

**IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 11TH DAY OF  
OCTOBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.), DISTRICT  
MAGISTRATE**

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**SUIT NO. G/WJ/DG/A4/76/22**

**LILY MARLEY**

**PETITIONER**

**VRS**

**DANIEL MARRION NAI ADJEI**

**RESPONDENT**

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**PETITIONER IS PRESENT AND REPRESENTED BY YVONNE AMEGASHIE ESQ.**

**RESPONDENT IS PRESENT AND REPRESENTED BY ISAAC AIDOO ESQ.**

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### **JUDGMENT**

The petitioner filed a petition in this court on 3<sup>rd</sup> August, 2022 seeking the following reliefs;

1. Dissolution of the Ordinance Marriage between the parties
2. Custody of the issues of the marriage to be granted to petitioner with reasonable access to respondent including payment of maintenance, school fees and medical bills as and when they fall due.

Respondent filed an answer on 16<sup>th</sup> August 2022 and cross petitioned for the dissolution of the parties' marriage and custody of the issues of the marriage with reasonable access to the petitioner.

At the end of pleadings, the issues set down for determination by the court are as follows;

1. Whether or not the marriage contracted between the parties has broken down beyond reconciliation
2. Whether or not custody of the issues of the marriage should be granted to petitioner with reasonable access to the respondent.

#### **THE CASE OF THE PETITIONER**

At the hearing, the petitioner told the court that parties got married under the Ordinance on 17<sup>th</sup> October, 2009 at the Methodist Church of the Resurrection at Kpeehe in Accra and have two issues of the marriage namely Japhet Goodman Marley Adjei aged 12 and Euodia Elizabeth Anyeley Adjei aged 6 years. According to the petitioner the parties marriage has broken down beyond reconciliation and prays for same to be dissolved. It is her further case that barely a year after the marriage, there have been continuous misunderstandings between the parties and a lot of external family interference especially from respondent's mother. She added that the moment she shows her disinterest or disagreement with any issue, she is branded as disrespectful or a nagging wife. She stated that for three years, the respondent has packed out of the matrimonial home and used to visit however barely a year ago, he took custody of the children and since then parties have not lived as husband and wife and all attempts at reconciliation has not yielded any fruits. She therefore prayed for a dissolution of the parties marriage with custody of the issues granted to the respondent with reasonable access granted to her.

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

The case of the respondent is that parties have been separated because they have not been able to agree on where to settle as a couple following the expiry of their tenancy agreement after ten years of paying rent. Petitioner intimated to the respondent that she wanted parties to move into her family land whilst he also wanted to move to Gbawe.

On 22<sup>nd</sup> June 2019, respondent moved out of the matrimonial home to Gbawe and continued to visit the petitioner and the children twice on weekends. According to him, he kept on visiting until July 2021 when he decided to stop as petitioner had never paid him a visit at Gbawe on a weekend or a public holiday. He stated that when he confronted the petitioner about her refusal to pay him a visit, she indicated that she was no longer interested in the marriage.

On 19<sup>th</sup> February 2022, the family of the parties tried to reconcile the parties to no avail. A pastor was also invited to help parties to reconcile however same was not fruitful and so the petitioner eventually summoned him to court for a dissolution of the marriage,

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.

All parties declined the invitation to cross examine each other when they were 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 law cited supra to 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 irreconcilable differences between them.

## **ISSUE TWO**

From the evidence, parties are agreed that it is in the best interest of the two issues of the marriage that custody is granted to the respondent with reasonable access to the petitioner for continuity in their care and control. I do hereby grant custody of the issues to the respondent with reasonable access to the petitioner on weekends and school vacations.

## **DECISION**

Having held that the marriage between the parties has broken down beyond reconciliation, the petition for the dissolution of the Ordinance Marriage between the parties is granted under Section 47 (1)(f) of the Courts Act 1993, Act 459. It is further decreed that the said marriage be dissolved. The Ordinance Marriage between Lily Marley and Daniel Marrion Nai Adjei celebrated at the Methodist Church of the Resurrection at Kpeehe in Accra on 17<sup>th</sup> October, 2009 is hereby legally dissolved and a certificate of divorce is to issue to that effect.

Custody of the two issues of the marriage is granted to the Respondent for continuity in their care and control with reasonable access to the Petitioner on weekends and school vacations. Respondent is ordered to maintain the two issues, pay their school fees and medical bills as and when they arise.

I make no order as to costs.

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