

**IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 24TH DAY OF
OCTOBER, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT
MAGISTRATE**

SUIT NO. G/WJ/DG/A4/86/22

LORRAINE LOMOKIE NKORNU

PETITIONER

VRS

HARRISON KWAME

RESPONDENT

PETITIONER IS PRESENT AND SELF REPRESENTED

RESPONDENT IS ABSENT

JUDGMENT

On 25th August 2022, petitioner filed a petition at the registry of this court against the respondent for the dissolution of the parties' marriage.

Even though the respondent was served with all the necessary processes, for unknown reasons, he failed to attend court or file any process to be heard. The Court accordingly proceeded without him pursuant to Order 25 r 1 (2) (a) of the District Court Rules 2009 which reads as follows;

Where an action is called for trial and a party fails to attend, the trial magistrate may

- (a) Where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim if any and allow the plaintiff to prove the claim.

THE CASE OF THE PETITIONER

It is the case of the petitioner that the marriage between the parties has broken down beyond reconciliation due to the desertion of the respondent.

She pleaded that parties got married under the ordinance at the Presbyterian Church of Ghana at Adabraka on 6th August 2020. She pleaded further that after the celebration of the marriage, parties cohabited at community 18 junction on the Spintex road and have no issue of the marriage.

Petitioner added that two months after the marriage, parties had a misunderstanding. This was because respondent used to go to his mother's house from Thursdays to Sundays and often brought home cooked food which became the norm in their matrimonial home. According to the petitioner, when she enquired from respondent the reason for his action, he informed her that he had been advised by his mother not to eat her food.

She averred that on 15th November 2020, respondent informed her that he was travelling to Dubai for work and that his mother had instructed that he comes to her house to enable the family see him off at the airport. She averred further that she reported the conduct of the respondent to her father and respondent's uncle. Respondent left home and failed to communicate with petitioner on 16th November 2020 however when she took the initiative to call him on telephone, he informed her that he had been diagnosed with COVID and had been taken to an isolation centre at Dome Kwabenya. Petitioner says she tried to follow up to the said isolation centre to check up on the respondent however he informed her that he had been discharged and that he had called his mother who was on her way to pick him up.

Petitioner added that since 16th November 2020, she has been calling respondent to no avail. She subsequently involved her pastors who went to the house of respondent's mother only to be told that respondent had travelled out of Ghana and he has decided not to resume cohabitation when he returns.

Petitioner concluded that she has not heard from the family of the respondent to date and prayed the court to dissolve the marriage.

ISSUES SET DOWN FOR DETERMINATION

The issue set down for determination by the court was whether or not the marriage of the parties has broken down beyond reconciliation.

BURDEN OF PROOF

It is trite that the standard of proof in all civil matters is by a preponderance of probabilities.

In the case of **Sagoe v SSNIT [2011] 30 GMJ 133; (2012) 52 GMJ 47 at page 58**, the Supreme Court speaking through Gbadegbe JSC held as follows;

"The party who asserts the affirmative of an issue has the incidence of the legal burden..."

Section 1(2) of the matrimonial Causes Act 1971 (Act 367) reads;

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

2. Proof of breakdown of marriage

(1) for the purpose of showing that the marriage has broken down beyond reconciliation, the petitioner must satisfy the court on 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 so 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 to the marriage have after diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 reads;

On a petition for divorce, the court shall inquire so far as is reasonable into the facts alleged by the petitioner and the respondent

Section 2(3) of Act 367 also reads;

Although the court finds the existence of one or more of the facts specified in subsection (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.

The petitioner relied on the fact that respondent has deserted the matrimonial home without her consent to establish that the marriage of the parties has broken down beyond reconciliation.

At page 152 of the book "At a glance! Contemporary Principles of Family Law in Ghana by Mrs. Frederica Ahwireng-Obeng, the learned author states that desertion has been defined as "the unjustifiable withdrawal from cohabitation without the consent of the other spouse and with the intention of remaining separated permanently."

According to the learned author, the separation must amount to a total repudiation of marital obligations and there must be the intention to bring cohabitation permanently to an end. The burden is on the petitioner to show to the court that the respondent had the necessary intention to permanently withdraw from cohabitation.

The respondent failed to attend court to cross examine the petitioner on her assertions.

From the totality of the evidence therefore, I find that parties' marriage has broken down beyond reconciliation due to the desertion of the respondent from the matrimonial home without the consent of the petitioner.

I therefore proceed under Section 47 (1)(f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Lorraine Lomokie Nkornu and Harrison Kwame celebrated at the Presbyterian Church of Ghana, Ascension Congregation at Adabraka on 6th August, 2020 is hereby dissolved.

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

I make no order as to costs.

.....(SGD).....

H/W RUBY NTIRI OPOKU (MRS)

DISTRICT MAGISTRATE