

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON THURSDAY, THE 25<sup>TH</sup> DAY OF JULY, 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL BAASIT, CIRCUIT COURT JUDGE.

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SUIT NO.: CCD/C4/10/23

PAULINA ARTHUR

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PETITIONER

VS

CARL ALLOTEY

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RESPONDENT

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**PARTIES:**

PETITIONER – PRESENT

RESPONDENT – ABSENT

**COUNSEL:**

MITSUI KORYOO ODJIDJA HOLDING BRIEF FOR YVONNE AMEGASHIE FOR THE PETITIONER –PRESENT

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**JUDGMENT**

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**Background:**

Petitioner herein per the Petition filed at the Registry of the Court on the ..... stated that the Parties got married under Part III of the Marriages Act 1884-1985 [Cap 127] on the 10<sup>th</sup> day of January, 2013 which marriage was celebrated at St. Theresa's Catholic Church, Kaneshie, Accra. She further stated, among others, that the initial stages of the marriage was normal and blissful and challenges parties faced was one which was normal in every marital relationship but a couple of months into the celebration of the marriage, Respondent began to verbally assault Petitioner at the least or without any provocation whatsoever such that the marriage was characterized with a lot of acrimony and misunderstanding. Petitioner says that there was no happiness in the matrimonial home because the Respondent became unemployed and the Petitioner was solely responsible for the running and

maintenance of the matrimonial home resulting in undue financial hardship on her.

At a point, the Petitioner had to assist the Respondent set up a microcredit business in the year 2017 with an amount of Eight Thousand Ghana Cedis (Ghc8,000.00) which Respondent has since paid back Four Thousand Cedis (Ghc4,000.00) to the Petitioner. Additionally, the Respondent accused the Petitioner of infidelity on several occasions and also physically assaulted her to an extent that the matter ended at the Domestic Violence and Victims Support Unit (DOVVSU) of the Ghana Police Service at Amasaman in Accra. She stated further that due to the Respondent's series of abuse, she deserted the matrimonial home in October 2021 because she realized that the Respondent would never change and would resort to being physically abusive towards her at the least or without any provocation whatsoever. According to the Petitioner, the Respondent was indebted to her in the sum of Twenty-two Thousand Ghana Cedis but has since paid back Eight Thousand Cedis leaving an outstanding balance of Fourteen Thousand Cedis to be paid by the Respondent to the Petitioner. Again in 2022, she loaned money to the Respondent Twelve Thousand Cedis (Ghc12, 000.00) but he is yet to pay the balance of Nine Thousand Cedis (Ghc9, 000.00) despite repeated demands for him to do so. She concluded her Petition by intimating to the court that the Respondent has fathered Four (4) children with Two (2) different women since she deserted the matrimonial home in October, 2021 and several efforts made to resolve the differences between the parties have not yielded any positive results. She therefore prays this Honourable Court for the following reliefs;

- (a) Dissolution of the ordinance marriage celebrated between the parties as having broken down beyond reconciliation.

(b) Respondent to be compelled to pay back to the Petitioner loans he took from Petitioner totaling an amount of Twenty-seven Thousand Ghana Cedis (Ghc27,000.00).

On the 27/6/23, the Respondent filed an Answer to the Petition wherein he insisted, among others that the Petitioner has behaved in an unreasonably as he has been a very good and lovely husband to the Petitioner and her family. He stated that he informed the Petitioner to be patient for him to put things in order before she moves in with him but the Petitioner Accra and met his family but he cannot eject his first wife and children. He stated further that he can marry more than one wife but the Petitioner refused and left his premises until this time that he was served by the petition. He concluded by stating that the marriage has broken down beyond reconciliation and prays the court to grant the Petitioner's request. The Petitioner then applied to set the issues down for trial and same was granted with the Court ordering parties to file their Witness Statements and Pre-Trial Checklist but the Respondent failed to comply with the orders. The Respondent was subsequently served with all other Court processes including Court notes and Hearing Notices but the Respondent again failed to respond to any of the said Court processes. The Court accordingly proceeded to hear the case of Petitioner since Respondent, after being duly served, failed to appear before the Court to exercise the rights available to him as part of the civil practice in our Courts.

### **Determination**

On the 15<sup>th</sup> of March 2023, the court heard the case of the Petitioner on oath as he gave a short evidence in chief. Consequently, the issues for determination are;

- (i) **Whether the marriage between the parties has broken down beyond reconciliation.**

- (ii) **Whether the Respondent can be compelled to pay an amount of Twenty-seven Thousand Ghana Cedis (Ghc27, 000.00) being loans he took from the Petitioner.**

**Analysis**

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*”. Section 2(1) of Act 367 provides that 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.*

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. The Court also has to satisfy itself that the grounds for dissolution canvassed by the Petitioner falls within Section 2 of Act 367.

The Petitioner repeated the averments contained in the Petition in her Witness Statement testified further that the Respondent has behaved unreasonably throughout the marriage and efforts at resolving their differences have been futile. 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 to mean 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 vs. Domfeh** (1997-98) 1 GLR 282, it was held per holding 3 as follows: “...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”. Similarly, it is trite 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 vs. 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”. Consequently, I find that the marriage has broken down beyond reconciliation.

The next issue for determination is whether the Respondent can be compelled to pay an amount of Twenty-seven Thousand Ghana Cedis (Ghc27, 000.00) being loans he took from the Petitioner.

The court is therefore of the opinion that the Petitioner's ground for seeking dissolution of the marriage therefore falls under Section 2 (1)(b) and (f) of Act 367 which provides that 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 a way that the Petitioner cannot reasonably be expected to live with the Respondent; as well as the fact that '... the parties to the marriage have, after diligent effort, been unable to reconcile their differences'*.

### **Conclusion**

The evidence on record shows that the parties have not lived together as husband and wife for the past Two (2) years neither have they had sexual relations for Two (2) years now. Additionally, attempts at reconciling the differences of both parties have been futile. The court therefore finds that the marriage between the parties celebrated on the 10th day of January, 2013 at St. Theresa's Catholic Church, Kaneshie, Accra has broken down beyond reconciliation. In view of the fact that the Petitioner's evidence per the prayer for the recovery of monies owed by the Respondent remains unchallenged, that relief is also granted. In the circumstances, the court hereby

- (i) Decrees the said marriage celebrated on the 10<sup>th</sup> day of January, 2013 at St. Theresa's Catholic Church, Kaneshie, Accra dissolved this 25<sup>th</sup> day of July, 2023.
- (ii) The Respondent shall refund an amount of Twenty-seven Thousand Ghana Cedis (Ghc27, 000.00) being loans he took from the Petitioner.
- (iii) There shall be no orders as to cost.

**H/H HALIMAH EL-ALAWA ABDULBAASIT  
CIRCUIT COURT JUDGE**