IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 6TH DAY OF DECEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/07/23

GOLDER NANA ADJOA OKYERE **PETITIONER**
OF ALMA OHLMANN WEG 28
HAMBURG, GERMANY SUING PER
HER LAWFUL ATTORNEY
MAVIS OKYERE, NYANYANOR
ROAD BLOCK FACTORY
JUNCTION, KASOA

VRS

EBENEZER OBAREY AFARI **RESPONDENT**
OLD BARRIER, APLAKU
NEAR PUMA FILING STATION

PARTIES:

Lawful Attorney of petitioner is present and self-represented.

Respondent is present and self-represented.

JUDGMENT

The petitioner filed a petition in the registry of this court on 13th October, 2022 for the following reliefs;

1. An order for the dissolution of the marriage celebrated between the parties.
2. Any further order(s) as the Honourable Court may deem fit.

Respondent entered appearance on 1st November 2022.

THE CASE OF THE PETITIONER

Mavis Okyere, the sister and lawful attorney of the petitioner informed the court that the petitioner who lives out of the jurisdiction has given her a Power of Attorney to bring an action against the respondent in court for the dissolution of the parties' marriage.

She tendered the Power of Attorney filed together with the Petition on 13th October 2022 in evidence and same was admitted and marked as "Exhibit A".

It is her case that the petitioner and the respondent married under the Ordinance on 17th May 2012 at the Saint Mary's Anglican Church at Accra. She tendered the marriage certificate number AN/OR743/12 in evidence and same was admitted in evidence and marked as "Exhibit B."

According to her, after the parties' marriage, they began to have issues of childbirth and this brought about a lot of misunderstanding and quarrels between the parties as well as their family members.

She added that respondent used to assault the petitioner physically and in order to forestall any harm to the petitioner, her family members dissolved the customary marriage. She concluded that parties have been separated for well over five years and prayed for the dissolution of the parties' marriage.

THE CASE OF THE RESPONDENT

It is the case of the respondent that he got married to petitioner in 2012. It is his further case that after the marriage, parties cohabited at Lartebiokorshie and have no issue of the marriage,

According to him, after the marriage, parties lived for a continuous period of five years without any issue. He testified that parties visited several hospitals where they were advised to exercise patience as both of them were medically fit to produce issues in due course.

He added that subsequently petitioner and her family started taunting him that he was sterile and this was very embarrassing to him. He stated that petitioner was very disrespectful to him and insulted him at will. After sometime petitioner deserted the matrimonial home,

He informed the court that after the petitioner deserted the matrimonial home, he was hopeful that she will return to resume cohabitation however her family members followed up by returning the customary drinks to his family members in 2016 to dissolve the marriage customarily and since then parties have not lived as husband and wife.

He concluded that the petitioner travelled out of the jurisdiction between 2017 and 2018 and since then they have lived their separate lives. He informed the court that he has granted his consent to the dissolution of the parties' marriage.

ISSUES

The issue set down for determination by this court is whether or not the ordinance marriage contracted between the parties in 2012 has broken down beyond reconciliation.

BURDEN OF PROOF

It is trite that in civil cases, proof is by a preponderance of probabilities.

In the case of Ackah v Pergah Transport Ltd [2010] SCGLR 728 at page 736, Sophia Adinyira JSC (as she then was) delivered herself as follows;

"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail."

This position of the law was re-echoed by Benin JSC in the case of Aryee v Shell Ghana Ltd & Fraga Oil Ltd [2017-2020] 1 SCGLR 721 at page 733 as follows;

"It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved."

EVALUATION OF THE EVIDENCE AND THE DECISION OF 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.

To prove that the marriage has broken down beyond reconciliation, the Petitioner shall satisfy the court of one or more of the six facts outlined from section 2 (1) (a) to (f) of Act 367 which are as follows;

(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.

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."

His Lordship Dennis Adjei J.A reiterated this 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."

From the evidence, the Lawful Attorney of the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent and intimated that petitioner could not reasonably be expected to live with respondent due to the persistent quarrels and physical abuse.

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

Mrs Frederica Ahwireng-Obeng in her book, "At a glance! The Marriages Act and the Matrimonial Causes Act Dissected at page 123 on unreasonable behaviour, the learned writer stated that;

"Unreasonable behaviour has been defined in English law as conduct that gives rise to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger". The above statement reiterated the position of the law in **GOLLINS V GOLLINS [1964] A.C 644**

The principle of law is that, the bad conduct complained of must be grave and weighty and must make living together impossible. It must also be serious and higher than the normal wear and tear of married life.

Under cross examination, lawful attorney of the petitioner informed the court that she knows that respondent had assaulted the petitioner because that was what had been narrated to her by her sister, the petitioner.

From the totality of the evidence I find that the lawful attorney of the petitioner has not led any evidence to establish unreasonable behaviour on the part of the respondent.

After the evidence of the respondent, the lawful attorney of the petitioner declined the invitation to cross examine him when she was invited to do so even though the implications of her refusal was explained to her and she understood same being literate.

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 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 it is uncontroverted that parties have not lived as husband and wife since 2016 due to the desertion of the petitioner from the matrimonial home.

Accordingly, I hold that the parties' marriage has broken down beyond reconciliation due to the desertion of the petitioner from the matrimonial home since 2016.

I therefore proceed under section 47(1)(f) of the Courts Act 1993 (Act 459) to decree that the marriage between Golda Nana Adjoa Okyere and Ebenezer Obarey Afari celebrated at Saint Mary's Anglican Church in Accra on 17th May 2012 is hereby dissolved. A certificate of divorce is to issue accordingly.

I make no order as to costs.

H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE)