancillary reliefs as per their Terms of Settlement filed on 23<sup>rd</sup> March 2023 will be adopted as consent judgment on the ancillary reliefs in addition to the judgment of the Court on the dissolution of the marriage.

As a result, the hearing of the instant petition was basically on the dissolution of the marriage since the parties had filed their Terms of Settlement on the ancillary reliefs.

In her evidence to the Court, the Petitioner stated that the parties got married under Ordinance on 12<sup>th</sup> December 2009 at Emmanuel Methodist Church, Spintex in the Greater Accra Region after their customary marriage. That after the said marriage, they cohabited at Haatso Accra and subsequently acquired a matrimonial home. That they have four issues in the marriage as stated above. According to the Petitioner, her husband has changed in the last few years and has committed adultery with many women and by the reason of the adultery, she is unable to tolerate him or to live with him. That in view of his behavior she cannot reasonably be expected to live with him. The Petitioner continued that the Respondent gets angry at the least provocation and at one point in time he threatened to harm her compelling her to leave the matrimonial home. That the Respondent most of the time refused to provide for the proper upkeep of her and the children forcing her to depend on her meagre salary or to borrow from friends and family members for maintenance. That the Respondent makes it difficult to reconcile with him when they have issues as he talks to her at his convenience, and when she complains he will insult her and ask her to leave if she is not happy. That the Respondent even told her parents that he is no longer interested in the marriage so she should leave the matrimonial home. The Petitioner further told the Court that all efforts by members of both families to reconcile the parties have been unsuccessful and that the marriage is broken down beyond reconciliation. She prayed for custody of the children of the marriage, maintenance orders, compensation of GH¢20,000.00, their matrimonial home at Haasto, a plot of land at Amrahia and an Elantra vehicle with registration no. GR-23-22 be settled in her favour as well as cost.

The Petitioner did not call witness and thereafter closed her case.

The Respondent in his evidence confirmed being married to the Petitioner under Ordinance on the said venue and date, and having four children in the marriage. He continued that he has never had peace of mind ever since he married the Petitioner. That the Court should give the Petitioner what she wants if she wants to go. That he is tired of appearing before elders and parents to settle issues. The Respondent further denied all the allegations against him. He prayed that custody of the children be granted to the Petitioner with reasonable access to him, that he will give a compensation of GH¢10,000.00 to the Petitioner; and the plot of land at Amrahia be settled in his favour as well as costs and expenses of this litigation.

The Respondent thereafter closed his case without calling witness.

The legal issues to be determined by this Court are:

- a. Whether or not the Petitioner committed adultery.*
- b. Whether or not the Respondent committed adultery.*
- c. Whether or not there is unreasonable behavior on the part of the Respondent such that the Petitioner cannot reasonably be expected to live with him.*
- d. Whether or not the marriage has broken down beyond reconciliation.*

In every civil case, the general rule is that the burden of proof rests upon the party, whether Petitioner or Respondent, who substantially asserts the affirmative of his or her case.

In the case of *Adwubeng v. Domfeh* [1996-97] SCGLR 660, the Supreme Court held that in all civil actions, the standard of proof is proof by preponderance of probabilities, and there is no exception to that rule.

In the case of *Lamptey alias Nkpa v. Fanyie & Others* [1989-90] 1 GLR 286, the Supreme Court held that:

*“On general principles, it was the duty of a plaintiff to prove his case. However, when on a particular issue he had led some evidence, then the burden will shift to the defendant to lead sufficient evidence to tip the scale in his favour”.*

This is clearly covered in *section 14 of the Evidence Act, 1975 (NRCD 323)*.

*Section 11(4) of the Evidence Act* explains the burden of proof in civil cases as follows:

*“In other circumstances, the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact was more probable than its non-existence”.*

Before I examine the evidence adduced at the hearing, it is essential to set out the relevant sections of the Matrimonial Causes Act, 1971 (Act 367) namely; sections 1(2), 2(1) and (3) which provide as follows:

*“1(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.*

*2(1) 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 so 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; or*

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

*(3) 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 the instant case the burden is therefore on the Petitioner to prove that the marriage has broken down completely; proof of one or more of the facts under section 2(1) of Act 367 is necessary.

From the evidence adduced by the parties at the hearing, I made the subsequent observations and findings:

The Respondent in his answer and cross petition stated that the Petitioner is unfaithful and commits adultery; however, he did not lead any evidence whatsoever on his allegation of adultery on the part of the Petitioner. For that reason, the said assertion remains unproven allegation and same is dismissed for lack of evidence.

The Petitioner told the Court that the Respondent has committed adultery with many women and by the reason of the adultery, she is unable to tolerate him or to live with him.

The Respondent denied the allegations of the Petitioner and stated that he has never had peace of mind ever since this marriage. Under cross examination the Respondent told the Court that it is rather the Petitioner who does not respect her anymore, and has a lot of male friends she chats with and talks undertone when she sees him around; and rather accuses him.

