

IN THE HIGH COURT, SEKONDI HELD ON TUESDAY, THE 25<sup>TH</sup> DAY OF  
MAY, 2023 BEFORE HER LADYSHIP JUSTICE DR. BRIDGET KAFUI  
ANTHONIO-APEDZI (MRS) J.

SUIT NO: E6/5/23

ESTHER KRAH

- PETITIONER

H/NO. PT. 62, ANAJI

TAKORADI

VRS

JOHN OSEI

- RESPONDENT

H/NO. UNNUMBERED FUFUOM

NEAR BAREKESE

## J U D G M E N T

The parties in this matrimonial cause contracted a marriage under the Ordinance, which was celebrated on 4th March 2017, at the Faith and Grace Ministries Auditorium, Takoradi.

## PRELIMINARY POINTS

The Petitioner applied for the grant of a divorce of the said marriage in a Superior Court of Justice. The procedural history of the case attracts relevant treatment by this court because the Respondent chose not to participate in the court proceedings. In such a situation, the *Rules* provide that the procedure for obtaining a default judgment is used to dispose off the case. Yet, there are situations where proceedings

through the use of Affidavit evidence, alone, may be inadequate and that testimony is also required. In such cases, the party who alleges must prove per the rules of evidence and satisfy both the legal and evidentiary burden. This constitutes an uncontested trial. One of the effects of this is that, unlike a default judgment, a decision from such a process is based on the merits. It creates a hurdle in setting it aside and blunts one of the grounds used to impugn a default judgment, properly so-called.

Where there is total silence from a plaintiff/respondent, such as in the case herein, a court must ascertain the procedural history of the case and verify key elements such as those of service (notice), etc. The rules of natural justice demand this - it is also a constitutional requirement under Article 23.

### **PROCEDURAL HISTORY**

On 28<sup>th</sup> December 2022, a Petition was issued at the instance of the Petitioner/wife. The court records show that the pleadings were served upon the Respondent/husband personally on 29<sup>th</sup> December 2022 at 11am. The proof of service was sworn to by one Richard Robert Osei, a Bailiff/process server attached to the High Court, Sekondi which provided particulars of service. I am satisfied that, as at 29<sup>th</sup> December 2022, the Respondent had notice of the court case launched against him for the divorce of his marriage to the Applicant and for the reliefs contained in the said Petition.

Per the *Rules*, the Respondent had eight days within which to enter appearance and thereafter respond to his petition. There is no evidence that this was done. He neither entered appearance nor filed a response to the petition. There is no evidence to show that he had any interest in the court case and to challenge any of the pleaded facts that he had notice of. Accordingly, I made a finding that the Respondent was in

default of defending the case and that the court could proceed with the case made against him.

On 3<sup>rd</sup> April 2024, the Petitioner entered the witness box and gave testimony and was questioned by the court in the uncontested trial.

### **RELEVANT FACTS/BACKGROUND**

The information of the parties glean from evidence on record is that the Petitioner is an Accountant whilst the Respondent is an Artisan. The parties co-habited briefly in Takoradi, for about three weeks, after the marriage. At all material times, the Respondent resided in the United Kingdom and the Petitioner in Ghana. There are no issues in the marriage, though the Petitioner brought a child into the marriage. The Respondent has three children elsewhere. There had not been any previous proceedings regarding the marriage. The Respondent left for the UK about three weeks after the marriage was celebrated and returned in or about 2019. Out of the five years of marriage, the spouses stayed together, as man and wife, for a total period of about two months. Further, that the Respondent stopped maintaining the Respondent from December 2020.

