

**IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2',
ACCRA ON THURSDAY, 17TH AUGUST, 2023 BEFORE HIS HONOUR
ISAAC ADDO, THE CIRCUIT COURT JUDGE**

SUIT NO.: C5/280/2023

EVELYN ACOLATSE

PETITIONER

VRS

STEPHEN OBENG ASARE DONKOR

RESPONDENT

PETITIONER PRESENT

RESPONDENT ABSENT

JOHN BAPTIST AYEDZE, ESQ. FOR THE PETITIONER PRESENT

JUDGEMENT

On the 9th May, 2023, the Petitioner instituted this action against the Respondent praying for an order for dissolution of the ordinance marriage celebrated between the parties.

The Affidavit of Service on the docket shows that the Respondent was duly served with the Petition on the 10th May, 2023. Neither did the Respondent enter Appearance nor file an Answer to the Petition. The Notice To Set Down The Matter For Trial was filed on the 12th June, 2023 and same was also duly served on the Respondent. The Witness Statement of the Petitioner was also served on the Respondent. Pursuant to Order 36 Rule 1(2)(a) of High Court (Civil

Procedure) Rules 2004 (C.I 47), the court heard the case of the Petitioner in the absence of the Respondent.

The matter was accordingly set down for trial on the 14th July, 2023 and the Petitioner ordered to file Witness Statements. The Respondent was duly served with all the court processes and orders and cannot complain of a breach of the rules of natural justice. A defaulting defendant takes the blame for failing to appear in Court to defend an action against him. In the case of Republic vrs High Court (Fast Track Division), Accra; Ex Parte State Housing Co. Ltd (No. 2) (Koranten-Amoako Interested Party) [2009] SCGLR 185, the venerable Chief Justice Wood CJ observed that if a party like the Defendant herein, who has been served with notices to appear in court to be heard, fails to attend court, he cannot later turn around and accuse the court of a breach of natural justice. See also Republic vrs High Court, (Human Rights Division), Accra, Ex parte Josephine Akita (Mancell-Egala & Attorney General Interested Parties) [2010] SCGLR 374 @ 384 per Brobbey JSC; Republic vrs Court of Appeal, Accra, Ex Parte East Dadekotopon Development Trust, Civil Motion No. J5/39/2015, dated 30th July 2015 and Baiden vrs Solomon [1963] GLR 488 at page 495.

THE CASE OF THE PETITIONER

It is the case of the Petitioner that she got married to the Respondent under the

ordinance on the 27th April, 2019 at the Lighthouse Chapel International, Achimota, Accra. After the marriage, the parties cohabited at Dome Pillar II, Accra. There is no issue of the marriage. The marital relationship between the parties started deteriorating a couple of months into the marriage due to the Respondent's involvement in adulterous relationship with several other women. The Respondent committed adultery in the matrimonial home. The Respondent physically assaulted the Petitioner on one occasion when she caught him with one of his numerous girlfriends naked in the party's matrimonial home. According to the Petitioner, she was subjected to verbal abuses and on occasion, the Respondent told him in the presence of his elderly sibling and wife that he has someone else and does not want to stay married to the Petitioner. The Petitioner added that her marriage with the Respondent has been characterized with a lot of misunderstandings and quarrels and she was not allowed to engage in any meaningful employment because the Respondent wanted the Petitioner to be a housewife. The Respondent did not maintain the Petitioner. The Petitioner moved out of the house because of the Respondent's adulterous and unreasonable behaviour of the Respondent three years ago and had stayed away from the matrimonial home since then. All attempts by the families of the parties to resolve their differences have proven futile. The behaviour of the Respondent has caused so much pain, embarrassment and anxiety such that she cannot be reasonably

expected to remain married to the Respondent. The customary marriage between the parties was dissolved on the 4th March, 2023 by the family of both parties.

The legal issue that emerged for determination is whether or not the marriage between the parties has broken down beyond reconciliation to warrant the court to decree a divorce.

The law on dissolution of Ordinance marriages is laid out in the Matrimonial Causes Act, 1971 (Act 367). In respect of this instant case, the relevant sections are sections 1(2), 2(1)(b)(f) and (3) of Act 367. I reproduce them below:

"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:

(b) that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;

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

(3) 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.

In the case of Mensah v. Mensah [1972] 2 GLR 198, Hayfron-Benjamin J. (as he then was) held that:

“..... it is therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough”

In this case, the evidence of the Petitioner has not been contested or challenged. In the case of Ghana Ports and Harbours Authority & Captain Zeim vrs Nova Complex Ltd. (2007-08) SCGLR 806 and Takoradi Flour Mills vrs Samir Faris (2005-06) SCGLR 882, the Supreme Court held that

“Where the evidence led by a party is not challenged by his opponent in cross examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial court. I therefore find as a fact by the behaviour of the Respondent is unreasonable such that the Petitioner cannot be reasonably expected to live with the Respondent.

In this case, attempts by the families of the parties to resolve their differences failed. In the circumstances, I hold that the marriage between the parties has broken down beyond reconciliation. Accordingly, I grant the Petitioner's prayer for the dissolution of the marriage.

Following from the above, I hereby dissolve the Ordinance Marriage celebrated between the parties on the 27th April, 2019 at the Lighthouse Chapel International, Achimota with Licence No. LCI/ML/62/2019 and Certificate No. LCI/AC/08/2019.

No order as to costs.

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ISAAC ADDO
CIRCUIT COURT JUDGE
17TH AUGUST, 2023