

IN THE DISTRICT MAGISTRATE COURT HELD AT N.A.M.A. NSAWAM ON 2ND DAY OF JUNE, 2023 BEFORE HER HONOUR SARAH NYARKOA NKANSAH CIRCUIT COURT JUDGE SITTING AS ADDITIONAL MAGISTRATE

SUIT NO. A4/08/22

MICHAEL MARTEY ----- PETITIONER
OF H/NO. EG-079-9143

VRS

NATALIE OPPONG ----- RESPONDENT
OF ADOAGYIRI, NSAWAM

PARTIES: PETITIONER PRESENT. RESPONDENT ABSENT.

NO LEGAL REPRESENTATION

JUDGEMENT

The Petitioner commenced this instant divorce petition praying the court for the following reliefs:

- a. An order from this Honourable Court dissolving the Ordinance marriage contracted between the parties on the 24th day of March, 2018 at the Presbyterian Church of Ghana, Akim Oda.

- b. Any further order or other reliefs as this Honourable Court may deem fit.

Respondent was present in court when the parties were referred to court connected ADR to attempt settlement. The Respondent however failed to attend court thereafter. On the

day of the trial Respondent was again absent although she had been duly served with a hearing notice. The court accordingly proceeded to hear the Petitioner under Order 25 Order 25 of the District Court Rules, C.I. 59, proceeded with the trial in the absence of the Respondent.

Order 25 r 1(2) (a) provides;

“Where an action is called for trial and a party fails to attend, the trial 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”

In *Ankumah v City Investment Co Ltd [2007-2008] 2 SCGLR 1064, Baffoe Bonnie JSC* held at page 1076 as follows;

“A court is entitled to give judgment in default as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard.”

PETITIONER'S CASE

The Petitioner informed the court that after their marriage on the 24th of March 2018, the Respondent began to put up an ungoverned behaviour to the extent of having flirtatious relations with several other men. The Petitioner added that the Respondent would leave home for days without anyone knowing her whereabouts and all efforts by the family to

get the Respondent to change her bad ways have failed. The Petitioner continued that the Respondent has packed out of the matrimonial home and they have not had any sexual relations for the past one year thereby leading to this divorce petition.

In the circumstance the issue that falls for determination is

Whether or not the marriage has broken down beyond reconciliation.

Petitioner has adduced that attempts at settling the issue by the Pastor and some elders of the church was not successful. In addition to this Petitioner has asserted adultery against Respondent. Per the evidence on Record, Respondent has packed out of the matrimonial home and as a result there has been lack of consortium for one year.

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."

It must be noted that the Petitioner was not cross-examined on the evidence that he led. Also, the Respondent failed to lead contrary evidence since she chose to absent herself from the trial.

In *FORI V AYIREBI [1966] GLR 627* it was held by the Supreme Court at page 647 that:

“The law is that where a party makes an averment and that averment is not denied, no issue is joined on that averment and no evidence need be led. Again when a party gives evidence of a material fact and is not cross examined upon it, he needs not call further evidence to that fact.”

The evidence led by the Petitioner was not challenged and Respondent did not lead contrary evidence either. In the circumstance the court ought to accept the whole of the evidence adduced by the Petitioner at the trial.

Having accepted Petitioner’s evidence, the court finds irreconcilable differences between the parties. The court also finds adultery on the part of the Respondent.

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...”.

I have carefully considered the whole of the evidence adduced at the trial and Petitioner has succeeded in satisfying the court that the marriage has indeed broken down beyond reconciliation. In view of same, I hereby enter judgment as follows:

- i. The marriage celebrated between the parties on 24th May, 2018 is hereby dissolved.

On the 13th of April, 2022 the parties executed a Terms of Settlement for an ancillary relief and same is hereby adopted as part of this judgment as the consent judgment of this court as follows:

- ii. Petitioner agrees to forgo any interest in the container both parties constructed. It thus becomes the sole property of the Respondent henceforth.

There will be no order as to cost.

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H/H SARAH NYARKOA NKANSAH
CIRCUIT COURT JUDGE SITTING
AS ADDITIONAL MAGISTRATE
02/06/2023