

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 25TH DAY OF APRIL, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/90/2022

BARBARA ADOFO-ANTWI

PETITIONER

VRS

JOSEPH TAWIAH

RESPONDENT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

The petitioner filed a petition for divorce at the registry of this court on 15th September, 2022 against the respondent for the following reliefs:

- a. An order to dissolve the existing marriage between the parties celebrated on 18th October 2017.
- b. Custody of Kofi Agyei Tawiah with access to the Respondent.
- c. Any further order(s) as the honourable court may deem fit.

The Respondent filed an answer to the petition on 22nd November 2022 and cross petitioned for the dissolution of the marriage and custody of the children of the marriage.

On 22nd November 2022, parties were referred to the Court Connected Alternative Dispute Resolution for a possible reconciliation. On 23rd November 2023, the feedback from the mediator William D. Ofori Atta indicated that parties had been able to reach an agreement with regard to the ancillary reliefs. The court proceeded to hear the petition.

THE CASE OF THE PETITIONER

The Petitioner testified by herself and called no witness.

It is the case of the petitioner that parties got married under the ordinance at the Principal Registrar of Marriages' Office on 18th October 2017 in Accra. Parties cohabited at Achimota and later relocated to Block Factory in Accra and have two issues of the marriage namely Kwasi Agyei Tawiah aged twenty years and Kofi Agyei Tawiah aged sixteen years. According to petitioner, the marriage has broken down beyond reconciliation by reason of the unreasonable behaviour of the Respondent. She particularised the unreasonable behaviour of the Respondent as follows;

1. That the Respondent is disrespectful and does not show the petitioner any care.
2. That for the past two years, respondent has not provided towards the upkeep of the issues of the marriage and has neglected his duties as a husband.
3. That Respondent threatens petitioner whenever there is a misunderstanding between the parties and was once ordered by DOVVSU to sign a bond to be of good behaviour.
4. That respondent demands the petitioner to return his drinks to his family to dissolve the customary law marriage at the slightest provocation.

According to petitioner, all attempts at reconciliation by her father has yielded no fruits and as a result petitioner prays the court to dissolve the parties' marriage and grant her reliefs.

THE CASE OF THE RESPONDENT

It is the case of the respondent that he is a Canadian citizen who got married to the petitioner in Ghana. It is his further case that he has two issues of the marriage and that when the issues were 7 and 4 years old, he acquired Canadian citizenship for them and relocated them back to Ghana to stay with their mother.

According to him, he set up a business here in Ghana for the supply of margarine. He added that he left the business in the care of the petitioner who incurred huge losses within six months of operation. He was compelled to sell his Suzuki saloon vehicle to defray part of the debt because the supplier had refused to supply goods to them unless the arrears had been defrayed.

Respondent says that the petitioner's inability to defray the outstanding debt of GHC100,000.00 has brought about misunderstandings between the parties as he has had to look for money to settle the debt. He therefore prayed for a dissolution of the parties' marriage.

ISSUE SET DOWN FOR DETERMINATION BY THE COURT

The issue set down for determination by the court is whether or not the marriage contracted between the parties has broken down beyond reconciliation.

BURDEN OF PROOF

It is trite that sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

In **NARTEY V MECHANICAL LLOYD ASSEMBLY PLANT LTD [1987/88] 2 GLR 314 at 344, Adade JSC** reiterated the position of the law cited supra by stating:

"A person who comes to court no matter what the claim is must be able to make a case for the court to consider otherwise he fails."

In **ABABIO V AKWASI IV [1994-1995] GBR 774, AIKINS JSC** delivered himself thus;

“The general principle of law is that it is the duty of a plaintiff to 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.”

THE COURT’S ANALYSIS AND OPINION

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

Section 2 (1) of Act 367 explains that 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 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
- (f) That the parties after a diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also provides that although 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.

His Lordship Dennis Adjei J.A stated this position of the law in **CHARLES AKPENE AMEKO V SAPHIRA KYEREMA AGBENU (2015) 99 GMJ 202**, thus;

“The combined effect of sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a court to dissolve a marriage, the court shall satisfy itself that it has been proven on the preponderance of probabilities that the marriage has broken down beyond reconciliation. That could be achieved after one or more of the grounds in Section 2 of the Act has been proved.”

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent.

At page 315 of the book, “The Law on Family Relations in Ghana by William Cornelius Ekow Daniels, the learned author states as follows;

“In cases involving behaviour, the burden of proof will lie on the petitioner to prove that the respondent has behaved in such a way that he cannot reasonably be expected to live

with the respondent. It will be a good defence for the respondent to seek to prove that he has not behaved wholly or in the manner alleged. This defence will go to the establishment of the truth of the statement concerning the behaviour. The second defence will relate to the question whether the extent of respondent's behaviour is that the petitioner cannot reasonably be expected to live with the respondent."

The respondent refused to cross examine the petitioner when he was invited to do so even though the implications of his refusal to cross examine the petitioner was explained to him. He again failed to open his case when he was invited to do so with the explanation that he has granted his consent for the dissolution of the marriage and that the court should grant same.

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

"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."

This principle of law was re-echoed in **QUAGRAINE V ADAMS [1981] GLR 599, CA**, where it was held thus;

"Where a party makes an averment and his opponent fails to cross examine on it, the opponent will be deemed to have acknowledged sub silentio, that averment by the failure to cross examine".

Accordingly, I find from the evidence that the parties' marriage has broken down beyond reconciliation by the fact of unreasonable behaviour on the part of the respondent and the petitioner cannot be reasonably expected to live with him. I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Barbara Adofo-Antwi and Joseph Tawiah celebrated at the Principal Registrar of Marriages Office on 18th October 2017 is hereby dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

The terms of Agreement of the parties dated 23rd November 2022 is hereby adopted as consent judgment and made a part of the final judgment of this court.

I make no order as to costs.

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H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE)