### **RELIEFS**

The Petition requested for the following reliefs:

1. An order for the dissolution of the marriage between her and the Respondent celebrated on the 4<sup>th</sup> day of March, 2017.
2. An order for the payment of maintenance at GHS 2000 monthly from August 2020.
3. Lumpsum payment of GHS 50,000.00 as financial provision

### **THE LAW**

In a matrimonial matter involving divorce, the sole ground for granting a petition is stated in Section 1(2) of *Matrimonial Causes Act, 1971* (Act 376) - that "the marriage is broken down beyond reconciliation". In proof of this, the law demands that the petitioner satisfies the court of the occurrence of one or more of the stipulations under Section 2 (1) of the Act 367. These are outlined, *in extenso*, 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 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; or*

*(f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences."*

The *sole* statutory *ground* and the court's long-standing duty to establish same, crystallizes the common law learning. Further guidance is contained in Section 2(3) of the *Matrimonial Causes Act, 1971* (Act 367), which provides that; "*Notwithstanding that 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 learned authors of HALSBURY'S LAWS OF ENGLAND provide relevant scope and a caveat to a finding of any of the six (6) statutory elements stated under section 2(1) of the Act. It is written, as such:

*"On a petition for divorce it is the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent. If the court is satisfied on the evidence of any such fact, then unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it must grant a decree of divorce."* (Vol 29(3) 4th ed Reissue, para 405).

In the case of ADJETEY VRS ADJETEY (1973)1 GLR 216, the court in applying the above-stated principles noted thus:

*"On the proper construction of this subsection of the Act, the court can still refuse to grant a decree even when one or more of the facts set out in S.2 (1) have been established. It is therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough."* ASH VRS ASH (1972)1 ALL ER 582 cited.

Thus, in divorce, the onus is on the petitioner to convince the court that the factual situation of the marriage is able to sustain one or two of the elements mentioned in Section 2 (1) of Act 367. Any of these must occur to support the prayer for dissolution of the marriage.

In the instant case, the Petitioner's pleaded facts of relevance to the breakdown of the marriage are chronicled (filed on 28<sup>th</sup> December 2022), in part as follows:

- a) *That prior to the departure of the respondent he exhibited traces of some disrespectful conduct towards the petitioner, but the petitioner did not attach any seriousness to it.*
- b) *That upon arrival at his base, the respondent began disrespecting the petitioner that there was no singular instance that the respondent did not insult the petitioner.*
- c) *That the respondent is very disrespectful, violent and arrogant and did not accord the petitioner the needed respect in the marriage and treated the petitioner with disdain even in public for the short stay prior to his departure and afterward during every telephone conversation the parties had, much to the pain and embarrassment of the petitioner.*
- d) *That aside the disrespectful conduct by the respondent of the petitioner which he extends to the family of the petitioner and to some extents his own family members, he does not want to have anything to do with the petitioner's child whom he had warned the petitioner to send to her parents.*
- e) *That two years after the party's marriage, the respondent came back to Ghana and returned to his base and failed to maintain the respondent from the month of December, 2020 till he recently got married to another lady while the parties marriage is still subsisting.*
- f) *That there had been several instances where the petitioner's parents had to intervene before the respondent will see reason in sending money to the petitioner for her upkeep.*
- g) *That unable to cope with the above mistreatment by the respondent the petitioner made a complaint to the respondent's parents but none of them could prevail upon him to change his ways.*

- h) *That instead of a change the respondent rather resorted to sending audio recordings full of insults to petitioner to the extent that the petitioner had to block the respondent's line to avoid further humiliations.*
- i) *That sometime in January 2021 the petitioner and her family members visited the respondent's family members with the view to finding an amicable resolution to the issues between them but several calls to his cell phone was refused by the respondent.*
- j) *That the petitioner's family requested that the respondent come down for the amicable resolution of the issues between the parties, but the respondent made it clear subsequently to the petitioner and her family that he was no longer interested in the marriage.*
- k) *That in spite of the subsistence of the parties' marriage which has not been formally dissolved the respondent has gone ahead to marry another woman upon his arrival in Ghana **recently**.*
- l) *That the respondent is very rude and autocratic and always imposes his decisions on the petitioner without any input from the petitioner.*
- m) *That currently there is no effective communication existing between the parties.*
- n) *That the respondent has thwarted all attempts by the family members and all well-meaning persons to reconcile the parties.*
- o) *That the respondent has openly declared that he was no longer interested in the marriage*

