IN THE DISTRICT MAGISTRATE COURT HELD AT N.A.M.A. NSAWAM ON 28TH DAY OF JULY, 2023 BEFORE HER HONOUR SARAH NYARKOA NKANSAH CIRCUIT COURT JUDGE SITTING AS ADDITIONAL MAGISTRATE

SUIT NO. A4/14/23

AGATHA AMANKWA **HOUSE NO. HH17** **ASANTE AKURAA-NSAWAM**	**-------**	**PETITIONER**
	VRS	
DANIEL ADDO ABOAKYE **HOUSE NUMBER UNKNOWN** **LA-ACCRA**	**-------**	**RESPONDENT**

PARTIES: PRESENT.

NO LEGAL REPRESENTATION

JUDGMENT

The Petitioner commenced the present action in this Court praying for the following reliefs:

a. An order of the Court dissolving the Ordinance Marriage contracted between the Petitioner and the Respondent.

b. An order of the Court directed at the Respondent to care for the only child out of the marriage by paying of her school fees, medical care, necessaries of life and monthly maintenance money which the Court may deem fit.

c. Any other relief as this Honourable Court may deem fit.

PETITIONER'S CASE

The Petitioner says she and the Respondent got married under ordinance on 9th December 2004 and that, the marriage has produced one child. The Petitioner averred that, after their marriage, the Respondent had an amorous relationship with another woman and had two (2) children with the said woman. The Petitioner added that, the Respondent suddenly stopped maintaining the petitioner and their child and added that, the Respondent put up an ungoverned character and brought embarrassment into the matrimonial home. The Petitioner mentioned that, she and the Respondent have been separated for the past six (6) years and that the marriage has broken down beyond reconciliation.

RESPONDENT'S CASE

It is Respondent's case that the parties were happily married until one day when the Petitioner decided to pack out all her belongings from the Matrimonial home claiming that the Respondent must rent a new place for them to stay. The Respondent continued that, several attempts have been made by both families to reconcile the parties but to no avail until he was served with this instant petition for divorce. The respondent averred that there has been no sexual relations between the parties for the past eight (eight) and he has been traumatized by the actions of the Petitioner. Therefore he prayed the Court to dissolve the ordinance contracted between the parties.

In the circumstance the issue that falls for determination is:

Whether or not the marriage has broken down beyond reconciliation.

The law on dissolution of marriages is laid out in the Matrimonial Causes Act, 1971 (Act 367). Sections 1(2) and 2(1)(3) of Act 367 provides as follows:

"1(2) the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.
2(1) 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 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.*

(3) 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."

Both parties have adduced that the Petitioner moved out of the matrimonial home. While Petitioner maintains that it was the actions of Respondent that caused her to leave the matrimonial home, Respondent has indicated that the Petitioner let by her own will. What the parties to not dispute is the fact that there has been no consortium for at least six years. Respondent has adduced, and same has not been challenged by Petitioner, that several attempts at settlement have been unsuccessful. At paragraph 6 of Respondent's witness statement he states as follows:

"(6) The Respondent later informed me of his amorous relationship with the said woman so I agreed with him that after the child is delivered and of age, the Respondent will let me take care of the child."

Again when the matter was referred for settlement by Court connected ADR, the parties settled the ancillary reliefs which terms shall be adopted as consent judgment as part of this judgment. However they failed to reconcile at this attempt as well. It is obvious that the parties have irreconcilable differences.

Section 2(1)(f) of Act 367 provides that:

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

I find that the parties have been unable to reconcile differences even after diligent effort.

It is to be noted that both parties waived cross-examination and so neither Petitioner nor Respondent was cross-examined on their evidence.

The position of the law is that, the Court ought to accept the evidence led by a party, where his opponent fails to lead contrary evidence or challenge same under cross-examination by deeming the evidence as having been admitted by his opponent.

In ***Takoradi Flour Mills vrs Samir Faris [2005-06] SCGLR 882***, the Supreme Court held that;

"where the evidence led by a party is not challenged by his opponent in cross examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial Court."

I have considered the whole of the evidence adduced at the trial and I hereby conclude that the marriage has broken down beyond reconciliation.

In ***Mensah v. Mensah [1972] 2 GLR 198, Hayfron-Benjamin J.*** (as he then was) held that:

"… 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…".

In view of the foregoing, I accordingly enter judgment in favour of the petitioner as follows:

i. The marriage celebrated between the parties on the 9th April, 2004 is hereby dissolved.

The terms of settlement executed by the parties on the 12th of January, 2023 for the ancillary reliefs is hereby adopted as the consent judgment of this Court as follows:

ii. That they have been married for over 10 years with a girl of 10 years old.

iii. That both parties agree to be responsible for the welfare of their child as follows:

iv. Addo will provide GH¢300.00 monthly support for feeding. He will also be responsible for the child's school fees and school supplies and medical bills.

v. Agatha will take care of clothing, Accommodation and some feeding as the child is in her custody.

vi. Both parties agree this settlement ends their dispute.

There will be no order as to cost.

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H/H SARAH NYARKOA NKANSAH
CIRCUIT COURT JUDGE SITTING

AS ADDITIONAL MAGISTRATE

28/07/2023