The Respondent having denied the Petitioner's allegation of adultery on his part, the Petitioner had a burden to lead sufficient evidence to prove her allegation of adultery on the part of the Respondent. This burden, the Petitioner failed to discharge.

In the case of *Adjetey v. Adjetey* [1973] 1 GLR 216 HC, it was held by Sarkodee J. that:

*“Adultery must be proved to the satisfaction of the Court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability. Direct evidence of adultery is rare. In nearly every case the fact of adultery is inferred from circumstances which by fair and necessary inference would lead to that conclusion. There must be proof of disposition and opportunity for committing adultery, but the conjunction of strong inclination with evidence of opportunity would not lead to an irrebuttable presumption that adultery has been committed, and likewise the Court is not bound to infer adultery from evidence of opportunity alone.”*

Applying the above authority to the instant case, both the Petitioner and the Respondent had the onus to prove their respective allegations of adultery on the part of each other, to the satisfaction of the Court which assertion both parties failed to prove.

On the first and second issues, since both the Petitioner and the Respondent could not prove their respective allegations of adultery after same was denied, I therefore find from the entire evidence before this Court that neither the Petitioner nor the Respondent committed adultery.

The Petitioner further stated that the Respondent gets angry at the least provocation and threatened to harm her compelling her to leave the matrimonial home. That the Respondent most of the time refused to maintain her and the children.



The Respondent denied these allegations in his answer. As provided in the authorities supra, the party who in his or her pleadings raises an issue essential to the success of his or her case assumes the burden of proof and the issue must be proved by the party who alleges the affirmative in substance. In view of that, the Petitioner had a burden to prove her assertion that the Respondent threatened to harm her and also refused to maintain her and the children. However the Petitioner only repeated her pleadings in her evidence to the Court without leading cogent evidence to support her allegation.

In **Klah v. Phoenix Insurance Company Ltd [2012] 2 SCGLR 1139**, it was held that:

*“where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the Court can be satisfied that what he avers is true”.*

The Court cannot accept mere assertions without credible and reliable evidence. In the absence of sufficient evidence before the Court by the Petitioner to prove that the Respondent threatened to harm her, I dismiss the said allegation as unsubstantiated.

On the issue of the Respondent’s refusal to maintain the Petitioner and the children; even though the Petitioner did not lead sufficient evidence on same, other than repeating her pleadings in her evidence, the Respondent made some admissions under cross examination. The Respondent under cross examination

admitted that there are times he even deserted the Petitioner and the children and he failed to maintain them.

This is a clear and unequivocal admission of desertion as per the evidence of the Respondent. I consequently find that the Respondent deserted the Petitioner.

The conduct of the Respondent in the said marriage which he himself has admitted under cross examination amounts to unreasonable behavior on the part of the Respondent.

In **Asante v. Bogyabi [1960] GLR 232 @ 240** per Siriboe JSC:

*“Where admissions relevant to matters in issue between parties to a case are made by one side, supporting the other ... then it seems to me right to say that, that side in whose favour the admissions are made, is entitled to succeed and not the other, unless there is good reason apparent on the record for holding the contrary view ...”*

To the extent that the Respondent admitted having sometimes deserted the Petitioner and the children; and failed to maintain them, I find on the third issue that there was unreasonable behaviour on the part of the Respondent such that the Petitioner cannot reasonably be expected to live with him.

In **Knudsen v. Knudsen [1976] 1 GLR 204 CA**, the Court of Appeal per Amissah JA stated as follows:

*“... Of course, in a state of affairs where the duty is placed upon the Petitioner to show that the marriage has broken down beyond reconciliation, common prudence indicates that attempts at reconciliation be made whenever possible and that where such attempts have been made without success evidence of these be given to*

*help the Court arrive at the desired conclusion. It does not, to my mind follow, however, that a divorce will never be granted in any case unless evidence of an unsuccessful attempt at reconciliation is led."*

Both parties told the Court that there were several attempts at reconciliation by their family members but all were unsuccessful.

After a careful examination of the evidence adduced by the parties, it is undisputable that the parties to the marriage have been unable to reconcile their differences. The parties have also not lived as husband and wife for about two years now and the Respondent has no objection to the grant of a decree of divorce.

Accordingly, I find as a fact that the parties have been unable or failed to live together as husband and wife for a continuous period of at least two years immediately preceding the presentation of this petition and the Respondent consents to the grant of a decree of divorce.

Flowing from the above, I find on the last issue that the marriage between the parties has broken down beyond reconciliation.

In view of the above, I conclude that the marriage between the parties has broken down beyond reconciliation and in the circumstances; I do hereby grant the Petitioner's prayer for dissolution of the marriage. The marriage celebrated between the parties on 12<sup>th</sup> December 2009 is hereby dissolved; and the Terms of Settlement signed by the parties herein and filed on 23<sup>rd</sup> March 2023 is hereby adopted and entered as consent judgment of the Court on the ancillary reliefs.

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**H/H AKOSUA A. ADJEPONG  
(MRS)  
CIRCUIT COURT JUDGE  
31<sup>ST</sup> MARCH 2023**