CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS DISTRICT MAGISTRATE, DISTRICT COURT "B", SEKONDI ON THE 20TH DAY OF FEBRUARY, 2023

SUIT NO. A4/15/2023

DAN SAMSON EPHRIM - PETITIONER

V

GENEVIEVE OPARE ADDO - RESPONDENT

TIME: 10.58 AM

PETITIONER - PRESENT

RESPONDENT - PRESENT

PARTIES UNREPRESENTED

JUDGMENT

The Petitioner filed the instant petition on 26/10/2022 praying for a dissolution of the ordinance marriage celebrated between the parties on the 3rd of December 1994 at the Wesley Methodist Church on the grounds of unreasonable behaviour on the part of the Respondent.

By an amended answer filed on 16/02/2023, the Respondent denied any claim of unreasonable behaviour on her part and cross-petitioned for the dissolution of marriage. The Respondent further claimed a refund of a loan facility she contracted to support the matrimonial home which now stands at GH₵7,381.11

The parties filed their respective witness statements pursuant to an order of the court and none of them called a witness. Petitioner tendered **Exhibit A** the marriage certificate in support of his case.

PETITIONER'S CASE

It is the case of the Petitioner that he is a Mechanical Engineer and the Respondent is a professional teacher and that after the parties' marriage, they co-habited at Butumagyebu via Sekondi. There are three adult children of the said marriage. It is further the case of the Petitioner that the said marriage has broken down beyond reconciliation because the Respondent is unreasonable. Respondent accuses Petitioner of engaging in an amorous relationship with other women without any basis. The Respondent packed out from the matrimonial home in 2012 with the children of the marriage and has since not returned. It is the case of the Petitioner that the Respondent never supported him in the building project that he embarked upon and she does not communicate well with him. He avers that the parties have not lived together continuously for over 10 years and also that the love and trust that he has for the Respondent has diminished. It is the case of the Petitioner that the customary marriage between the parties has been dissolved since 2018, hence this Petition.

CASE OF THE RESPONDENT

The Respondent on the other hand denies being unreasonable. Respondent says the Petitioner falsely accused her and the two children of the marriage of being witches and wizards. She avers that it was the Petitioner's constant accusation that made her inform the Petitioner that they should separate for a while and she took along with her the children of the marriage to the knowledge of the Petitioner. Respondent says that she supported the building project by feeding the laborers who worked as well as contracted a loan facility of GH₵2,000.00 to enable them to complete the matrimonial home. Apart from that she forfeited taking housekeeping money for the sake of the building project from 2008 to 2012. Respondent says that it is rather the Petitioner who refused to communicate with her for over 2 years and 2 months and also refused to eat food prepared by her. Respondent agrees to the dissolution of the marriage.

The issue for determination at the end of the trial thus is **whether or not the marriage between the parties has broken down beyond reconciliation**

In divorce just like in all civil cases, the degree of proof required by law is that of a balance or preponderance of probabilities. See **Section 12 (1)** and **(2) of the Evidence Act, 1975 (Act 323)**. In the case of **Adwubeng V. Domfeh [1996-97] SCGLR 660,** the Supreme Court held that "*sections 11 (4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by a preponderance of probabilities – no exceptions were made*".

Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367) states that the sole ground for granting a petition for divorce in Ghana shall be that the marriage has broken down beyond reconciliation.

Section 2(1) of Act 367 stipulates the causes a petitioner must establish to prove that the marriage has broken down beyond reconciliation, simply paraphrased as following: *adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.*

It is material to point out that although the court may find the existence of one or more of the facts specified above, the law does not require the court to decree divorce unless it was satisfied on all the evidence, that the marriage has indeed broken down beyond reconciliation.

It is trite law that the court must enquire as far as is reasonable into the reasons for the divorce and may either grant or refuse to decree a divorce after hearing.

As earlier stated, the petitioner grounds his reason for the dissolution on unreasonable behaviour. 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*"

The parties both testified themselves and did not call any witnesses. It is the case of the Petitioner that the Respondent is fond of raining insults on him at the least opportunity. He cites an occasion when their last child visited him at his house to assist him with his schoolwork. According to the Petitioner when the Respondent found out she rained

insults on him. Respondent on the other hand denies raining insults but rather says that she was really upset with the Petitioner because it was after school and very late and the Petitioner never informed her that their child was with him until after frantic efforts she got to know. From the evidence, I find that before this incident the parties themselves were not on good terms and that the Respondent had even left the matrimonial home. From the Petitioner's own evidence his son even told him to call the mother (Respondent) but he (Petitioner) thought that was not necessary because he was with him (his father). To my mind, irrespective of the fact that he is the father, the Petitioner should have informed the Respondent that their son was with him to allay any fears. I say so because the time the son went to him, was the exact time he should have been home with the Respondent. It was late in the evening and Petitioner had kept the child without recourse to the Respondent who was desperate and frantically looking for him. Eventually, it was through her own efforts that she found out the child was with Petitioner. Respondent says that put so much stress on her and got her really upset. It is my view that any reasonable person would be upset and I do not in any way fault the Respondent for being upset. It is my considered view that the Petitioner was wrong to have kept the child without recourse to the Respondent; for that reason, I conclude he acted unreasonably I so hold.

