

IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 29<sup>TH</sup> DAY OF  
NOVEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.),  
DISTRICT MAGISTRATE

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SUIT NO. G/WJ/DG/A4/80/22

ABIGAIL AFFUL DWOMOR

PETITIONER

VRS

STANLEY ADDO

RESPONDENT

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PETITIONER IS PRESENT AND REPRESENTED BY SAMUEL KISSIEDU ESQ.

RESPONDENT IS PRESENT AND SELF REPRESENTED.

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## JUDGMENT

The petitioner filed a petition in this court on 5<sup>th</sup> August, 2022 seeking the following reliefs;

1. An order for the dissolution of the marriage celebrated between the parties.
2. An order granting custody of the only issue of the marriage to the petitioner with reasonable access to the respondent.
3. An order for the respondent to maintain the child.
4. An order for the respondent to pay financial settlement of GHC30,000.00
5. That respondent be made to bear costs of the proceedings

Respondent informed the court that he has granted his consent to the dissolution of the parties' marriage.

On 6<sup>th</sup> September 2022 parties were referred to the court connected ADR for a possible settlement of the ancillary reliefs and parties and on 18th October 2022 parties entered

into terms of agreement. The issue to be determined therefore was whether the marriage between the parties has broken down beyond reconciliation.

#### THE CASE OF THE PETITIONER

At the hearing, the petitioner told the court that parties got married under the Ordinance on 21<sup>st</sup> April, 2018 at the Presbyterian Church of Ghana, Trinity Congregation at Techiman and have one issue of the marriage.

According to the petitioner the parties' marriage has broken down beyond reconciliation due to the unreasonable behaviour and adultery of the respondent.

It is the case of the petitioner that parties got to know each other on facebook in December 2017. She subsequently paid respondent a visit in January 2018 and got pregnant. It is the further case of the petitioner that respondent told her he was a banker working with the Tudu Branch of the National Investment Bank in Accra which proved to be a lie. She added that in time she realized that the respondent was a fraudster who dupes people of their money. As his wife she has had to borrow money to get him bail on several occasions.

Petitioner said that respondent used to bring women into the matrimonial home in her absence and most of them left their clothes behind. She informed the court further that women whom she had never met often sent her messages on facebook about parties' marital issues until she got fed up. She reported him to her pastor which did not please respondent who assaulted her physically. Petitioner said she moved out of the matrimonial home temporarily and moved back home only to realize that respondent was in an amorous relationship with a tenant in their home.

She prayed the court to dissolve the marriage and grant her reliefs before the court.

#### THE CASE OF THE RESPONDENT

Respondent told the court that he grants his consent to the dissolution of the marriage and will therefore not contest same.

## BURDEN OF PROOF

By section 11(1) of the Evidence Act, 1975 NRCD 323 the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue and by the authority of **Duah v Yorkwa [1993-94] 1 GLR 217**, it is the plaintiff and therefore the petitioner who has the duty or obligation to lead evidence in order to forestall a ruling being made against him.

## ISSUE ONE

Section 1(2) of the Matrimonial Causes Act, 1971, Act 367 provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Under Section 2(1) Act 367 for a marriage to be deemed to have broken down beyond reconciliation which is the only reason under Ghanaian law for the grant of a petition for divorce it is stated that;

(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: —

(a) that the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or

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

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

(d) that the parties to the marriage have not lived as man 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 such 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 notwithstanding the refusal; or

(e) that the parties to the marriage have not lived as man 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.

The respondent declined the invitation to cross examine the petitioner when he was invited to do so.

In **FORI V AYIREBI [1966] GLR 627**, it was held by the Supreme Court at page 647 as follows:

“The law is that where a party makes an averment and that averment is not denied, no issue is joined on that averment and no evidence need be led. Again when a party gives evidence of a material fact and is not cross examined upon it, he needs not call further evidence to that fact.”

This principle of law was re-echoed in **QUAGRAINE V ADAMS [1981] GLR 599, CA**, where it was held thus;

“where a party makes an averment and his opponent fails to cross examine on it, the opponent will be deemed to have acknowledged sub silentio, that averment by the failure to cross examine”.

Applying the facts and the evidence led in this matter to the test under section 2(1) of the Matrimonial Causes Act 1971, Act 367, I find that the parties’ marriage has broken down beyond reconciliation due to the unreasonable behaviour and adultery of the respondent.

I therefore proceed under section 47(1)(f) of the Courts Act 1993 (Act 459) to decree that the marriage between Abigail Afful Dwomor and Stanley Addo celebrated at the Presbyterian Church of Ghana, Trinity Congregation at Techiman is hereby dissolved. A certificate of divorce is to issue accordingly.

The terms of agreement of the parties dated 18th October 2022 is adopted as consent judgment and made a part of the full judgment of this court.

I make no order as to costs.

**H/W RUBY NTIRI OPOKU (MRS.)**  
**(DISTRICT MAGISTRATE)**

