

IN THE DISTRICT MAGISTRATE COURT, HARBOR AREA, TAKORADI, HELD  
ON FRIDAY 28<sup>TH</sup> DAY OF JULY, 2023 BEFORE HIS WORSHIP BERNARD  
DEBRAH BINEY ESQ. .... MAGISTRATE

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SUIT NO. A4/15/2023

SALA ABA VANDYCK .... PETITIONER

H/NO.70/5A,

LOWER

INCHABANVRS

PHILIP COBBINAH .... RESPONDENT

JNR. UNNUMBERED

HSE TESHIE, ACCRA

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## **JUDGMENT**

The Petitioner filed a divorce petition in the registry of this court on 21/03/23 and sought the following reliefs;

1. An order for the dissolution of marriage celebrated between the parties as same has broken down beyond reconciliation due to unreasonable behavior of the Respondent.
2. Any other orders or relief as the court shall deem fit.

In her petition, the Petitioner averred that she got married to the Respondent under the Marriages Act on the 12<sup>th</sup> August, 2016 at Ahanta West District Assembly, Agona Ahanta and they have no child. The petitioner further averred that the Respondent has behaved unreasonably towards her such that she finds it embarrassing and intolerable to continue

staying with him. The Petitioner finally averred that respondent has deserted her and packed out of their matrimonial home and he is staying with another woman for the past four years. That after diligent efforts they have been unable to reconcile their differences and therefore prayed the court to dissolve their marriage and grant her reliefs.

Upon the receipt of the petition the Respondent filed an answer to the petition and virtually admitted the averments of the petitioner and attributed his unreasonable behavior and desertion in the marriage to the attitude of the petitioner. The Respondent further contended that his lack of communication with the Petitioner was due to the fact he lost his phone and later changed his number. The Respondent finally cross petitioned that their marriage be dissolved for them to have their peace of mind to go their separate ways.

### **Legal Issue**

Whether or not the marriage between the parties has broken down beyond reconciliation to warrant dissolution of same.

### **Evidence Adduced In Court**

The Petitioner in her evidence -in -chief to the court stated that the marriage between herself and the Respondent has broken down beyond reconciliation because the unreasonable behavior of the respondent. The Petitioner testified that after two years of their marriage, respondent stopped going to work and stayed at home all the time and left the taking care of the home on the Petitioner alone. After some time Respondent stopped sleeping on the matrimonial bed and eating Petitioner's food and when she complained it generated into a heated argument. So for six months, parties were not having sexual intimacy nor did proper communication and the respondent started staying away without the petitioner knowing his whereabouts, so the Petitioner reported the matter to the family head of the Respondent but it continued till he told petitioner that he had gotten a job at Teshie, Accra thus he would move there. The petitioner further

testified that she indicated her willingness to move with him but the Respondent told her to exercise patience since he would stay at a friend's place. Communication became difficult since Respondent said his work schedules does not allow him to talk frequently on phone or visit so Petitioner told him to show her where he stays but all to no avail, however, he started visiting petitioner once a month. According to the Petitioner, she was so stressed and resorted to follow the Respondent to Accra so she secretly followed him and was met with a pregnant woman who told Petitioner that she was married to Respondent. Respondent confirmed it and told the Petitioner that from the onset he told Petitioner and showed his disinterest in the marriage but Petitioner refused to see it. That since that time Respondent finally came to take the rest of his stuff from their matrimonial home at Inchaban and told her that a date would be fixed for them to dissolve the traditional marriage between them. The Respondent's actions has caused the Petitioner emotional distress, discomfort, and unhappy life. Petitioner says there are no properties or nothing in her marriage to the respondent and therefore prays this court to dissolve the marriage for them to finally go their separate ways.

#### **Evaluation of Evidence, Analysis, and Finding of Facts.**

The court found as a fact that the parties to the marriage have separated and while Respondent lives in Teshie, Accra, Petitioner lives at Inchaban and this has been the case for the past four years. The Respondent constructively deserted the Petitioner by refusing to eat the food she cooked and refused to sleep with her on their matrimonial bed and this has continued since 2018. The court also found as a fact that all attempts at reconciling the parties has proved futile. That the Respondent committed adultery with another woman in Accra which has resulted in the birth of a child.

#### **Law and Application.**

Though, the Respondent filed an answer to the petition for divorce together with cross

petition for divorce and subsequently filed witness statement, he later refused to participate further in the trial. According was absent in court on the hearing day, he stated in his witness statement filed on record that his work schedules will not permit him to attend court when called upon and is no longer interested in the marriage and urge the court to dissolve same for them.

