IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 16TH DAY OF MAY, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/36/23

CLARA MACULATOR MENSAH **PETITIONER**

VRS

JUSTICE A. QUARCOE **RESPONDENT**

PARTIES ARE PRESENT AND SELF REPRESENTED.

JUDGMENT

The petitioner filed a petition for divorce at the Registry of this court on 29th December, 2022 against the respondent for the following reliefs:

a. That the marriage celebrated between the parties on the 30th April 2016 be dissolved.
b. Any further orders the court may deem fit.

The respondent filed an answer to the petition on 17th January 2023 and cross petitioned for the dissolution of the parties' marriage.

At the close of pleadings, the court set down the issue of whether or not the parties' marriage has broken down beyond reconciliation for determination.

THE CASE OF THE PETITIONER

It is the case of the Petitioner that parties got married on 30th April 2016 at the Christ Apostolic Church International at Sakumono in the Greater Accra Region of the Republic of Ghana. She tendered the marriage certificate with licence number RC/646 7930 in evidence and same was admitted and marked as Exhibit A.

After the marriage parties cohabited at Sampa Valley, Weija Old barrier and have no issue of the marriage.

It is the further case of the petitioner that she lost her seven weeks old pregnancy in June 2016 and since then the respondent has changed his attitude towards her. According to her, respondent became hostile, quiet and complained about everything she did to his friends and church members. She added that respondent abuses her emotionally and verbally at any given time he pleases and all attempts at reconciliation by bishops, reverends and pastors have yielded no results.

She stated further that the respondent treated her like a house help and a sex machine until 30th August 2022 when out of pressure and emotional trauma, petitioner packed out of the matrimonial home.

According to her, the dowry was presented to her family on 12th November 2022 and that respondent failed to maintain her from the inception of the marriage till she moved out of the matrimonial home. She prayed for the dissolution of the parties' marriage.

RESPONDENT'S CASE IN ANSWER

Respondent's case is that petitioner is quarrelsome and disgraces him in front of people especially his church members. It is his further case that he has never abused petitioner either emotionally or physically. He adds that it is the petitioner who has been disrespectful to him and has caused him a lot of emotional distress, pain and suffering in the marriage.

According to respondent, the marriage between the parties has broken down beyond reconciliation and all attempts at reconciliation has failed. He has therefore given his consent to the grant of the petition.

BURDEN OF PROOF

It is trite that in civil cases, proof is by a preponderance of probabilities.

In the case of Ackah v Pergah Transport Ltd [2010] SCGLR 728 at page 736, Sophia Adinyira JSC (as she then was) delivered herself as follows;

"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail."

This position of the law was re-echoed by Benin JSC in the case of Aryee v Shell Ghana Ltd & Fraga Oil Ltd [2017-2020] 1 SCGLR 721 at page 733 as follows;

"It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved."

SHIFTING OF THE BURDEN OF PROOF

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

In the case of Re Ashalley Botwe Lands; Adjetey Agbosu v Kotey [2003-2004] SCGLR 420, it was held as follows;

"It is trite learning that by the statutory provisions of the Evidence Decree 1975 (NRCD 323) the burden of producing evidence in a given case is not fixed but shifts from party to party at various stages of the trial depending on the issue(s) asserted.

THE COURT'S ANALYSIS AND OPINION

Issue: whether or not the marriage between the parties has broken down beyond reconciliation.

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.

Section 2 (1) of Act 367 explains 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 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

(f) That the parties after a diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also provides that 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.

His Lordship Dennis Adjei J.A stated this position of the law in **CHARLES AKPENE AMEKO V SAPHIRA KYEREMA AGBENU (2015) 99 GMJ 202,** thus;

"The combined effect of sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a court to dissolve a marriage, the court shall satisfy itself that it has been proven on the preponderance of probabilities that the marriage has broken down beyond reconciliation. That could be achieved after one or more of the grounds in Section 2 of the Act has been proved."

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent.

To succeed under the fact of unreasonable behaviour, the petitioner must first establish unreasonable conduct on the part of the Respondent and secondly, she must establish that as a result of the bad conduct, she cannot reasonably be expected to live with him.

At page 123 of the book, "At a glance! The Marriages Act and the Matrimonial Causes Act Dissected by Mrs Frederica Ahwireng-Obeng, the learned writer on unreasonable behaviour stated;

"Unreasonable behaviour has been defined in English law as conduct that gives rise to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger". The above statement reiterated the position of the law in **GOLLINS V GOLLINS [1964] A.C 644**

She added that the principle of law is that, the bad conduct complained of must be grave and weighty and must make living together impossible. It must also be serious and higher than the normal wear and tear of married life.

The respondent declined the invitation to cross examine the petitioner on her assertions with the explanation that he had already consented to the grant of the divorce and there was no point in cross examining the petitioner.

In **Quagraine v. Adams [1981] GLR 599** it was held that in a situation where a witness testifies and his opponent fails to cross-examine him, the court may consider the witness's testimony as admitted by his opponent

I therefore find and hold that the petitioner has been able to prove on a balance of probabilities that the parties' marriage has broken down beyond reconciliation by the unreasonable behaviour of the respondent.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Clara Maculator Mensah and Justice Anyimah Quarcoe celebrated at Christ Apostolic Church International at Sakumono on 30th April 2016is dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

Parties are to bear their own legal costs.

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H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE)