

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

SUIT NO. A4/01/2024

KWAKU POKU
OF H/N. ASAMANKAMA
OFFINSO

] - PETITIONER

VRS

TRACEY OWUSU
OF TWIMASEN QUARTERS
OFFINSO

] - RESPONDENT

TIME: 8:35AM

JUDGMENT

The Petitioner instituted this action against the Respondent herein on the 4th of July, 2023 praying the Court for the sole relief of the dissolution of their marriage celebrated on the 6th of November, 2020 at the Asokwa Municipal Assembly, Kumasi. The Petitioner is a farmer and the Respondent is an administrative manageress.

EVIDENCE OF THE PETITIONER

The basis for the Petitioner's Petition was that soon after their marriage under the Ordinance he discussed with the Respondent to move from her place of abode to his residence so that they both live together as husband and wife but she refused.

According to the petitioner the respondent refused to pick up his calls and she will return the call at her convenience claiming she is busy learning. It is the case of the Petitioner that the respondent does not give him any attention whenever he visits her claiming to be learning.

The Petitioner averred that the Respondent visited him one evening at his residence unannounced and met him with a lady who was helping to facilitate his travelling documents. He stated that the Respondent became very furious and despite all explanation given to her in the presence of the said lady, she left his house that evening.

The Petitioner testified that he went to the Respondents house the next day to explain the situation to her but she did not accept the explanation. He added that she returned the customary drinks presented on her head at their customary marriage saying she will not continue with the marriage anymore.

According to the Petitioner both families had done all they could to reconcile them but yielded no positive results and therefore prayed for the dissolution of the marriage.

Even though the Respondent filed an Answer to the Petition and a witness statement, she failed to appear in court and to take part in the proceedings.

On the 27th of October, 2023 the court ordered the Petitioner to serve a hearing notice on the respondent to notify her of the trial and she failed to appear in court to take part in the proceedings.

On the 2nd 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 failing to do so called in the Petitioner to prove his 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 his Petition and witness statement that the Respondent has returned the customary drink present on her head during their customary marriage and she has informed the petitioner that she is no longer interested in the marriage.

Even though the Respondent filed her answer to the petition and a witness statement she 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)(f)** of **Act 367** which provides that:

“(f) the parties to the marriage have, after diligent effort, been unable to reconcile their differences.”

In support of this Petition, Petitioner stated in his Witness statement that the Respondent has blatantly refused to participate in any attempts at reconciliation by family members,

she has returned items presented to her family during their marriage and informed the Petitioner that she is no longer interested in the marriage.

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 6th of November, 2020 has broken down beyond reconciliation and same is hereby decreed as dissolved under **2(1)(f)** 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).

PARTIES;

PETITIONER PRESENT, RESPONDENT ABSENT