

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 15TH DECEMBER, 2022

SUIT NO. C5/59/21

GEORGETTE ANIMWAA OSEI-TETTEH - PETITIONER

VRS

NATHANIEL NII NOI TETTEH - RESPONDENT

JUDGMENT

On the 30th day of August, 2008, the parties to this petition, being of full age and in love and having come to the conclusion that they wanted to have each other's companionship for the remainder of their days on earth, joined together in holy matrimony under the ordinance at the St. Mary the Virgin Anglican Church, Accra.

In April, 2021, almost thirteen (13) years after that solemnization and after four issues of the marriage, the petitioner, convicted that she no longer wished to live the rest of her life in matrimony with the respondent, presented the instant petition for the dissolution of their marriage. She averred that their marriage has broken down beyond reconciliation due to the fact that the respondent has treated her unreasonably.

Petitioner further contended that the respondent accuses her falsely of infidelity, threatening her life as well criticizes and controls her. That this causes her sleepless nights. That in the course of their marriage, they acquired the matrimonial home as well as two cars and container shops.

She prayed the court to;

- a) Dissolve the marriage
- b) Give her custody of the four issues with reasonable access to the respondent
- c) Settle the matrimonial home on her to enable her stay with the children in it
- d) Order respondent to maintain her and the children of the marriage pending the hearing of the matter
- e) Order respondent to maintain the children, pay their school fees and medical bills when due
- f) Order respondent to pay alimony
- g) Any other orders as the court may deem fit.

The respondent in his answer and cross petition contended that it is rather the petitioner who has behaved in such a way that he cannot reasonably be expected to live with her. That in the course of their marriage, he has had reasons to confront petitioner over her dealings with other men. That the petitioner does not know how to appropriately deal with other men as a married woman.

Also that although he has invested so much money to get her to be gainfully involved in any business, she has failed to pay attention to any training which he paid for her to attend. That after borrowing from his friends, he set up a business for the petitioner only for her to abandon it after a short time. That he again paid for the petitioner to undergo training both in Liberia and Ghana to enable her run her own restaurant, yet, a short time after she started the business, she abandoned it.

He continued that the petitioner does not take counsel and challenges every decision and direction that he makes including those affecting the welfare of the children and her own benefit. That the petitioner sleeps very well and wakes up after he and the children on a usual morning.

Petitioner contended that the marriage has broken down beyond reconciliation. That all efforts by the petitioner's uncles and aunties and his own father to resolve their differences have proved futile as the petitioner has failed to heed advice. Also that he acquired the matrimonial home alone and the petitioner, has not supported the home financially but prefers squandering his resources. He cross petitioned for custody of the four children of the marriage.

In the course of proceedings, the parties settled the ancillary reliefs thus leaving the court to determine the main issue of whether or not their marriage has broken down beyond reconciliation.

THE CASE OF THE PETITIONER

Petitioner testified through an attorney. According to her, the marriage has broken down beyond reconciliation and same should be dissolved by the court.

THE CASE OF THE RESPONDENT

The respondent in his evidence in chief to the court said their marriage had broken down beyond reconciliation. That even though he was posted to the USA and he travelled there with the respondent and the children in the course of proceedings, they only travelled as a couple on paper because that was a requirement of his work.

That he has currently been reposted to Mali and the petitioner refused to come along with him and the children. He has thus returned with the children to Ghana and the petitioner is in the U.S.A.

CONSIDERATION BY COURT

In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. Divorce is defined as “*the legal dissolution of a marriage by a Court.*” See *Blacks’ law dictionary*, (8th edition, 2004 p. 1449).

Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. *Thus although the respondent in his answer admits that the marriage has broken down beyond reconciliation, the Court through evidence must satisfy itself that the marriage has truly broken down beyond reconciliation. See the case of Ameko v. Agbenu [2015] 91 G.M.J.*

The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*.

In *Section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner’s basis for arriving at the conclusion that their marriage has broken down beyond reconciliation is unreasonable behavior. Thus the petitioner who is asserting the positive bears the burden of establishing her case on a balance of probabilities. The burden on her is akin to a double edged sword.

Akamba JA (As he then was) in the case of *Kwaku Mensah Gyan & I Or. v. Madam Mary Armah Amangala Buzuma & 4 Ors. (Unreported) Suit No. LS: 794/92 dated 11th March, 2005* explained: “What is required is credible evidence which must satisfy the two fold burdens stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section”.

Petitioner’s basis of presenting this petition is that the respondent has behaved in such an unreasonable manner that she cannot be expected to live with him. The respondent denied this and said although the marriage has broken down beyond reconciliation, it is due to the unreasonable behavior of the respondent which she has exhibited throughout the course of their marriage.

In their evidence before this court, however, both parties maintain that their marriage has broken down beyond reconciliation and all efforts to reconcile them have failed. Indeed, they have begun to live individual lives and appear to be living by the terms of agreement which they filed in this court. Indeed, they appear to be in a hurry to free themselves of the legal shackles of their marriage.

Their terms of settlement included custody of the children to the respondent. In this court, evidence has been led that the respondent has custody of the children who are currently in Ghana whilst the petitioner is living in the U.S.A. It appears the only reason why the respondent went along with the petitioner to his duty post in the U.S.A was because the petitioner refused to allow him to take the children along without her and

not necessarily because she was his wife. Their marriage is existent only on the paper of their marriage certificate.

