

IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 21ST DAY OF MARCH, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/13/23

FRANKLINA AMOAKO

PETITIONER

VRS

GIDEON MATEKORLEY

RESPONDENT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

The petitioner filed a petition in this court on 20th October, 2022 seeking the following reliefs;

1. Dissolution of the Marriage between the parties
2. Custody of the issue of the marriage to be granted to petitioner with reasonable access to respondent.
3. An order directed at the Respondent to maintain the issue of the marriage monthly and payment of school fees
4. Parties to bear their own cost of litigation.
5. Any other orders that the court may deem fit.

Parties were referred to the Court Connected ADR for a possible reconciliation or settlement of ancillary reliefs. On 15th November 2022, the feedback from the mediator indicated that parties had been able to settle the ancillary reliefs amicably.

THE CASE OF THE PETITIONER

It is the case of the petitioner that parties got married at Pig Farm on 15th December 2013. It is the further case of the petitioner that parties cohabited at Gbawe CP and are blessed with one issue of the marriage namely Isaac Sakitey Narteh aged 8years old.

According to the Petitioner, she left the matrimonial home because of the unreasonable behaviour of the Respondent. She particularized Respondent's unreasonable behaviour as follows;

- a. That Respondent was not maintaining the matrimonial home
- b. That Respondent tried to have an amorous relationship with her house help.
- c. That Respondent advises her to leave the matrimonial home whenever parties had any misunderstanding.
- d. That Petitioner contracted another woman to cook his meals which she found to be very disrespectful.

She prayed for the dissolution of the marriage.

THE CASE OF THE RESPONDENT

In essence, the Respondent does not contest the dissolution of the marriage. It is his case that the marriage has broken down beyond reconciliation since its inception. He avers further that the Petitioner already deserted the matrimonial home on three occasions and so if she has decided to desert the marriage, he will not stop her.

According to him, he has already granted his consent for the dissolution of the marriage and prays the court to proceed accordingly.

The issues set down for determination by the court are as follows;

1. Whether or not the marriage contracted between the parties has broken down beyond reconciliation
2. Whether or not custody of the only issue of the marriage should be granted to petitioner with reasonable access to the respondent.

By section 11(1) of the Evidence Act, 1975 NRCD 323 the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue and by the authority of **Duah v Yorkwa [1993-94] 1 GLR 217**, it is the plaintiff and therefore the petitioner who has the duty or obligation to lead evidence in order to forestall a ruling being made against him.

ISSUE ONE

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) of 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 of a petition for divorce it is stated that;

(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 evidence led in this matter to the test under section 2(1) of the Matrimonial Causes Act 1971, Act 367, I find that the parties’ marriage has broken down beyond reconciliation due to irreconcilable differences between them.

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 said marriage be dissolved. Accordingly, the Ordinance Marriage between Franklina Amoako and Gideon Matekorley celebrated at the Christian Evangelical Ministry in Accra on 15th December, 2013 is hereby legally dissolved and a certificate of divorce is to issue accordingly.

The Terms of Agreement of the parties dated 15th November 2022 with regard to the ancillary reliefs is hereby adopted as consent judgment and made a part of the final judgment of this court.

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

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**H/W RUBY NTIRI OPOKU (MRS.)
(DISTRICT MAGISTRATE)**