*p) That as a result of the respondent's conduct the parties have not lived as husband and wife for the past two years.*

The law mandates the court to inquire into the facts alleged and be satisfied, on the preponderance of the evidence, that the marriage broke down. But, the law also requires an additional and important condition to exist and to be determined by the trier of fact; that of beyond reconciliation. The question is on the interplay of this purpose, sole provision with one or more of the facts specified in the Section 2 (1) of Act 367. For instance, it must be borne in mind when the timelines set under s. 2(1) are triggered and whether, at the time of the court's decision to grant the divorce, the stated statutory time(s) would have ripened.

The court documents, including the process filed together with exhibits, indicate that the parties agreed to the dissolution of the marriage. Nevertheless, evidence had to be led to persuade the court that, indeed, the marriage not only broken down but also that this was beyond reconciliation. Also, the basis for the corollary reliefs must be proven in accordance with the legal and evidential burden, to the requisite standard.

Therefore, on 3<sup>rd</sup> April 2023, the petitioner was invited to provide relevant testimony. She alleged that the marriage has broken down beyond reconciliation. Her testimony is reproduced, in part, verbatim, thus:

*“My name is Esther Krah. I live at St Peters, Anaji a suburb of Takoradi. We got married the 4<sup>th</sup> of March 2017. After the marriage, we only cohabited for 3 weeks and the Respondent went back to the United Kingdom where he is domicile. He came back two years after and spent about a month in Ghana. And that one month was not pleasant at all. Almost every conversation we had ended up into an argument, quarrelling and misunderstanding.*

*After the Respondent went back to the UK, he would even record audio message full of insults. In the year 2020, he ceased communicating with me for almost 6 months without any reason. Whenever I call, he does not answer and he later informed me to send him text message, when I need him. I complained of this behaviour to his parents and they assured me that they will talk to him.*

*My family had tried severally to get the feedback from the Respondent family on his behaviour but no positive response from them. Sometime ago, I together with my uncle Kwamina and my Aunty Joyce Asiedu went to the family house of the Respondent at Fufuom. The reason for that visit was for the Respondent's parents to get in touch with the Respondent so that the differences between us can be resolved, On that day the Respondent was called severally on phone but he did not answer and we left a message with them that I am not happy with the treatment being meted out to me by the Respondent in the marriage.*

*I made my pastor called him and he told him that if I have lost interest in the marriage, I can seek for a dissolution of the marriage.*

During her testimony, the Petitioner tendered **Exhibit "A"**, which is a Certificate of Marriage dated 4<sup>th</sup> March 2017.

Also, the Petitioner stated that the Respondent reiterated in a telephone conversation that he would not purchase a plane ticket to come to Ghana merely to resolve differences in the marriage. That, the Respondent informed her through an audio recorded message, that he has moved on and had a child with another woman in the UK and that she should also move on with her life. The petitioner attached an audio recording as **Exhibit "B"**.

The Petitioner again informed the court that the Respondent came to Ghana to contract another marriage somewhere in December 2022, but she could not substantiate this piece of information.

## **RELIEF OF DIVORCE**

It is evident that the marriage broke down and that this was beyond reconciliation, due to the unreasonable behaviour of the Respondent. On hindsight, he evidently abandoned the Petitioner. He returned to the UK, merely three weeks after the marriage was celebrated on 4<sup>th</sup> March 2017. He came back two years later and lived with the petitioner for a month, a period the petitioner described as unbearable. Accordingly, the parties lived together as husband and wife for barely, a meagre total of two (2) months in a marriage that was contracted about six (6) years ago.

