

CORAM: IN THE DISTRICT COURT HELD AT OFFINSO IN THE ASHANTI REGION ON THURSDAY THE 30<sup>TH</sup> DAY OF NOVEMBER, 2023 BEFORE HER WORSHIP MRS. CHRISTIANA ODARKOR BRUCE-ASHIRIFIE (ESQ.), THE DISTRICT MAGISTRATE.

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SUIT NO. A4/01/2024

AGYEMANG AKUA ANOKYEWAA                      ]- PETITIONER  
OF H/N. PLOT 29 BLOCK XXX  
OBUASE- OFFINSO

VRS

KWAME WIAFE AKENTEN    ]- RESPONDENT  
504 CENTRAL AVENUE ROOM NO. 35  
ALBANT, NEW YORK.  
UNITED STATES OF AMERICA

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TIME: 8:35AM

**JUDGMENT**

The Petitioner instituted this action against the Respondent herein on the 25<sup>th</sup> of July, 2023 after she had been granted leave by the court to serve same out of the jurisdiction. The Petitioner per her Petition is praying the Court for the sole relief of the dissolution of their marriage celebrated on the 9<sup>th</sup> of May, 2012 at the Kumasi Metropolitan Assembly, Kumasi.

## **EVIDENCE OF THE PETITIONER**

The basis for the Petitioner's Petition was that after her marriage to the Respondent on the 9<sup>th</sup> of May, 2012 they cohabited at offinso-Buase. According to the Petitioner, the Respondent travelled to the United States of America two (2) years after their marriage and has since not come back to the country even though he had lived there before.

It is the case of the Petitioner that in the year 2021, the Respondent called her over the telephone and informed her that he had developed a kidney failure and that he does not intend to come back to Ghana anytime soon and so the Petitioner should move on with her life.

Continuing with her assertion the Petitioner testified that she later got to know that it was not true that the Respondent is suffering from kidney failure but it was an attempt to end the relationship.

According to the Petitioner, the Respondent visited Ghana in January, 2023 and spent two months but refused to have a sexual intercourse with the Petitioner during the period claiming to be sick. It is her case that the Respondent from May, 2023 ceased to maintain or remit the her though the marriage is still subsisting.

The Petitioner stated that the Respondent has been subjecting her to relentless verbal abuse, disrespect and utter contempt that she cannot be expected to live with the Respondent as her husband. She added that the Respondent had long stopped

communicating with her and has been subjecting her to a silent treatment unwelcoming of a husband to a wife.

She therefore prayed for the dissolution of the marriage as it has broken down beyond reconciliation.

Even though the Petition and any other in this suit was service on the Respondent out of the jurisdiction vide registered post and through his "WhatsApp number he failed to file any process or appear in court to take part in the proceedings.

On the 19<sup>th</sup> of October, 2023 the court ordered the Petitioner to serve her witness statement and a hearing notice on the Respondent to notify him of the trial and he failed to appear or have a representative in court to take part in the proceedings.

On the 23<sup>rd</sup> of November, 2023 the trial of the suit proceeded the absence of the Respondent notwithstanding pursuant to **Order 25 rule 2(a)** of the **District Court (Civil Procedure) Rules, 2009 (C.I. 59)** which states as follows:

*"Where an action is called for trial and a party fails to attend, the Court may*

*(a) where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim;*

*(b) where the defendant attends and the plaintiff fails to attend, dismiss the action and allow the defendant to prove the counterclaim, if any;*

*or*

*(c) make any other order that is just."*

The Court having given the Respondent the opportunity to present his case but failed to do so called in the Petitioner to prove her case.

At the end of the trial the issue to be determined by the court is whether or not the marriage between the parties has broken down beyond reconciliation.

In Ghana, the dissolution of marriages is governed by the **Matrimonial Causes Act, 1971 (Act 367)** and per **Section 1(2)** the sole ground for the grant of a divorce is that the marriage has broken down beyond reconciliation.

A party who wants his or her petition for divorce to be successful ought to prove to the satisfaction of the Court any one or more of the facts stated under **Section 2(1)** of **Act 367**.

In the instant case, the Petitioner stated in her Petition and witness statement that the Respondent has told her to move on with her life as he has developed Kidney Failure in the USA and will not be coming to Ghana in a long time.

The Respondent did not attend court to refute any of the evidence given by the Petitioner and so the court was duty bound to accept it without further proof as stated in **Quaigraine v Adams (1981) GLR 599** as follows:

*“When a party makes an averment and his opponent fails to cross examine him on it the opponent will be deemed to have acknowledged sub silentio, that averment by the failure to cross examine”.*

Furthermore, the law was enunciated in the case of **Alpha Musa v Dr. Francis Asante Appeagyei (2015) DLCA 4532**, that:

*“failure to deny the assertion of the respondent contained in a pleading amounted to an admission requiring no proof”*

Therefore, the Petitioner’s evidence stood uncontroverted.

In order to succeed on the petition, the Petitioner herein ought to prove any one or more of the facts as provided under **Section 2(1)** of **Act 367**. The Petitioner's petition is founded on **Section 2(1)(b)** of **Act 367** which provides that:

*“(b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent”*

In support of this Petition, Petitioner stated in her Witness statement that the Respondent has asked her to move on with her life. He visited Ghana even though the marriage is subsisting but refused to have sex with her for the two months that he was in the country to visit. She stated that he disrespects and verbally abuses her.

According to **Section 2(3)** of **Act 367** which states as follows:

*“(3) Notwithstanding that 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.”*

After considering all the evidence adduced before me, I am satisfied that there is ample evidence that the marriage between the parties is broken down beyond reconciliation. I consequently hold that the marriage which was celebrated between the parties on the 9<sup>th</sup> of May, 2012 has broken down beyond reconciliation and same is hereby decreed as dissolved under **2(1)(b)** of the Matrimonial Causes Act (**Act 367**).

There will be no order as to cost.

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**CHRISTIANA BRUCE-ASHIRIFIE(ESQ.)**  
**(DISTRICT MAGISTRATE).**

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PARTIES;

PETITIONER PRESENT, RESPONDENT ABSENT