

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 15TH DAY
OF NOVEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE**

SUIT NO. G/WJ/DG/A4/53/22

GIFTY AMPONSAH ENNING

PETITIONER

VRS

JUSTICE ASANTE

RESPONDENT

PETITIONER IS PRESENT AND SELF REPRESENTED

RESPONDENT IS PRESENT AND REPRESENTED BY JOHN LISTOWELL SEKLE

JUDGMENT

The petitioner filed a petition on 10th May, 2022 against the respondent for the following reliefs:

- a. Dissolution of the marriage between the parties as having broken down beyond reconciliation.
- b. An order granting custody of the child to the petitioner with reasonable access to the respondent
- c. An order that the respondent rents a chamber and hall for petitioner and her children until the children attain majority
- d. An order that respondent pays a lump sum as financial settlement to petitioner
- e. An order that respondent provides maintenance of one thousand two hundred Ghana cedis monthly for the children of the marriage and also pay the fees and medical bills as and when they fall due
- f. Any further orders as the honourable court may deem fit.

The respondent filed appointment of solicitor and an answer to the petition on 6th June 2022 and cross petitioned for the following reliefs;

1. Dissolution of the marriage between the parties since the marriage has broken down beyond reconciliation
2. Custody of the eldest child, Mamertus Amponsah Asante be granted to the respondent
3. Custody of the female child, Bettinah Abuya Asante be granted to the petitioner
4. Respondent can only afford monthly maintenance of Four Hundred Ghana cedis to the petitioner for the maintenance of the second child Bettina Abuya Asante
5. The sum of Nine Thousand, Five Hundred Ghana Cedis the respondent gave to petitioner to be kept in her bank accounts for him be given to the petitioner as financial settlement.

On 26th of July 2022, parties were referred to the CCADR for an amicable settlement of the ancillary reliefs and on 8th August 2022 parties reached settlement of same.

Accordingly, 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.

In all divorce (civil) disputes, the petitioner ought to adduce evidence which must prove on the balance of probabilities that the marriage has broken down beyond reconciliation.

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.

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.

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.”

THE CASE OF THE PETITIONER

It is the case of the petitioner that parties got married at the Ga South Municipal Assembly at Weija on 27th January 2017. It is her further case that parties cohabited at SCC and have two issues of the marriage namely Mamertus Amponsah Asante and Bettina Abuya Asante aged 5 years and two years respectively. According to the petitioner, respondent has intimated to her that he is no longer interested in the marriage and the families of both parties have tried without success to reconcile the parties as respondent has wilfully refused to attend to the calls of their family members. She added that the respondent has deserted the matrimonial home since February 2022 and has no intentions of returning to the matrimonial home. She prayed for a dissolution of the parties’ marriage.

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

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

The petitioner gave the particulars of respondent's unreasonable behaviour as follows;

1. That the respondent has told petitioner and her family severally he is no longer interested in the marriage and wants to return her to her parents.
2. That respondent has deserted the matrimonial home since 1st March 2022 and has no intentions of resuming cohabitation.
3. That the respondent is currently living with another woman at Weija SCC although the marriage between the parties has not been legally dissolved.
4. That the parties have had irreconcilable differences for years during the pendency of the marriage.
5. That respondent never maintained the matrimonial home leaving the responsibility to the petitioner with the excuse that he was making investments for the family.

THE CASE OF THE RESPONDENT

Respondent on the other hand admits that the marriage between the parties has broken down beyond reconciliation save that he attributes the breakdown of the marriage to the unreasonable behaviour of the petitioner.

He particularised the unreasonable behaviour of the petitioner as follows;

- a. That the petitioner is disrespectful and arrogant

- b. That the petitioner has denied him sex for more than five years having allowed respondent to have sex with her on three occasions only during the pendency of the marriage.

Respondent informed the court that he had deserted the matrimonial home due to the adulterous lifestyle of the petitioner. According to him, petitioner brings men into the matrimonial bed whenever he travels and that he travelled to Oda Twereso in February 2022 and on his return his eldest child informed him in the presence of petitioner that a man came to the matrimonial home to have sex with the petitioner. He added that parties have irreconcilable differences and prayed for the dissolution of the marriage.

From the totality of the evidence, I find that the marriage celebrated between the parties has broken down beyond reconciliation by the fact that respondent has deserted the matrimonial home with no intentions of resuming cohabitation.

I therefore proceed under Section 47 (1)(f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Gifty Amponsah Enning and Justice Asante celebrated at the Ga South Municipal Assembly at Weija Accra on 27th January, 2017 is hereby dissolved.

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

The Terms of Agreement of the parties dated 8th August 2022 is adopted as consent judgment and made a part of the final judgment of this court.

There will be no order as to costs.

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