

**CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 8TH DECEMBER, 2022**

SUIT NO. C5/90/16

WILHELMINA HANSON

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PETITIONER

VRS

JOSEPH HANSON

-

RESPONDENT

JUDGMENT

On the 30th day of September, 1997, the parties herein, being of full age and desirous of living together and being recognized by society as a single unit, celebrated their marriage under the ordinance. There is one issue of the marriage. The petitioner, after twenty-four years, decided that she no longer wanted to remain in a marriage unit with the respondent. She thus presented this petition for dissolution of their marriage on the grounds that same has broken down beyond reconciliation.

The petitioner contends that the respondent has behaved in such an unreasonable manner that she cannot be expected to live with him as husband and wife. That about nine years ago, the respondent asked her to leave the matrimonial home to her parent's house. That he would come for her when he was ready. That since then, he has not asked her to return to the matrimonial home and so for the past nine years, they have not lived as husband and wife.

That all attempts by family and friends to reconcile them have failed and the marriage cannot be salvaged since both of them have moved on. She prayed the court to dissolve their marriage and for each party to bear their own cost in suit.

In his answer, the respondent denied behaving unreasonably towards petitioner. According to him, it is rather the petitioner who has abandoned him since he became ill and bedridden with stroke. That the petitioner left him upon the claim that she could not live with a bedridden man. He prayed the court to dissolve their marriage.

The petitioner filed a reply and denied abandoning the respondent in his time of sickness. She averred that it was the respondent who asked her to leave the matrimonial home two years prior to his sickness. That she returned on her own after getting to know of the respondent's illness in order to take care of him but the respondent sacked her after a short while.

THE CASE OF THE PETITIONER

In her evidence in chief, the petitioner said that she had to vacate the matrimonial to go and live with her mother after the respondent told her to do so. That two years after this, the respondent fell sick. When she got to know about it, she hurriedly left her mother's house to go and take care of him.

She continued that she spent three weeks with the respondent. That she fed and cleaned him. However, the respondent treated her with so much disrespect by insulting and blaming her for his woes in life. That on one occasion, the respondent beat her with a wire in her sleep because he needed her assistance to the washroom and she could not

wake up on time. That he continued in that habit and told her that she was of no use to him.

That this attitude became unbearable and so she left the matrimonial home but returned within one week upon the advice of her mother. That upon her return, the respondent asked her to leave as he did not need any woman in his life. That she then left the matrimonial home. All efforts she has made to visit the respondent since then have not fallen through because the respondent moved out of the matrimonial home.

That the respondent contacted their son after sometime and she indicated to him that she wanted to know of his whereabouts so she could visit. The respondent asked her to give him sometime but he even when he returned to the matrimonial home, he made it clear that he did not want her to visit him. That it has been three to four years since she last saw the respondent and all attempts to reconcile them have failed. Further that for the past nine years, they have not lived together as husband and wife and both of them have moved on with their lives.

THE CASE OF THE RESPONDENT

According to the respondent, he was struck with stroke about nine years ago. That immediately afterwards, the petitioner moved out of the matrimonial home and abandoned him to his fate after telling him that she cannot live with an incapacitated man. That he has to rely on outsiders for assistance.

He continued that they have not lived together and he has not seen the petitioner since then. That the court should dissolve the marriage.

The only issue for the court to determine is whether or not the marriage between the parties has broken down beyond reconciliation.

CONSIDERATION BY COURT

In divorce just like in all civil cases, the degree of proof required by law is that of a balance or preponderance of probabilities. See *section 12 (1) and (2) of the Evidence Act, 1975 (Act 323)*. In the case of *Adwubeng v. Domfeh [1996-97] SCGLR 660*, the Supreme Court held that '*sections 11 (4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by a preponderance of probabilities – no exceptions were made*'. It is he who asserts who bears the burden of proof and so the burden of persuasion lies on him/her to lead cogent and positive evidence to establish the existence of his/her claim in the mind of the court. See the case of **Takoradi Flour Mills v. Samir Paris [2005-6] SCGLR 882**.

1. Whether or not the marriage between the parties has broken down beyond reconciliation

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) The court must enquire as far as is reasonable into the reasons for the divorce and may either grant or refuse to decree a divorce after hearing. 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 which the offended party finds intolerable to live with; 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 of presenting this petition is that they have not lived as husband and wife for the past nine years prior to the presentation of this petition. The respondent agrees but says it is because the petitioner abandoned him in his time of need when he became bedridden as a result of a stroke he had suffered.

