

IN THE CIRCUIT COURT 3 AT ACCRA HELD ON FRIDAY THE 9TH
 DAY OF JUNE, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL
 (MRS.), CIRCUIT COURT JUDGE

SUIT NO. C5/320/2018

BISMARCK KWAKU ASARE

PETITIONER

VRS

EVELYN AMA AMPONSAH

RESPONDENT

PETITIONER PRESENT AND UNREPRESENTED; RESPONDENT
 ABSENT

JUDGMENT

The Petitioner filed this Petition personally on April 4, 2018. There after the Petitioner gave power of attorney to a family member to represent him. The Parties to this suit married under the Marriage Ordinance (Cap 127) on July 2013 at the Accra Metropolitan Assembly. The parties have no child of the said marriage. The Petitioner is seeking the dissolution of the marriage on the grounds of Unreasonable behaviour.

The Petitioner prayed the Court as follows;

1. That the marriage celebrated between the Petitioner and the Respondent be dissolved.

2. The Respondent be ordered to pay the amount of GHC10,000.00 as financial provision.

3. That House Number 41 Travellers Close Road, Bouganville Batsonaa Accra be shared equally between the petitioner and the respondent.

The Respondent entered appearance and filed her Answer and Cross-Petition. The parties were ordered to file their witness statement which were filed and a date given for trial. On April 8, 2022, June 10, 2022 and November 11, 2022 the Petitioner's attorney mounted the witness box and was cross-examined by Counsel for the Respondent. The Petitioner closed his case and the case was adjourned till December 16 2022 for the Respondent's evidence. the case called on two different occasions but the Respondent was not available. Consequently, Counsel for Petitioner prayed that the Respondent Answer to Petition and Cross-Petition as well as the witness statement filed be struck out to enable the court close the case for Judgment and the court obliged the Petitioner.

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, “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.

In this suit, the Respondent did not take advantage of the opportunity granted her to be heard.

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 issues that fell for determination by the court were;

1. whether or not the marriage celebrated between parties on July 2013 at the Accra Metropolitan Assembly has broken down beyond reconciliation.
2. Whether or not the Petitioner can be ordered to pay the amount of GHC10,000.00 to the Respondent as financial provision.
3. Whether or not the parties to share House Number House Number 41 Travellers Close Road, Bouganville Batsonaa Accra as it is their marital property.
4. Respondent can be ordered to pay to the Petitioner 50% share of the residential facility situate at Tuba Junction near Kasoa be settled on the Petitioner. Or in alternative order the Respondent to pay cost of labour per man hours spent on the property if indeed the said property is that of the Respondents mother, including expenses incurred on transportation, food among others totalling GHC15,000.00.

The Petitioner's Attorney did not tender in evidence any marriage certificate to prove the existence of their marriage save to say that the parties got married in July 2013. Exhibit A which is the marriage certificate of the parties to prove that Respondent is in fact married to the Petitioner. The Attorney tendered in evidence Exhibit A which power of attorney given him by the Petitioner to Represent him in court. According to the Petitioner's Attorney the parties have not lived as husband and wife since August 2013. This is because the Respondent always shows excessive anger towards the Petitioner and the Respondent has stopped communicating with the Petitioner. Attorney further stated that during the subsistence of marriage between the parties they acquired a mortgaged property with HFC at Batsona the attorney tendered in evidence exhibit B which is the documents covering the parties property at Batsona. According to the Attorney it was the Petitioner who paid substantial part of the mortgage property. Attorney prayed that the court grants the Petitioner's relief as endorsed on the petition.

The Petitioner did not call any witness

The Respondent did not attend court to deny or admit the allegations. The Court is of the opinion that the Petitioner's evidence is reasonably probable to prove that marriage between the parties has broken down beyond reconciliation.

The Court therefore, hold that the marriage celebrated between the parties herein has broken down beyond reconciliation.

Next is to determine whether or not the parties can be ordered to share equally the House Number 41 Travellers Close Road, Bouganville Batsonaa. The court after considering the evidence on record deems it equitable to grant the Petitioner's and hereby grants same. The Petitioner tendered in evidence exhibit B,C,D to show that the property stated above is the joint property of the parties. This assertion has not been controverted or contested from the evidence on record. The court accordingly hold that the House Number 41 Travellers Close Road, Bouganville Batsonaa is a joint property and it is equitable to order that same is shared between the parties equally.

The Petitioner has asked that he be ordered to pay her 10,000.00 to Respondent as financial provision.

The court having considered the evidence as a whole deems it fair and just to grant the later and accordingly grants same.

DECISION

1. The marriage celebrated between the Petitioner herein, Bismark KwaKu Asare and the Respondent, Evelyn Ama Amponsah on July, 2013 at the Accra Metropolitan Assembly, has broken down beyond

reconciliation and same is dissolved. The marriage certificate with registration No. 1285/MC/2013 A Decree of Divorce is hereby granted.

2. The Petitioner is ordered to pay the amount of GHC10,000.00 to the Respondent as financial provision.
3. It is ordered that the parties are joint owners of House Number 41 Travellers Close Road, Bouganville Batsonaa Accra. The parties are ordered to share the property equally. That is 50% each.
4. I will make no order as to cost.

LEGAL REPRESENTATION

KWABENA SARFO MENSAH FOR PETITIONER

SGD

H/H SUSANA EDUFUL (MRS)

(CIRCUIT JUDGE)