IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT CAPE COAST IN THE CENTRAL REGION ON MONDAY THE 10TH DAY OF JULY, 2023 BEFORE HIS LORDSHIP JUSTICE BERNARD BENTIL - HIGH COURT JUDGE

SUIT NO: E6/09/2023

KOFI KUTU GYAN - PETITIONER

VRS

HARRIET BOAKYE-AGYEMANG - RESPONDENT

JUDGMENT

The Petitioner who lives outside the Country appointed one Emmanuel Essuman of H/No. AN 232/1 Anomabo, within the Central Region of the Republic of Ghana as his Attorney.

Per the Witness Statement filed by His Attorney, the Parties got married under the ordinance on 21st November, 2016, in Kumasi Metropolitan Assembly of the Republic of Ghana. A copy of the marriage Certificate was attached and marked as **Exhibit B**. At the time of the marriage, the Petitioner was a Medical Researcher whilst the Respondent was a Civil Servant. There are no children between the Petitioner and the Respondent.

According to the Petitioner, immediately after his marriage with the Respondent he had to travel to the United States making it impossible to live together with the Respondent as husband and wife. The Respondent joined the Petitioner a year after.

From the testimony of the Petitioner, the Respondent during their brief cohabitation behaved in such a way that he cannot reasonably be expected to live with Respondent. The Respondent has also been accused of deserting her matrimonial home for a continuous period of Seven (7) years and has since failed to perform any duty as a wife. The Petitioner stated that he has on a number of occasions reported the conduct of the Respondent to her family members but nothing positive came out of it. The Petitioner is of the view that the marriage is practically non-existent.

The only relief the Petitioner is seeking is that the marriage be dissolved.

The rule is that, unless the relevant rules in Order 65 of the High Court (Civil Procedure) Rules, 2004 (C.I.47) (herein referred to as C.I. 47) are complied with, a court is not competent to proceed with the trial or hearing of a cause brought before it.

(See Taylor v Taylor (Supreme Court, 12 November 1962)).

Order 65 rule 9 of C.I. 47 provides that *unless the court otherwise directs, a matrimonial action shall not proceed to trial unless every person required by Rule 8 to be served with a copy of the petition*

a. *has filed appearance or*
b. *is shown by Affidavit to have been served with the Petition personally or in accordance with an Order for Substituted Service.*

The provision above is without any ambiguity and on the authority of Order 65 Rule 9(b) supra, a court may proceed to hear the case where the Respondent does not

participate or defend the action. This court is duly satisfied that the Petition has been served on the Respondent. The Petitioner was therefore requested to open his case despite the fact that the Respondent has failed to participate in the trial.

The main issue for determination is whether or not the Petitioner is entitled to his relief. The Petitioner is not automatically entitled to his claim merely because he faces no opposition from the Respondent. The Petitioner must satisfy the court on the preponderance of probabilities of the existence of the facts he alleges in his Petition. In other words, the Petitioner must show that his claim is more probable. It is trite that a party cannot win a case based on allegation which he fails to prove or establish. Therefore, a party who makes allegations has the burden to lead evidence to prove those allegations unless they are admitted by the other party. If he fails to do that, a Ruling on those allegations will be made against him.

See **Okudzeto Ablakwa (No. 2) v Attorney General and Another [2012] 2 SCGLR 845 at 867.**

It is worthy of note that the absence of a party at trial does not in any way lower the standard of proof on the Petitioner.

According to section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) (the Matrimonial Causes Act), the sole ground for granting a Petition for Divorce must be that the marriage has broken down beyond reconciliation. Section 2(1) of the Matrimonial Causes Act specifies facts, one or more of which a Petitioner must prove for the purposes of showing that the marriage has broken down beyond reconciliation.

See Alex Borkettey Aplerh-Doku v Georgette Adubea Aplerh-Doku (DM/0481/2016) dated 22 March 2017 HC.

In addition to the establishment of either of the facts in section 2(1) of the Matrimonial Causes Act, the Court must be satisfied, on all the evidence that the marriage has broken down beyond reconciliation. Section 2(3) of the Matrimonial Causes Act provides that 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.

The onus clearly lies on the Petitioner to adduce sufficient evidence in support of his claim in order to avoid a finding against him. The justification for this is that a person who makes an averment or assertion which is denied by his opponent has a burden to establish that his averment or assertion is true and he does not discharge this burden unless he leads admissible and credible evidence from which the fact(s) he asserts can properly and safely be inferred.

See Zabrama v Segbedzi [1991] 2 GLR 221.

With regards to the claim of having not lived with the Respondent for almost Seven (7) years, section 2(1)(c) of the Matrimonial Causes Act provides that Petitioner must satisfy the Court that the Respondent has deserted the Petitioner for a continuous period of at least Two (2) years immediately preceding the presentation of the Petition. The evidence adduced by the Petitioner to this effect is that, as stated in paragraph 9 of his Witness Statement, that the Respondent has deserted her matrimonial home for continuous period of Seven (7) years cannot be overlooked and this court is able to safely make an inference from this evidence that the minimum Two (2) years of desertion has been satisfied. Therefore, this ground succeeds.

Where the Court is satisfied from the conduct of the Parties that the marriage has in truth and in fact broken down beyond reconciliation, it cannot pretend and insist that

they continue as man and wife. To do so would be turning a contract of marriage into one of slavery regardless of the psychological effect on the Parties or one of them.

On the totality of the evidence, I am satisfied that, the conduct of the Respondent clearly shows her disinterest in the marriage and also that the marriage has broken down beyond reconciliation in terms of section 2(1) of the Matrimonial Causes Act. As a result the marriage between the couple is hereby dissolved. No order is made as to the payment of alimony and cost.

(SGD)

BERNARD BENTIL J.

[HIGH COURT JUDGE]

COUNSEL

EUNICE FRIMPONG ESQ. FOR THE PETITIONER.