The petitioner denies this and says two years prior to the respondent suffering a stroke, he sent her away from the matrimonial home on the basis that her presence was bringing him only misfortunes. She insisted on this under cross examination by learned counsel for the respondent. At pages 16 and 17 of the record of proceedings, she had answered;

Q: Since when did you depart from your husband?

A: My Lord, I did not leave him. We separated about 11 years ago.

Q: I suggest to you that you abandoned Respondent when he became incapacitated with a stroke.

A: Please, that is not so. When he fell ill, I was not around. I was informed in my house that he had suffered a stroke and was at the General Hospital. I visited him at the hospital. When he was discharged, I intended to go to him to take care of him. I did so.

We were in bed one night asleep when I realized that someone was beating me with a stick in the bed. When I woke up, one of the boys we lived with was standing in the room and so I asked him what was happening. He told me that his father, the respondent had said he wanted to urinate but he had called me severally and I could not respond or hear. So, when he came into our room, my husband asked him to hand over to him the rod he uses in beating children. He did so and then my husband began to hit me with the rod to wake me up. When I woke up, my husband was insulting me. I left the room that day because we had our separate bedrooms. The following morning, I left to my mother's place. I thought my husband would call and apologise to me but he did not and after one week I returned to his house. When I returned and greeted him, he asked me what I wanted in his house and that I should leave as he does not need any woman in his house. That even his sister came from Kumasi to the house to take care of him and he sent her away with transportation and so it is not I who lives in Tema. I who stayed with him for one week but anytime I greet him, he does not respond and would steep at me and close his eyes. I then decided that since I was not living with him before he suffered the stroke, and he had sacked me from the matrimonial home to my parents because according to him I am responsible for the misfortunes in his life, and again that when I returned to his house after the stroke, he hit me with a belt and was still insisting that I leave his house, it meant that he did not want me around him and so I left.

I find the petitioner to be a credible witness who was in court to tell the truth rather than throw dust into the eyes of the court. She testified in a clear and definitive manner and did not prevaricate or become evasive during cross examination. Consequently, I find that for two years prior to the respondent suffering a stroke, the parties were not living together as husband and wife.

Section 2 (1) (d) of the Matrimonial Causes Act, 1971, (Act 367) provides that;

2. (1) 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:

(d) that the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce; provided that such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal;

From the evidence, the respondent suffered a stroke about nine years prior to the presentation of the petition. Afterwards, the petitioner stayed with him for about a month after which they have not lived together as husband and wife nor accorded each other any of the courtesies, rights and privileges associated with a husband and wife. They have each been leading their separate lives.

In this court, they have each made it clear that the court should dissolve their marriage. The respondent in his answer and during his evidence left no ambiguity in his stance that the marriage be dissolved.

As they have not lived together for all these years and are both advanced in age, I find that it is better that they live the remainder of their years in peace and away from each other not only physically but legally. It appears that not even the presence of their son

and their common interest in him has thawed their strained and practically non-existent relationship for the past nine years.

In the circumstances, I find that it is better to destroy the legal yoke that remains of their union in order to give them the peace of mind to lead their single and separate lives. As *Sarkodee J (as he then was)* succinctly put it in the case of *Addo v. Addo [1973] 2 GLR 103*, which he himself quoted from *The Law Commission Report; Reform of the Grounds of Divorce. The Field of Choice, para. 15. (Cmd. 3123)* “ For it is better: “When regrettably, a marriage has irretrievably broken down to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation.”

Consequently, I hereby find that the marriage between the parties has broken down beyond reconciliation on the grounds that for more than nine years prior to the presentation of this petition, they have not lived together as husband and wife and both of them consent to the dissolution. I duly issue a decree of dissolution to dissolve the marriage celebrated between them on the 30th day of September, 1997. Their marriage certificate is accordingly cancelled. The Registrar is to notify the Registrar of Marriages at the Tema Metropolitan Assembly of the cancellation to enable them amend their records accordingly.

There would be no order as to costs.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

BENEDICTA MAWUSI FIANOO FOR THE PETITIONER

JOHNNY ADEKU FOR THE RESPONDENT

