

**IN THE DISTRICT COURT HOLDING AT DODOWA, SHAI- OSUDOKU ON  
TUESDAY THE 25<sup>TH</sup> DAY OF JULY, 2023 BEFORE HER WORSHIP BRIDGET AKPE  
AKATTAH**

**SUIT NO: A4/76/2023**

**ANNANG RUTH**

**PETITIONER**

**VRS**

**GODWIN AGYEKUM**

**RESPONDENT**

**JUDGMENT**

Per a Petition filed on the 20<sup>th</sup> day of January, 2023, the Petitioner sought the following reliefs:

- (i) That the said marriage as contracted between the parties on 3<sup>rd</sup> August, 2019 be dissolved forthwith.
- (ii) Any other order or orders that this Honourable Court may deem fit.

The Respondent never filed an answer to the Divorce Petition although several hearing notices were issued and the Court ordered for him to be served by substituted service.

Petitioner filed her written statement and the Court proceeded to take evidence to establish the breakdown of the marriage beyond reconciliation.

**EVIDENCE OF PETITIONER**

The Petitioner led evidence and called no witness herein. The case the Petitioner put across is that she used to live with Respondent for a continuous period of two years and a month until around September 2021 when Petitioner moved out of the matrimonial

home due to incessant verbal abuse and maltreatment suffered in the hands of the Respondent.

Petitioner claimed that before marriage, she informed Respondent that she was not interested in having children because of the emotional and psychological issues she encountered as a child whilst growing up and decided to dedicate her life to the full-time service of Jehovah God. She further claimed Respondent agreed and also decided to dedicate his life to the full-time service of God until two years after marriage when Respondent declared to her that he had changed his mind concerning having children of their own.

Petitioner averred that when she refused to heed to Respondent's demands, Respondent left the matrimonial home for four days and upon his return started treating her harshly, abused her sexually anytime he wanted sex and she could not stand his incessant sexual demands because she was a virgin before meeting Respondent. She said a month after marriage she suffered severe pain in her lower abdomen and was later diagnosed as a urinary tract infection. She claimed she was asked to abstain from sexual intercourse for a month to enable her heal completely but Respondent always wanted to have sex with her and informed her that he has committed adultery with another woman due to his inability to wait for a month to pass.

Also that anytime Petitioner refused Respondent sex, he will leave the matrimonial home for about three to four days before returning and that always put fear in her since it was an isolated place and she was afraid of her security. She then moved out to live at Oyibi.

Petitioner further averred that ten months after she left the matrimonial home, Respondent informed her that he had committed adultery with about six women and had

informed the elders of the church. That Respondent informed her of his desire to learn a trade as a fashion designer which she paid for and later on bought a motorcycle for him for commercial use since he had stopped the fashion designing trade.

Petitioner finally claimed that there is no communication between the parties for one and half years now, parties have separated since September 2021 and the marriage has broken down beyond reconciliation. She therefore prayed the Court for the dissolution of the marriage.

It is settled law that the Court was under a statutory and positive duty to inquire so far as it reasonably could, into the charges and counter charges alleged by parties in a divorce suit as this one. But the onus of proof is on the petitioner to prove all allegations made against any such respondent and where a respondent made a counter allegation, he in accordance with section 14 of NRCD 323, bears the onus of proof to establish those allegations. And in discharging the onus on the petitioner, it was immaterial that the respondent had not contested the petition; she must prove the charges and, flowing from all the evidence before the court, the court must be satisfied that the marriage had irretrievably broken down. See *Danquah v. Danquah* [1979] G.L.R. 371; *Donkor v Donkor* (supra).

The onus therefore, of producing evidence of a particular fact, as in civil cases, is on the party against whom a finding of fact would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323. The authorities are also in harmony that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

The burden of producing evidence has been defined in Section 11 (1) of NRCD 323 as follows;

*“11 (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party”.*

The burden of proof is also not static but could shift from party to party at various stages of the trial depending on the obligation that is put on that party on an issue. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 as follows:

*“14 Except as otherwise provided by law, unless 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 that party is asserting”.*

So in accordance with the general rule of procedure, the Petitioner had the burden of proving all the averments she made against the respondent on a preponderance of probabilities. If she succeeds in establishing her averments by evidence, the onus will then shift to the Respondent to lead some evidence to rebut same failing which a ruling may be made against him on any particular issue.

The Matrimonial Causes Act, 1971 (Act 367) governs divorces in this country. Under section 1(2) of the Matrimonial Causes Act, 1971 (Act 367), a Court shall not grant a petition for divorce unless the marriage is proven to have broken down beyond reconciliation. And under Section 2(1) of Act 367, for the purposes of showing that the marriage has broken down beyond reconciliation, a petitioner for divorce 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;
- 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; or
- f. that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

It has been held in a line of cases including **Donkor v Donkor [1982-83] GLR 1158** that the Matrimonial Causes Act, 1971 (Act 367), did not permit spouses married under the Marriage Ordinance, Cap. 127 (1951 Rev.), to come to court and pray for the dissolution of their marriage just for the asking. And that the petitioner in such a case for dissolution of marriage must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act (above), not only by pleading them but also by proof for the purpose of showing that the marriage had broken down beyond reconciliation. The court explained further that Section 2 (3) of the Act, provided that even if the court found the existence of one or more of those facts it should not grant a petition for divorce unless it was satisfied that the marriage had broken down beyond reconciliation.

As stated earlier, the Respondent was served with several hearing notices but he chose not to file an answer nor attend Court to be heard. In such circumstance, the Respondent cannot claim that he has not been heard or a breach of the audi alteram partem the natural justice principle against him.

Per the evidence before this Court, the Petitioner has proved that the marriage between her and the Respondent has broken down beyond reconciliation. The marriage between the parties as celebrated on 3<sup>rd</sup> August, 2019 is hereby dissolved.

Costs of GH¢10,000 is awarded against the Respondent.

(SGD.)

**HER WORSHIP BRIDGET AKPE AKATTAH**  
**DISTRICT MAGISTRATE**