It is trite learning that a party to a case may refuse to participate in the proceedings altogether or fail to lead evidence. The rule therefore is that when a party is given opportunity to participate in the court proceedings and/or lead evidence in support of his stand or in defence of allegations against him but deliberately declines to avail himself of that opportunity, the court will be entitled to proceed with the trial to conclusion and make deductions or findings on the basis of the evidence adduced at the trial. See: **In re West Coast Dyeing Industry Ltd; Adams v. Tandoh** [1984-86] 2 GLR 561, CA and also **Watalah v. Ghana Primewood Products Ltd.** [1973] 2 GLR 126.

Moreover, in the case of **In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors v. Kotey & Ors** [2003-2004] SCGLR 420 at 465, it was held thus:

“A litigant who is a defendant in a civil case does not need to prove anything; the plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make a determination of a fact or of an issue, and that determination depends on evaluation of facts and evidence, the defendant must realize that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court, which may turn out to be only the evidence of the plaintiff. If the court chooses to believe the only evidence on record, the

plaintiff may win and the defendant may lose. Such loss may be brought about by default on the part of the defendant."

It is in the light of the afore-stated authoritative decisions that I proceed to decide the instant suit. But the Petitioner must understand that the default of the defendant herein does not imply an automatic victory for her. Her case must first of all be believed by the court and must be legally tenable before he can have victory. After all, "success in litigation is not achieved by chivalry or bravado but by the outlay of credible and reliable evidence." See: **Alec Grant Sam & Others v. Unilever Ghana Ltd & Others** (Civil Appeal No. J4/48/2014 dated 6<sup>th</sup> June 2016), per Akamba,JSC.

Section 1 of the Matrimonial Causes Act, 1971 (Act 267) with the heading "Petition for Divorce" provides as follows: "(1) a petition for divorce may be presented to the court by either party of the marriage.

(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation

Section 2 of Act 367 with the heading "Proof of breakdown of Marriage" provides in subsection

(1) (f) as follows:

"(1) for the purposes 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) Adultery.

(b) Unreasonable behavior

(c) Desertion

(d) Failure to live together as husband and wife (2 years)

(e) Failure to live together as man and wife(5 years )

(f) Inability to reconcile differences after diligent efforts"

Section 2(2) of the MCA supra enjoins a court to enquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent. The section further states that a court shall not grant a petition for divorce unless it is satisfied on all the evidence that the marriage has broken down beyond reconciliation.

When a petitioner proves one of the facts mentioned under section 2(1) of the MCA he or she may be deemed to have proved that the marriage has broken down beyond reconciliation.

Section 2(3) of the same law, directs a judge to conduct an inquiry to determine whether in truth the marriage has broken down beyond reconciliation and if upon the enquiry the judge is satisfied then and then only should divorce be decreed.

Accordingly, I am enjoined by law in the instant case, to determine whether the petitioner has been able to prove one or more of the facts listed above in her present petition to prove that their marriage is broken down beyond reconciliation. It is only upon satisfactory prove of these facts that the court can decree dissolution of this marriage between the parties.

From the totality of the evidence adduced, it is clear that parties have been unable to reconcile their differences after diligent effort. This honorable court referred parties to court connected ADR and in their terms of settlement filed on the docket of this case, dated 8<sup>th</sup> May, 2023, the parties agreed that the marriage be dissolved. The Petitioner further established through her testimony in court that, they have since March 2018 separated and the Respondent has been living in Teshie apart from their matrimonial home in Inchaban where the Petitioner lives, and as a result they have not been having any sexual intimacy. This was not challenged by the Respondent, infact by his answer to the petition, the Respondent admitted to this piece of evidence. This is a proof of desertion and separation for more than five years by the Petitioner.

It was again established that Respondent committed adultery with another woman in

Accra as a result of which a child has been born, this was confirmed by the Respondent to Petitioner when she secretly followed him to Accra.

The court has held in the case of **Adjetey & or v.Adjetey [1973] 1GLR 216** that **“Adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability. Direct evidence of adultery was rare. In nearly every case the fact of adultery was inferred from circumstances which by fair and necessary inference would lead to that conclusion. There must be proof of disposition and opportunity for committing adultery, but the conjunction of strong inclination with evidence of opportunity would not lead to an irrebuttable presumption that adultery had been committed, and likewise the court was not bound to infer adultery from evidence of opportunity alone”**

In the instant case, the Respondent himself admitted to this issue of commission of adultery and there is no proof better than the admission of the Respondent himself.

Proven issues of separation of marriage coupled with commission of adultery by a spouse are among six factors that are considered to be indicators of a marriage that has broken down beyond reconciliation. These facts have been proved in this instant case, that they have indeed occurred in the marriage of the parties, and I am convinced and satisfied that the marriage between the parties has actually broken down irretrievably beyond reconciliation.

In conclusion therefore, the court hereby dissolves the ordinance marriage between the parties since the evidence clearly shows that the marriage has broken down beyond reconciliation.

Cost of GHC 1000.00 will be awarded in favor of the Petitioner.

SGD

H/W BERNARD D. BINEY

(MAGISTRATE)