

**IN THE CIRCUIT COURT ONE HELD AT ACCRA ON MONDAY, 20TH
DAY OF MARCH, 2023 BEFORE HER HONOUR AFIA OWUSUAA
APPIAH (MRS) CIRCUIT COURT JUDGE**

SUIT NO.: C5/139/2022

SERWAA GIDIGLO

PETITIONER

V

FRNKLIN ANIN AGYEI

RESPONDENT

JUDGEMENT

Petitioner herein petitioned the court on 7/7/2022 praying for the singular relief that the marriage celebrated between the parties be dissolved. Petitioner contended that the marriage celebrated between the parties at Porter's City Church, Miotso, in the Greater Accra Region of Ghana on the 8/6/2019 has broken down beyond reconciliation due to Respondent's unreasonable behaviour.

Respondent upon service of the petition on him duly entered appearance to the petition but failed /refused to file his answer to same and or appear in court for the conduct of the matter despite several hearing notices and court notes served on him.

It is trite learning that where a court has taken a decision without due regard to a party who was absent at a trial because he was unaware of the hearing date that decision is a nullity for lack of jurisdiction on the part of the court. See **Barclays Bank v Ghana Cable Co. [2002-03] SCGLR 1 and Vasque v Quarshie [1968] GLR 62**. However, where the party affected was sufficiently aware of the hearing date or was sufficiently offered the opportunity to appear but he refused or failed to avail himself (as evident in this case) the court was entitled to proceed and to determine the case on the basis of the evidence adduced at the trial. See *In re West Coast Dyeing Ind. Ltd; Adams v Tandoh [1987-88] 2 GLR 561*.

The Court accordingly proceeded to hear the case of Petitioner and matter adjourned to today for judgment.

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”.

There is only one ground for dissolution of a marriage under the Act 367. Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 states “ The sole

ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation". Petitioner therefore must satisfy the court of one or more of the instances listed under section 2(1) of Act 367 as proof that the marriage has broken down beyond reconciliation to be entitled to the relief of dissolution of marriage.

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 per her Petition and evidence on oath given is that both parties are Ghanaians. Parties herein got marriage under the ordinance on the 8/6/2019 at the Porter City Church-Miotso, in the Greater Accra Region of Ghana and thereafter cohabited for a month at Abokobi, Accra. Petitioner is a registered nurse and Respondent a banker with Absa Bank. There are no issues of the marriage. Petitioner contends that the marriage between the parties have broken down beyond reconciliation due to Respondent's unreasonable behaviour. Petitioner stated that parties have been disconnected for over 3 years now and not been in touch. According to petitioner, few months after she departed to Canada, Respondent started pestering her to return home so that he would be give her allowances and they can start having children. Despite telling him that with the challenges she was going through it in Canada it would be difficult on my part to combine having a baby at the same time with her lectures Respondent persisted and started quarreling with her. She stated that Respondent reported her to her pastors and accused her of having sexual intercourse with her sister's husband in Canada. She stated further that Respondent caused the arrest of her entire family humiliating them. Respondent again threw out the belongings of her sister who was living in their matrimonial home to assist Respondent on their mutual agreement prior to her leaving for Canada. Petitioner continued that

when the issue of her sister having been thrown out of the matrimonial home came up, her father requested Respondent to refund loans he had taken from her family to raise money for rent for her sister but Respondent instead of pleading rather insulted her father.. With all these happenings her dad contacted Respondent's family for a meeting to find possible ways to resolve the happenings in the marriage. Several attempts made by her father yielded nothing as Respondent's family always gave one excuse after the other. She stated that prior to going to Canada, Respondent went into her account to take large sum of money meant for my in-laws to pay later as time went by, he told them he would never pay them the money and rained lots of curses on her family. Petitioner contended that Respondent had never supported her financially since the marriage and was just putting lot of psychological burden on her. She stated that his presence in her life is not affecting her in any positive way and she has seized communication in any form with him for over 2 years now.

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 also is proof of the break down of the marriage beyond reconciliation. What constitutes the fact of Unreasonable behavior under section 2(1)(b) of Act 367 has been discussed in the case of **Mensah v Mensah [1972] 2 GLR 198**. The court held per **Hayfron-Benjamin** 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". Also 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.”

Petitioner’s evidence on record which is unchallenged i.e Respondent causing the arrest of his in-laws, throwing the belongings of his sister in law outside the matrimonial home, taking loans from his in-laws and refusing to repay same, insulting his father-in-law, persistently demanding Petitioner to abandon her study and return to Ghana contrary to their agreement before marriage cumulatively establish unreasonableness on the part of Respondent and Petitioner cannot reasonable be expected to continue living with him as husband and wife

Again Further unchallenged evidence on record also discloses that parties have and not lived as husband and wife for over 2 years now and all forms of communication seized between them. Where a petitioner proves 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 see **Section 2(1d) of Act 367**.

Section 8 of Act 367 requires petitioner to inform the court of all efforts made by or on behalf of the petitioner, both before and after the commencement of the proceedings, to effect reconciliation. Petitioner’s evidence establishes that all efforts made by her father to seek audience with Respondent’s family

have proved futile.

Having found that Respondent has behaved in a manner that Petitioner cannot reasonably be expected to live with him as husband and wife, parties having failed to live together as husband and wife for a period of over 2years immediately preceding the presentation of the petition, the Court is satisfied that indeed the marriage celebrated between the parties herein at Porters City Church, Miotso, in the Greater Accra Region has broken down beyond reconciliation. Accordingly, the Petition for dissolution of the marriage filed by Petitioner succeeds.

The court hereby decrees the said Ordinance marriage celebrated between the Parties at Porters City Church, Miotso, in the Greater Accra Region on the 8/6/2019 be and same is dissolved today the 20th day of March 2023.

No order(s) as to cost.

PARTIES ABSENT

**JOCELYN ARMAH WITH AKOSUA OPPONG DAMOAH HOLDING
THE BRIEF OF VIVIAN LAMPTEY FOR PETITIONER PRESENT.**

**(SGD)
H/H AFIA OWUSUAA APPIAH (MRS)
(CIRCUIT COURT (1) JUDGE)**