They have both come to this Court with a common purpose; for the court to dissolve the remnants of their marital union which both of them have considered existent only on the paper of their marriage certificate for over one year.

At page 4 of the record of proceedings, under cross examination by learned counsel for the petitioner, respondent had answered;

Q. *Because of your issues, it reads that you and your wife are no longer staying together as man and wife.*

A. *It is so. We are no more staying as husband and wife.*

Q. *And you both agree that the marriage should be dissolved*

A. *Yes, My Lord. It should be dissolved.*

Q. *As far as you are concerned, the marriage is now broken down beyond reconciliation*

A. *Exactly so my lord*

The petitioner attorney had also answered at page 7 and 8 of the record of proceedings;

Q. *To your knowledge, is the marriage still existing*

A. *No*

Q. *What do you want the court to for you*

A. *I wish the marriage to be dissolved*

To borrow the words of Amissah J.A in the case of *Knudsen v. Knudsen [1976] 1 GLR 204*, "if a man comes to court saying that his marriage has reached a stage that he "cannot reasonably be expected to live" with his wife any more, should a court say to him oh yes you can?'. In the circumstances of this case, both the man and woman are in

court saying they cannot reasonably be expected to live with each other and have taken concrete steps to commence new ways of livelihood without each other.

From the evidence, there is no going back to their state of marriage as the petitioner particularly considers the marriage as non existent.

That is why *section 2 (1) (f) of the Matrimonial Causes Act, 1971 (Act 367) provides that; “For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts; that the parties to the marriage have, after diligent effort, been unable to reconcile their differences”*.

On that basis, I hereby find that all diligent attempts to resolve the differences of the parties to this action and enable them continue their marriage have failed and as such their marriage has broken down beyond reconciliation. Consequently, I proceed to issue a decree of dissolution in respect of the marriage celebrated between them on the 30th day of August, 2008 at the St. Mary, the Virgin Anglican Church, Accra.

Their marriage certificate number ST.MAC 08/08 is accordingly cancelled. The Registrar is to notify the administrator of the church of the dissolution to enable them to duly amend their records.

Let the terms of settlement filed in this Court on the 3rd day of November, 2022 at 9:32 am and which is duly signed by the parties and their lawyers and contained in this judgment, be and same is hereby adopted as consent judgment. The usual default clause applies.

TERMS OF SETTLEMENT

A. WHEREAS

1. The petitioner commenced the divorce proceedings, seeking the reliefs as endorsed on the petition.
2. The respondent filed an answer to the petition and cross-petitioned, seeking an order for custody of the issues of the marriage,
3. The parties agree to settle the ancillary reliefs amicably;

NOW THEREFORE the petitioner and the respondent agree as follows:

B. CUSTODY OF THE FOUR CHILDREN

1. That the parties will have shared custody of the issues of the marriage without separating them. The respondent will have custody of the children for the first six (6) years after the divorce, to give them stability and to allow the petitioner to go through her education and find a decent job and accommodation to be able to also take custody of the children for a couple of years. The petitioner and the respondent will arrange the visits of the children between them.
2. The respondent will be responsible for the children's healthcare until the petitioner is engaged in decent employment and is in a better position to contribute.
3. The respondent will be responsible for their tuition fees until the petitioner is engaged in decent employment and is in a better position to contribute.
4. The respondent will be responsible for their feeding, upkeep, and other essential needs until the petitioner is engaged in decent employment to contribute.
5. The petitioner will be responsible for their clothing and other essential needs and is required to make such provision every six (6) months with effect from January 2023.

C. ALIMONY

The parties have agreed that there will be no payment of alimony.

D. SHARING OF PROPERTY

1. The parties have agreed that they will each have 50% share of the current market value of their 3-bedroom residence at No. 5 Ruzizi Close, Baatsona (GT-341-1106). The current value (US\$87,201.00) was ascertained after a recent valuation of the house which was carried out by professional surveyors from Ghana Home Loans (a copy of the valuation report is attached for ease of reference).
2. The parties have agreed that the respondent will keep the house but will pay off the petitioner's 50% share, amounting to forty-three thousand, six hundred United States Dollars, fifty cents (US\$43,600.50) in twelve (12) installments, each monthly installment being in the sum of three thousand six hundred and thirty-three United States Dollars, thirty-eight cents (US\$3,633.38) with effect from January 2023.
3. The parties have agreed that the said 3-bedroom residence at No. 5 Ruzizi Close, Baatsona (GT-341-1106), must be willed to all four children namely; Nathan Gabriel NiiNuertey Tetteh, Edmund George Nii Tete-Kwakwa Tetteh, Kathlyn Mary-Ann NaaNuerkie Tetteh and Michelle Eva NaaNorkor Tetteh and will remain as such.
4. The parties have agreed that the petitioner should keep the Ford Edge 2013 provided by the respondent, whiles the respondent keeps the Dodge Avenger 2012.
5. The parties have agreed that the petitioner should keep the 2 container shops in Baatsona and their contents provided by the respondent.

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

EDITH AWUKU ASABRE FOR THE PETITIONER

JULIET LONGDON-SOWAH FOR THE RESPONDENT PRESENT FOR D.K.
AMERLEY.