The evidence further shows that the parties have not continuously lived together as husband and wife for over 10 years. The Petitioner says that the Respondent deserted the matrimonial home. Respondent on the other hand avers that she had to leave because the Petitioner constantly accused her and the children of being witches. I do not find from the records any denial of this fact from the Petitioner. Which implies an admission. 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. Also see **IBRAHIM VRS ABUBAKARI (2001-2001)1 GLR 540.**

The evidence that stood unchallenged is that the Respondent constantly insulted the Respondent and the children of being witches. In paragraph 7 of the Respondent's witness statement, she stated as follows

> "*That rather petitioner has consistently insulted respondent as being (sic) witch and that all of the children precisely GRACE is bewitched and uses the spirit of (sic) vulture to learn and that is why she is brilliant*".

This piece of evidence as I earlier stated was never denied or challenged which implies that the Petitioner admits same. The Respondent avers that it was for this constant verbal abuse that she and the children had to leave the matrimonial home sometime in 2012 to preserve her sanity.

In **Frowd v Frowd [1904] P.177 Jeune P** defined desertion as:

> "*Desertion means the cessation of cohabitation brought about by the fault or act of the parties. Therefore, the conduct of the parties must be considered. If there is good cause or reasonable excuse, it seems to me there is no desertion in law*"

In the **Frowd** case quoted above **Jeune P** explained that *if there is good cause or reasonable excuse for leaving, that will seem there is no desertion in law.* In this case, however, I am of the humble view that the constant verbal abuse by the Petitioner referring to the Respondent and children as being witches was unreasonable and there is a limit that one can take this level of abuse. The Respondent says it was to preserve her sanity and

in my humble view that was a good reason to leave. I, therefore, find that the Respondent did not desert the matrimonial home.

What is clear from the evidence is that there is non-cohabitation for over 10 years. **Section 1(2)(e) of Act 367** stipulates that the fifth fact that can be proved to establish the breakdown of a marriage is "*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*"

In **Kotei v Kotei [1974] 2 GLR** at holding 4 of the headnotes, **Sarkodee J** stated that

> "*(4) Where there was proof that the parties had lived apart for a continuous period of five years immediately preceding the presentation of the petition, the court would dissolve the marriage against the will of a spouse who had not committed a matrimonial offence and who could not be blamed for the breakdown of the marriage. But there must be proof that the parties had not lived as husband and wife during that period; there must have been a total breakdown of the consortium vitae, mere physical separation was not enough. The petitioner must prove not only the factum of separation but also that he or she has ceased to recognize the marriage as subsisting and intended never to return to the other spouse. The state of mind of the parties was relevant but it did not matter whether or not the state of mind of one of the parties was communicated to the other*"

In the instant case, the Respondent left the matrimonial home on the 4th of August, 2012, and has since not returned. For the past 10 years, there is a total breakdown of the consortium vitae and the parties have ceased to recognize that the marriage subsists. Again, the Petitioner acknowledges that the Respondent will never go back because according to him both families met and the customary marriage was dissolved after numerous attempts to reconcile them failed. Undoubtedly, there is sufficient evidence

to justify a conclusion that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation having considered all the facts and evidence.

In the circumstances I hereby declare that the marriage celebrated between the parties on the 3rd of December, 1994 be and is hereby dissolved. *It is ordered that a decree of divorce be granted; the marriage certificate with registration number 5/94 pursuant to Licence No. STMA/331/1994 is hereby cancelled.*

In respect of the Respondent's cross Petitioner for the refund of the loan contracted for the Petitioner, the Petitioner has accepted to refund same to the Respondent in the sum of GH₵7,381.11 to be paid in 6 monthly installments effective ending of March 2023. The Petitioner is to pay the said amount directly to GESRO Co-operative Credit Union. The Respondent has indicated to the court that she makes no claim for a share of the matrimonial property. Consequently, I hereby make the following orders:

DECISION

1. *The marriage celebrated between the parties on the 3rd of December, 1994 be and is hereby dissolved. It is ordered that a decree of divorce be granted; the marriage certificate with registration number 5/94 pursuant to Licence No. STMA/331/1994 is hereby cancelled.*

2. *The Petitioner is hereby ordered to pay the sum of GH₵7,381.11 in 6 monthly installments effective ending of March 2023 directly to GESRO Co-operative Credit Union.*

3. *There is no order as to cost*

(SGD)

H/W ROSEMARY EDITH HAYFORD (MRS)

MAGISTRATE