

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/A4/14/22

MATILDA QUAYNOR

PETITIONER

VRS

CHRISTOPHER COMMEY

RESPONDENT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

The petitioner filed a petition on 17th November, 2021 against the respondent for the following reliefs:

- a. Dissolution of the marriage celebrated on 28th March 2009 at the Accra Metropolitan Assembly, Accra.
- b. Maintenance of the child at GHC300.00 monthly.
- c. Lump sum compensation of GHC20,000.00
- d. Any further orders as the honourable court may deem fit.

The respondent filed an answer to the petition on 15th February 2022 and cross petitioned for the following reliefs;

1. That the marriage be salvaged.
2. That custody of the issue of the marriage be granted to the respondent.

On 13th of September 2022, parties were referred to the CCADR for an amicable settlement of the ancillary reliefs and on 29th September 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 Accra Metropolitan Assembly in Accra on 28th March 2009. It is her further case that parties cohabited in a 2-single uncompleted rooms of respondent at Upper Weija before she assisted him to complete the construction works. The building remained the matrimonial home of the parties. She added that there is one issue of the marriage namely Ellis Nii Okai Commey aged 11 years. According to the petitioner, respondent's attitude towards her changed after she gave birth to their child. He started womanising and neglected to take care of his family and as a result she was solely responsible for the maintenance of the home. She added that she lodged a number of complaints against the respondent at DOVVSU where the respondent was ordered to maintain his family with the sum of GHC300.00 per month however he refused to comply with the said orders. It is the case of the petitioner that respondent had the backing of his family members because he had informed them that she threatens him with a knife whenever he attempts to have sex with her and so all her attempts at reconciliation fell on deaf ears. She informed the court that she was at the market selling her wares when she was informed that the respondent had packed out her belongings from the matrimonial home to her family house with the explanation that he was no longer interested in the marriage. Petitioner says that parties have been separated since 2018 and therefore prays for the dissolution of the marriage between the parties.

Respondent refused to cross examine the petitioner.

THE CASE OF THE RESPONDENT

It is the case of the respondent that parties have been separated due to the unreasonable behaviour of the petitioner. He particularised the unreasonable behaviour of the petitioner as follows;

1. That the petitioner denies him sex and draws out a knife when he attempts to have sex with her

2. That petitioner refuses to perform domestic duties required of her as a wife including washing and cooking
3. That petitioner has on three occasions locked him out of the matrimonial home and denied him entry when he comes back late from work
4. That petitioner verbally abuses him and he finds it intolerable as it causes him much distress
5. That petitioner steals respondent's money and denies same when confronted
6. That petitioner insulted a big client of the respondent and he has since then lost that client which conduct has caused him much distress

Respondent concluded that the parties' marriage can be salvaged if petitioner turns on a new leaf and change from her unreasonable behaviour.

From the totality of the evidence, I find that the marriage celebrated between the parties has broken down beyond reconciliation by the separation of the parties since 2018.

I therefore proceed under Section 47 (1)(f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Matilda Quaynor and Christopher Commey celebrated at the Accra Metropolitan Assembly in Accra on 28th March, 2009 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 29th September 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)