

**IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 18TH DAY OF
APRIL, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.), DISTRICT
MAGISTRATE**

SUIT NO. G/WJ/DG/A4/44/23

EBENEZER ASARE KORANTENG

PETITIONER

VRS

ELIZABETH OFORIWAA ASANTE

RESPONDENT

**PETITIONER IS PRESENT AND REPRESENTED BY KWABENA ANKAMA OFFEI
ESQ.**

RESPONDENT IS PRESENT AND SELF REPRESENTED.

JUDGMENT

The petitioner filed a petition in this court on 13th January, 2023 seeking the following reliefs;

1. That the marriage between the parties be dissolved
2. Parties should bear their own cost

Respondent filed an answer to the petition on 31st January 2023 and cross petitioned for the dissolution of the parties' marriage.

At the end of pleadings, the issue of whether or not the parties' marriage has broken down beyond reconciliation was set down for determination.

THE CASE OF THE PETITIONER

It is the case of the petitioner that parties got married under the ordinance at the Accra Metropolitan Assembly in Accra on 13th September 2006. He tendered the marriage certificate with licence number A.M.A.5401/2006 as evidence of the parties' marriage and same was admitted and marked as Exhibit A. After the marriage, parties cohabited at Gbawe in Accra and have no issue of the marriage.

It is the further case of the petitioner that even though parties lived under the same roof, they were emotionally and psychologically wide apart and lived like two independent individuals. He added that parties are not compatible and have both lost interest in the marriage. He stated that as a result of the incompatibility of parties, respondent has moved out of the matrimonial home and parties have lived separately and independent of each other for over five years now without having sex and this has caused the petitioner much anxiety.

According to the petitioner, he has lost all love, care, affection and desire for respondent and this has resulted in mental anguish and stress. He adds that all attempts by the respective families of the parties including friends and sympathizers have not yielded any positive fruits. He prayed the court to dissolve parties' marriage.

THE CASE OF THE RESPONDENT

Respondent admits that the parties' marriage has broken down beyond reconciliation. It is her case that several factors including the inability of parties to have children in the marriage have contributed to the breakdown of the marriage. It is her further case that she moved out of the matrimonial home about five years ago for the sake of peace and also to protect the mental health and sanity of both parties. According to her, parties have since lived apart in peace without any contact or communication between them and all attempts at reconciliation by family and friends have not been successful as parties have drifted further apart with time.

She prayed for the dissolution of the parties' marriage.

BURDEN OF PROOF

It is trite that the burden of proof will generally lie on the party asserting the affirmative of an issue, the absence of the defendant notwithstanding.

Section 11 of the Evidence Act, 1975 NRCD 323 provides;

(i)For the purposes of this decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue."

Section 14 of NRCD 323 also provides that in a trial, the burden of proof may shift but unless and until it is shifted, a party has the burden of persuasion as to each fact, the existence or non-existence of which is essential to the claim or defence he is asserting.

This principle of law is reiterated in the case of **RE: ASHALLEY BOTWE LANDS; ADJETEY AGBOSU & OTHERS V KOTEY & OTHERS [2003-2004] SCGLR 420** where Woode JSC (as she then was) at page 444 stated;

It is trite learning that by the statutory provisions of the Evidence Decree 1975,(NRCD 323) the burden of producing evidence in any given case is not fixed, but shifts from a party to party at various stages of the trial depending on the issues asserted and or denied.

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.

Under Section 2(1) Act 367 for a marriage to be deemed to have broken down beyond reconciliation which is the only reason under Ghanaian law for the grant

(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 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 consents 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.

All parties declined the invitation to cross examine each other when they were invited to do so.

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”.

Applying the law cited supra to the facts and the evidence led in this matter to the test under section 2(1) of the Matrimonial Causes Act 1971, Act 367, I find that it is uncontroverted that parties have not lived together as husband and wife for well over five years immediately preceding the presentation of this petition. Accordingly, I hold that the parties’ marriage has broken down beyond reconciliation in accordance with section 2(1) (e) of Act 367.

DECISION

Having held that the marriage between the parties has broken down beyond reconciliation, the petition for the dissolution of the Ordinance Marriage between the parties is granted under Section 47 (1)(f) of the Courts Act 1993, Act 459. It is further

decreed that the Ordinance Marriage between Ebenezer Koranteng Asare and Elizabeth Oforiwaa Asante celebrated at the Accra Metropolitan Assembly in Accra on 13th September, 2006 is hereby legally dissolved and a certificate of divorce is to issue to that effect.

I make no order as to costs for the sake of amity between the parties.

H/W RUBY NTIRI OPOKU (MRS)

DISTRICT MAGISTRATE