

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 22ND DAY
OF NOVEMBER, 2020 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/75/22

FLORENCE AMPONSAH

PETITIONER

VRS

ERNEST BESSAH

RESPONDENT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

The petitioner filed a petition at the Registry of this court on 3rd August, 2022 against the respondent for the dissolution of parties' marriage on the ground that the marriage has broken down beyond reconciliation by reason of the unreasonable behaviour of the Respondent.

The parties were referred to the Court Connected Alternative Dispute Resolution (CCADR) on 6th September 2022 for a possible reconciliation of the parties. The terms of agreement of the parties dated 8th September 2022 indicated that parties together with their families have all resolved not to resume cohabitation and prayed for a dissolution of the parties' marriage.

THE CASE OF THE PETITIONER

The case of the petitioner is that parties got married in Wa in 2018. It is the further case of the petitioner that during the subsistence of the marriage, she was the one who was travelling from Wa to Accra to visit the respondent whilst the respondent never visited her in Wa and always insisted that she moves to cohabit with him in Accra. Petitioner adds that at all material times before the marriage, respondent knew that she had been

employed by STC and is stationed at Wa and so for the respondent to insist that she abandons her job and join him in Accra amounts to unreasonable behaviour. She concluded that since the inception of the marriage the respondent has never maintained her as his wife. She therefore prayed for a dissolution of the marriage.

THE CASE OF THE RESPONDENT

It is the case of the respondent that he met the petitioner at Wa and got married to her. It is his further case that before the marriage, parties agreed that petitioner will move to Accra and cohabit with him. However, petitioner moved back to Wa after the marriage and refused or failed to cohabit with him in Accra. According to him, there were instances when the petitioner visited Accra but failed to come to the matrimonial home. This conduct continued for one year and he was subsequently informed that the petitioner was pregnant. He asked her how old the pregnancy was and she informed him she was four months pregnant. According to the respondent, he could not have been responsible for the said pregnancy as he had not been with the petitioner since their marriage.

Respondent said he did not hear from the petitioner since then until she returned the customary drinks and served him with the divorce petition.

ISSUES

At the end of the pleadings, the issue that was set down for determination was whether or not the marriage contracted between the parties has broken down beyond reconciliation.

STANDARD OF PROOF

A party who asserts assumes the burden of proof. The requirements in sections 11,12 and 13 of the Evidence Act, 1975 (NRCD 323) on the burden to adduce evidence and burden

of persuasion which together constitute the burden of proof was explained in *Yorkwa v Duah* [1992-93] GBR 272 as follows;

“I am of the view that the expression burden of persuasion should be interpreted to mean the quality, quantum, amount, degree or extent of evidence the litigant is obliged to adduce in order to satisfy the requirement of proving a situation or fact. The burden of persuasion differs from the burden of producing evidence...the burden of producing evidence means the duty or obligation lying on a litigant to lead evidence. In other words, these latter sections cover which of the litigating parties should be the first to lead evidence before the other’s evidence is led. Therefore it is the plaintiff who will lose first who has the duty or obligation to lead evidence in order to forestall a ruling being made against him.”

The burden of proving the claims lies on the party making the claim.

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.

ANALYSIS OF THE ISSUES AND DECISION OF THE COURT

In divorce cases, 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 again 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 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(3) provides that although the court finds the existence of one or more of the facts specified in (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 reiterated the position of the law in the case of **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.”

In **ADJETEY V ADJETEY [1973] 1 GLR 216**, it was held;

“ On a proper construction of the Act, the court can still refuse to grant a divorce even when one or more of the facts set out in section 2(1) has been established. It is therefore incumbent on a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion that the marriage has broken down will not be enough.”

From the totality of the evidence, I find that there has been a total repudiation of marital obligations by reason of the irreconcilable differences between the parties.

I therefore proceed under Section 47 (1)(f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Ernest Bessah and Florence Amponsah celebrated at the Presbyterian Church of Ghana, Epiphany Congregation in Wa on 1st September, 2018 is hereby dissolved.

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

I make no order as to costs.

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