The law provides that if married couples do not lived as man and wife for a continuous period of at least two (2) years, immediately preceding the presentation of the petition, and the respondent consents to the grant of a decree of divorce, this is a proof of the breakdown of the marriage, *prima facie*. I make a finding that the two (2) year statutory condition was met. The contents of the audio recording (Exhibit B) indicates that the respondent consents to the grant of a decree of divorce. Though Exhibit 2 is a hearsay document, it was admissible evidence and relevant. It was produced from the proper source, the recipient of the spousal conversation. It is also more likely than not that the Respondent has moved on from the marriage and does not treat the Petitioner as a spouse, from his base in the UK. These are relevant facts the court must consider under Section 2(1)(d) of Act 367, in determining the "beyond reconciliation" aspect of the legal provision.

Consequently, this court is satisfied, on the totality of the evidence and the circumstances, that the marriage between the parties has broken down beyond reconciliation.

Accordingly, the court grants the decree of divorce as sought. Let the marriage contracted between the parties on 4<sup>th</sup> March 2017 be dissolved and same is hereby dissolved.

**RELIEFS OF FINANCIAL SETTLEMENT, ETC.**

A request for a relief in a court of law requires proof and to satisfy the burden and stand of doing so. The proof can do to establish a request for a specific award and/or a general one. The court also has power to consider whether it is just and equitable, from the circumstances, to do justice. In Kofi Amofa Kusi v. Afia Amankwah Adarkwah [2022] 176 GMJ, the court held that the grant of financial provision is discretionary remedy that may be resorted to out of necessity and as such must be exercised fairly, reasonably and in accordance with statute granting the discretion. Factors to consider in exercising this discretion include:

1. *The financial standing of each party as borne out of the evidence led at the trial,*
2. *The ages of the parties and the ability to re-marry,*
3. *The balance of dependence that existed among the parties during the marriage,*
4. *The employment status and the professional standing of each party,*
5. *The income earning capacity of each party,*
6. *The duration of the marriage,*
7. *The contribution of each party towards maintaining the marriage and*
8. *The sacrifice made or opportunities forgone due to the marriage among others*

From the pleaded facts, the evidence and testimony, the Respondent lives abroad but financially supported the Petitioner, through monthly remittance of GHS 2,000. This stopped after July 2020. Accordingly, the Petitioner is claiming arrears from August 2020 till date.

Applying the factors enumerated in the case of Kofi Amofa Kusi (*supra*) and from the evidence, the court cannot ascertain for a fact that the Petitioner relied heavily on the Respondent. When questioned by the court on her current job status, the Petitioner said she used to be an accountant but now has a shop where she sells electricals. Her witness statement claimed her to be a businesswoman. There is also no evidence of employment status, or his earning capacity/means of the Respondent. The Petitioner was not able to tell; no proof was offered either. The only indication of relevance was from Exhibit "B" - the audio recording from the Respondent stating that he is ready

to foot the bills for the divorce or that he will send the petitioner money to initiate the divorce proceedings.

Further, the parties are relatively young (the petitioner 35 years, and the Respondent 33) - the Petitioner has the ability to remarry. There was no ample evidence of dependency of the Petitioner on the Respondent. The marriage was relative short and an even shorter period of cohabitation. The Respondent resides abroad where income levels are relatively better than in Ghana. Furthermore, he is heard on audio admitting to his ability to fund the litigation.

Therefore, the court will award a lumpsum of GHS 20,000.00 as financial settlement.

I take judicial notice of the fact that the Respondent's remittances stopped in the midst of the covid-19 pandemic shutdown. Besides, there was no evidence to suggest that upon the improvement of the shutdown conditions, the Respondent engaged in a lifestyle from which a level of income could be reasonably imputed and applied for arrears payment.

A legal cost of GHS5,000 is awarded against the Respondent.

**DR BRIDGET KAFUI ANTHONIO-APEDZI**

**JUSTICE OF THE HIGH COURT**

**COUNSEL**

**EMMANUEL ARTHUR WITH ENOCH ALLA-MENSAH FOR THE PETITIONER**