

IN THE GENDER-BASED VIOLENCE CIRCUIT COURT, SEKONDI-W/R, HELD
ON WEDNESDAY, 7THJUNE 2023 BEFORE H/H NAA AMERLEY AKOWUAH
(MRS.)

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C4/08/2021

ELIZABETH MAUD ESHUN

PETITIONER

v

KOFI BOSUMTWI

RESPONDENT

.....
PETITIONER: PRESENT

RESPONDENT: ABSENT

C/PET.:SAMUEL ADINKRAH, Esq.

C/RESP.: STEPHEN K. KESSE, Esq.
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JUDGMENT

Or. 36 r. 1 (2) (a) & 37 r. 2 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47)
provides, respectively that;

*“Where an action is called for trial and a party fails to attend, the trial Judge may where
the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any,
and allow the plaintiff to prove the claim”*

“It is the duty of parties, their lawyers and the Court to avoid all unnecessary adjournments and other delays, and to ensure that causes or matters are disposed of as speedily as the justice of the case permits”

In the *Rep. v High Court (Fast Track Division), Accra; Ex parte Francis NiiAyikai [2015] 81 GMJ 72*⁸⁷per Owusu JSC held that a person who intentionally spurns the opportunity to be heard cannot rely on the *audialter ampartem* rule. Indeed, that *“where therefore he [a lawyer] and his client disabled themselves from being heard in the proceeding, he cannot turn round and accuse a court of breaching the rules of natural justice”*. A similar holding was made in *Rep. v High Court (Fast Track Division) Accra; Ex parte State Housing Co. Ltd. (No. 2) (Koranten-Amoako Interested Party) [2009]SCGLR 185*¹⁹⁰per Wood CJ., SC.

In the instant case, Respondent’s counsel filed a Notice of Appearance on 3/11/2021 but never attended Court nor filed Pleadings on his behalf. Respondent also failed to file an Answer or any other process or participate in the hearing of the matter despite service on him of Pleadings, a motion and several Hearing Notices. Under the circumstances, this Court enabled the rule under Or. 36 r. 1(2)(b), C.I. 47, and conducted the hearing with only Petitioner in attendance to prove her case.

In an Amended Petition for Divorce, the Petitioner prayed for dissolution of her marriage to Respondent, custody of the two children of the marriage awarded to her, an order for maintenance of the children at a monthly stipend of GHC1, 500 and any other order(s) that the Court may deem fit.

In further particulars of her Pleadings, Petitioner relied on her Witness Statement filed on 17/11/2022 in the discharge of the burden on her *‘to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court’* and *‘to introduce sufficient evidence to avoid a ruling against him on the issue’* as required by ss. 10(1), 11 (1) & (4) of

the Evidence Decree, 1975 (NRCD 323). See the cases of *NDK Financial Services v Ahaman Enterprise Ltd., Attorney General & Alex A. Aduko [2021] DLSC 10690* and *Zabramav Segbedzi [1991] 2GLR. 221-247*. In her Evidence-in-Chief in Court, she tendered her a copy of the marriage certificate (**Exh. A**) issued as evidence of the matrimonial contract entered into by the parties at Christ the King Catholic Church, Sekondi ON 26/04/2008.

Petitioner testified that the marriage has broken down beyond reconciliation because Respondent slapped her in the presence of the children, in addition to verbally abusing her on several occasions prior. As a result, she reported him to the DOVVSU of the Police Service. In time, Respondent has been living with another woman in the matrimonial home at Effiakuma, Takoradi. Being apart from Petitioner and the children, Respondent has stopped maintaining Petitioner and the children. Matters came to a head when several attempts at reconciliation by family and the church failed, leading to the dissolution of the customary marriage on 3/07/2021.

Without the benefit of Respondent's presence to cross examine Petitioner and test her credibility as well as that of her testimony as provided for by Or. 38 r. 3F, C.I. 47, the Court could only proceed on the evidence made available to it to arrive at a decision.

Petitioner did not call a witness to testify or corroborate the averments she made.

Upon conclusion of hearing, the issue settled for determination was **"whether or not Petitioner proved the grounds for the grant of a divorce decree"**?

s. 2(1) (a-f) of the Matrimonial Causes Act, 1971 Act 367 states the six (6) grounds proof of which, singularly or collectively, will prove that a marriage has broken down beyond reconciliation. From her Pleadings and evidence-in-chief, I find that the grounds of unreasonable behavior, adultery and inability to reconcile differences proved by

paragraphs 6-13 of her evidence-in-chief. Under s. 2(1)(b) of Act 367 a judge may find that a marriage has broken down beyond reconciliation where a petitioner proves that a *‘respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent’*. See ***Darko v Darko [2011] 29 GMJ 121 CA and Donkor v Donkor [1982-83] GLR 1156@1158*** where the court relied on proof of unreasonable behavior to grant the respective petitions. From the evidence before me, I find that the marriage between the parties has broken down beyond reconciliation.

DECISION

The petition for divorce is granted on the finding that the marriage has broken down beyond reconciliation on proof of section 2(1) (a), (b)& (e) of Act 367.

On the authority of s. 42 (1) (b) of the Courts Act, 1993 (Act 459) I hereby decree that the marriage celebrated between Elizabeth Maud Eshun and Kofi Busumtwi on 26/04/2008 at Sekondi is dissolved and a certificate of divorce shall issue.

ANCILLARY ORDERS

Custody of James Kweku Busumtwi and Veronica Adjoa Busumtwi is granted to Petitioner, who shall be the primary caregiver, with reasonable access to Respondent. This order shall remain until each child turns 18 years whereupon a review of custody may be applied for.

Without proof of either party's income, Respondent is ordered to pay monthly maintenance of GHC1, 500 to Petitioner for the upkeep of the children, effective June 2023.

Bearing in mind that both parties are gainfully employed and the responsibilities that Petitioner has shouldered so far, Respondent is ordered to pay the school fees and as medical costs incurred by or on behalf of the children.

Elizabeth Maud Eshunv Kofi Busumtwi

Costs GHC4, 000 is awarded in favour of the Petitioner.

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H/H NAA AMERLEY AKOWUAH (MRS.)