IN THE DISTRICT COURT HELD AT AGONA AHANTA ON TUESDAY THE 21ST DAY OF MARCH, 2023. BEFORE HER WORSHIP BERNICE ODURO KWARTENG – MAGISTRATE

WR/AA/DC/A4/7/2023

AUGUSTUS SEY

AND

EVELYN BOATENG

JUDGMENT

This is an action filed on 29th December, 2022, for the dissolution of the marriage contracted on 4th June, 2011 between Augustus Sey, a public servant (investigator) who is resident at Amoako Nuamah Street, Kumasi, and Evelyn Boateng, a teacher resident at Agona Nkwanta. After the said marriage the couple lived and cohabited at Agona Nkwanta until the petitioner was later transferred to Kumasi. There are no issues of the marriage. It is the husband, Augustus Sey, who petitioned for an order to dissolve the marriage. The main ground the petitioner relied on for dissolution of marriage was that the marriage has broken down beyond reconciliation because the respondent has moved on with her life by having a child for another man and further that the parties have dissolved their customary marriage.

By her answer to the petition for divorce filed on 16th January, 2023, the respondent admitted having a child for another man and that the marriage has broken down beyond reconciliation but gave reasons.

At the trial, the petitioner relied on his witness statement filed on 19th January, 2023 as his evidence-in-chief. Petitioner testified that the parties had been married for 10 years without any issues of the marriage and same had led to irreconcilable differences and that the parties could no longer live together. Petitioner further submitted that their customary marriage was dissolved on 21st February, 2021 and that the respondent has moved on with her life for which reason he wants to move on with his life. Under cross-examination, the respondent had only one question for the petitioner which is quoted below:

Q. You say I have moved on with my life so you want to move with your life, I don't understand what you mean by I have moved on.

A. I mean the marriage has been dissolved in the house and respondent has given birth with someone so the court should dissolve the ordinance marriage so I can also move on.

Responding to the petitioner's claim, the respondent relied on her witness statement filed on 25th January, 2023 as her evidence-in-chief. Respondent made a case in her answer to the petition and her witness statement that the parties after having cohabited for 10 years could not conceive and that their childlessness caused serious strain on their marriage. The respondent stated further that sometime in the year 2017, the petitioner was operated on because he had weak sperms. After the said operation, petitioner started having extra-marital affair and was caught by the respondent on two occasions. The respondent stated further that the petitioner denied respondent her conjugal rights for a year, neglected the respondent which situation the respondent reported to the petitioner's employer. The respondent further made a case that the parties had their customary marriage dissolved on 21st February, 2021 and that the

petitioner misled the respondent to believe that that the parties having dissolved their customary marriage, each party can marry without necessarily going to court for the ordinance marriage to dissolved.

The petitioner had no questions for the respondent when respondent was under cross-examination.

From the facts of the case, the only issue the court has to determine is whether or not the marriage celebrated between the parties on 4th June, 2011 has broken down beyond reconciliation.

Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367), provides that the sole ground for the grant of a decree of divorce is that the marriage has broken down beyond reconciliation. Section 2 (1) of Act 367 prescribes facts, one or more of which a Petitioner must establish for the purposes of showing that the marriage has broken down beyond reconciliation as follows:

a) That the Respondent has committed adultery and that by reason of such adultery the Petitioner finds it intolerable to live with the respondent; or

b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; or

c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

d) That the parties to the marriage have not lived as Man and wife for a continuous period of at least two years immediately preceding the

presentation of the petition and the Respondent consent to the grant of a decree of divorce; provided that such 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 notwithstanding the refusal; or

e) That the parties to the marriage have not lived as man 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."

Section 2 (3) of Act 367 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.

It is trite learning that in civil cases, plaintiff or the petitioner as pertains to this case is required to adduce sufficient evidence to substantiate his claim on the preponderance of probabilities as stated in sections 10, 11(1) and (4), 12 and 14 of the Evidence Act 1975 (Act 323).

In the case of **Ababio v Akwasi III (1994- 1995) 2 GBR, 774**, the Court held that: "The general principle of law is that it is the duty of a plaintiff to prove his case, i.e. he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it.

The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this he wins; if not he loses on that particular issue."

Similarly, in the case of **Ackah v Pergah Transport Ltd & Others [2010] SCGLR 728**, the Supreme Court held that "it is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claims may fail……. This is a requirement of the law on evidence under Sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323)".

From the pleadings, the petitioner relied on the fact of unreasonable behaviour but abandoned same and rather relied on the fact of irreconcilable difference as being the reason for his prayer for divorce. The gravamen of the petitioner's case was the fact that the respondent has moved on with her life. This fact was not disputed by the respondent except that the respondent sought to justify same with the reason that she moved on with her life because the parties dissolved their customary marriage on 21st February, 2021. It is worthy of mention that the conduct of the parties in failing to controvert the testimony of the other through cross-examination by asking questions that would discredit the party or disprove the claim of the party suggests admission of the evidence of the party without question. See the case of **Takoradi Flour Mills v Samir Faris [2005-2006] SCGLR 882** holding 1 where their Lordships held that: "the law is well-settled (as held by the trial court and affirmed by the Court of Appeal) 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."

The inference I make from the evidence of both parties and their conduct at trial shows that the parties are no longer interested in the marriage and therefore wish to seek alternative lives. My conviction is cemented the more with the fact that their customary marriage has been dissolved and therefore goes to show that attempts at reconciliation had been abortive.

On the totality of the evidence, the court finds that the marriage has broken down beyond reconciliation. The court accordingly decrees that the marriage celebrated between the parties under the Marriage Ordinance (CAP 127) on 4 June 2011 at the Ahanta West District Assembly with certificate number AWDA/ADM/362011 per license number AWDA/ADM/GOV3/362011, be dissolved. The said marriage certificate is hereby cancelled. A copy of the divorce certificate is to be served on the Registrar of Marriages by the parties for the amendment of the records thereof.

(SGD.)

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H/W BERNICE ODURO KWARTENG

(MAGISTRATE)