CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS DISTRICT MAGISTRATE, DISTRICT COURT "B", SEKONDI ON THE 29TH NOVEMBER, 2022

SUIT NUMBER A4/7/2023

COLLINS KYEREMANTENG - PETITIONER

V

YVONNE PARKER - RESPONDENT

TIME: 10.28 AM

PETITIONER - PRESENT

RESPONDENT - ABSENT

JUDGMENT

The parties to the suit were married under the ordinance on the 11th of December, 2014 at the Sekondi Takoradi Metropolitan Assembly, Sekondi. They do not have any children. The Petitioner resides in Ghana whereas the Respondent is domiciled in London. The Petitioner claims that the said marriage has broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent and therefore prays for its dissolution.

Pursuant to the leave of the court granted the Petitioner on the 12th of October, 2022, the said petition was issued and notice of same served out of the jurisdiction on the Respondent. On the 25th of October, 2022, when the matter was called, the Respondent had failed to enter an appearance nor file an answer to the petition even though there was proof of service on her. The court proceeded and gave further orders for the petitioner to file his witness statement and serve the same on the Respondent together with a Hearing notice. On the return date of 10th November 2022 when the matter came on for trial the Respondent had still not filed any process. The court proceeded with the matter under Order 25 r 1 (2) of CI 59.

Order 25 rule 1(2) of the **District Court Rules, 2019 (C. I. 59),** provides that

> *"where an action is called for trial and a party fails to attend the trial the Magistrate may where the Plaintiff attends and the Defendant fails to attend, dismiss the counterclaim, if any, and allow the Plaintiff to prove the claim"*

The same applies to divorce proceedings in this case, therefore, a party who fails to appear in court after due service on him is taken to have deliberately failed to take advantage of the opportunity to be heard. In such a situation, the *audi alteram partem* rule cannot be said to have been breached.

The court, having satisfied itself that there was proof of service on the Respondent proceeded to hear the matter.

A party praying for an order of divorce must plead and prove facts sufficient and reasonable to convince the Court that the marriage has broken down beyond reconciliation. Under the **Matrimonial Causes Act, 1971 (Act 367**) the party must prove one or more of the facts listed in **Section 2 (1**) of the Act.

In **DONKOR V DONKOR (1982-83) GLR 1156** the Court held in consonance with the relevant provisions that the Matrimonial Causes Act did not permit spouses to come to

Court and pray for the dissolution of their marriage just for the asking. In discharging the onus on the Petitioner it was immaterial that the Respondent had not contested the petition. A Petitioner has to prove the charges and satisfy the Court that the marriage had irretrievably broken down.

In determining what constitutes unreasonable behavior, the test to be applied is an objective one. **Hayfron Benjamin J** (as he then was) held in the case of Mensah v. Mensah (1972] 2 G.L.R. 198 that "*In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova's Charter. The test is objective*"

Petitioner testified himself and did not call any witnesses. In support of his case the Petitioner, who claims he is a businessman tendered a copy of the marriage certificate, and the same was admitted as **Exhibit "A"**. Petitioner testified that after the marriage on the 11th of December 2014, the parties lived together as husband and wife for only 2 weeks before the Respondent traveled to the United Kingdom. It is the case of the Petitioner that after the Respondent left the shores of Ghana, communication stalled and all efforts to communicate with the Respondent proved futile. The Respondent stopped calling the Petitioner and also refused to pick up his calls. Eventually, the Petitioner changed her number and made it clear to the Respondent that her focus was just to get her residential documents done. It is the case of the Petitioner that after spending the two weeks with the Petitioner after their marriage, he has not set eyes on her again and there has not been any sexual relationship between the parties for over seven years. Petitioner says the Respondent has deserted him for which he prays for the dissolution of the marriage.

It is noteworthy that the only evidence on record is that of Petitioners and the same stands unchallenged because the Respondent never appeared in court to cross-examine the Petitioner even though there was proof of service on her. The effect is that whatever evidence the Petitioner led is acknowledged and therefore admitted. In **Quagraine v Adams [1981] GLR 599, CA** it was held that "*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*."

Again, in **TAKORADI FLOUR MIILS VRS SAMIR (2005-2006) SCGLR 882** it was held *that in law where evidence is led by a party and that evidence is not challenged by the opponent in cross-examination and the opponent did not also tender evidence to the contrary, the fact deposed to in the evidence is deemed admitted by the party against whom it is admitted and ought to be accepted by the court.* See also **IBRAHIM VRS ABUBAKARI (2001-2001)1 GLR 540.**

I recognize from the evidence of the Petitioner that the Respondent indicated to him that her focus was to get the resident permit. Understandably so but that should not be a hindrance to their communication or their marriage. To the extent that the Respondent even changed her number, it is obvious that she wanted to cut links with the Respondent otherwise she would not have done so. Seven years is too long a time. That is why the Petitioner is of the view that the Respondent has moved on with her life and so he also intends to do the same. Clearly, the parties have not lived together continuously as husband and wife for over five years**. Section 1(2)(e) of the Act** stipulates that to constitute a breakdown of marriage the Petitioner must show *"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"*. Clearly, there has been a total absence of consortium and cessation of cohabitation. Here, it is trite that consent from the Respondent is not needed for the dissolution of the marriage.

Having analyzed the facts and evidence, it is my humble view that the marriage contracted between the parties has broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent.

In the circumstances I declare that *the ordinance marriage contracted between the parties herein on the 11th of December, 2014 at the Sekondi Takoradi Metropolitan Assembly, Sekondi be and is hereby dissolved.*

It is hereby ordered that a decree of divorce be granted; the marriage certificate with no. 623/2014 pursuant to Licence No. STMA/RM/1248/2014 is hereby cancelled.

There is no order as to costs

(SGD)

H/W ROSEMARY EDITH HAYFORD (MRS)

MAGISTRATE