

**IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 13<sup>TH</sup> DAY OF  
DECEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.), DISTRICT  
MAGISTRATE**

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**SUIT NO. G/WJ/DG/A4/26/23**

**ELIZABETH KWABEAH YEBOAH**

**PETITIONER**

**VRS**

**MOHAMMED ANNOR**

**RESPONDENT**

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**PARTIES ARE PRESENT AND SELF REPRESENTED**

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**JUDGMENT**

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

1. An order to dissolve the marriage which was contracted and celebrated on 14<sup>th</sup> February 2009.
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, pay school fees and anything connected with education and all necessities of life.
4. An order to register the child on N.H.I.S and renew same when it expires

The Respondent filed an answer to the petition on 17<sup>th</sup> October 2022 and cross petitioned for the dissolution of the parties' marriage.

On 25<sup>th</sup> October 2022 parties were referred to the court connected ADR for a possible settlement of the ancillary reliefs and on 3<sup>rd</sup> November 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 14<sup>th</sup> February, 2009 at the Accra Metropolitan Assembly. Parties cohabited at North Kaneshie after the marriage and have one issue of the marriage namely Asante Annor aged 9 years old.

According to the petitioner, before parties got married, it was agreed that since respondent was self-employed and petitioner was on monthly salary, parties will use petitioner's salary for capital assets whilst respondent takes up maintenance of the matrimonial home.

It is the case of the petitioner that respondent was unable to maintain the matrimonial home and so she took up the responsibility of maintaining the home until she gave birth to the only issue of the marriage. She paid rent, utility bills, took care of the child until 26<sup>th</sup> March 2019 when she decided that she could no longer cohabit with the respondent. She moved out of the matrimonial home and parties have been separated since then.

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

### **THE CASE OF THE RESPONDENT**

Respondent told the court that he does not have much to say as he has granted his consent to the dissolution of the marriage.

### **ISSUES**

The issue set down for determination by the court was whether or not the marriage between the parties has broken down beyond reconciliation.

### **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 her.

### **DETERMINATION OF THE ISSUE BEFORE THE COURT**

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 provides as follows;

(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 and refused to testify.

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”.

## **DECISION**

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 of the respondent.

I therefore proceed under section 47(1)(f) of the Courts Act 1993 (Act 459) to decree that the marriage between Elizabeth Kwabeah Yeboah and Mohammed Annor celebrated at the Accra Metropolitan Assembly is hereby dissolved. A certificate of divorce is to issue accordingly.

The terms of agreement of the parties dated 3rd November 2022 is adopted as consent judgment and made a part of the full judgment of this court.

I make no order as to costs.

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