

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 16<sup>TH</sup> DAY OF MAY, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

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SUIT NO. G/WJ/DG/A4/43/23

SHIELA ADOMAA

PETITIONER

VRS

EKOW AMOASI ACQUAH

RESPONDENT

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PETITIONER IS PRSENT AND REPRESENTED BY FRANCIS MENSAH WENDLE ESQ. HOLDING THE BRIEF OF YVONNE AMEGASHIE ESQ.

RESPONDENT IS ABSENT

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### JUDGMENT

The petitioner filed a petition at the registry of this court on 13<sup>th</sup> January, 2023 against the respondent for the dissolution of the parties' marriage.

Respondent was served with the petition and a hearing notice on 27<sup>th</sup> March 2023 inviting him to contest the divorce however for unexplained reasons, respondent did not file an answer to the petition or appear in court personally to be heard.

The court therefore proceeded pursuant to Order 25 r 1(2) (a) of the District Court Rules 2009 (C.I. 59) which provides as follows;

*“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.”

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

### **BURDEN OF PROOF**

A party who asserts assumes the burden of proof. The requirements in sections 11,12 and 13 of the Evidence Act, 1975 (NRCD 323) on the burden to adduce evidence and burden of persuasion which together constitute the burden of proof was explained in *Yorkwa v Duah* [1992-93] GBR 272 as follows;

“I am of the view that the expression burden of persuasion should be interpreted to mean the quality, quantum, amount, degree or extent of evidence the litigant is obliged to adduce in order to satisfy the requirement of proving a situation or fact. The burden of persuasion differs from the burden of producing evidence...the burden of producing evidence means the duty or obligation lying on a litigant to lead evidence. In other words, these latter sections cover which of the litigating parties should be the first to lead evidence before the other’s evidence is led.

Therefore it is the plaintiff who will lose first who has the duty or obligation to lead evidence in order to forestall a ruling being made against him.”

The burden of proving the claims lies on the party making the claim.

### **SHIFTING OF THE BURDEN OF PROOF**

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, 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.

In the case of *Re Ashalley Botwe Lands; Adjetey Agbosu v Kotey* [2003-2004] SCGLR 420, it was held as follows;

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

#### **THE CASE OF THE PETITIONER**

It is the case of the petitioner that parties got married under Part III of the Marriages Act 1884-1985 (CAP 127) on 17<sup>th</sup> September 2010 at the Principal Registrar of Marriages Office in Accra. After the celebration of the marriage, parties cohabited at Gbawe in Accra and there are no issues to the marriage.

It is the further case of the petitioner that the parties' marriage has broken down beyond reconciliation due to the unreasonable behaviour of the respondent. According to her, after the celebration of the marriage, parties had a problem with conception and as a result resorted to several herbal and orthodox medicines to no avail. Because respondent had two children before the parties' marriage, he consistently taunted petitioner with her inability to bear children until she got fed up and moved out of the matrimonial home. She added that parties have not lived as husband and wife for eight years and all attempts at reconciliation have proven futile. She stated that respondent is currently living with another woman and has not provided her with financial support throughout the period of separation.

She prayed for a dissolution of the parties' marriage.

#### COURT'S ANALYSIS AND OPINION

In divorce cases, 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 again provides 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(3) provides that although the court finds the existence of one or more of the facts specified in (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.

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

To succeed under the fact of unreasonable behaviour, the petitioner must first establish unreasonable conduct on the part of the Respondent and secondly, she must establish that as a result of the bad conduct, she cannot reasonably be expected to live with him.

**At page 123 of the book, "At a glance! The Marriages Act and the Matrimonial Causes Act Dissected by Mrs Frederica Ahwireng-Obeng, the learned writer on unreasonable behaviour stated;**

*"Unreasonable behaviour has been defined in English law as conduct that gives rise to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger". The above statement reiterated the position of the law in GOLLINS V GOLLINS [1964] A.C 644*

She added that the principle of law is that, the bad conduct complained of must be grave and weighty and must make living together impossible. It must also be serious and higher than the normal wear and tear of married life.

The respondent was not in court to cross examine the petitioner on her assertions that the marriage of the parties has broken down beyond reconciliation due to his unreasonable behaviour.

In **Quagraine v. Adams [1981] GLR 599** it was held that in a situation where a witness testifies and his opponent fails to cross-examine him, the court may consider the witness's testimony as admitted by his opponent

I therefore find and hold that the petitioner has been able to prove on a balance of probabilities that the parties' marriage has broken down beyond reconciliation by the unreasonable behaviour of the respondent and as a result parties have not lived as husband and wife for eight years.

I therefore proceed under Section 47 (1)(f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Shiela Adomaa and Ekow Amoasi Acquah celebrated at the Principal Registrar of Marriages' Office in Accra on 17<sup>th</sup> September, 2010 is hereby dissolved.

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

There will be no order as to costs.

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

**(DISTRICT MAGISTRATE)**