

**IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 28TH DAY
OF APRIL, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE**

SUIT NO.C5/112/21

DOMINIC CASTRO ZORDEH

PETITIONER

VRS.

GITER NANA YAA OFFIN

RESPONDENT

PARTIES

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The petitioner, formerly a bachelor and the respondent, formerly a spinster got married at the Tema Metropolitan Assembly on the 5th day of September, 2013, under **Part III of the Marriages Act (1884-1985) Cap 127**. Thereafter, the parties cohabited at Lebanon, Ashaiman. There are two issues to the marriage namely; Alexia Afi Zordeh, aged 7 years and Helen Ann Seyram Zordeh, aged one year at the time of filing the instant petition for divorce. The petitioner, claiming that the marriage celebrated between himself and the respondent has broken down beyond reconciliation, filed the instant petition for divorce on 18th August, 2021 praying the court for the sole relief of the dissolution of the marriage.

The respondent entered appearance, filed an answer and cross-petitioned as follows;

- a. Custody of the children be granted to the respondent with reasonable access to the petitioner.
- b. The petitioner be ordered to rent an apartment for the children and the respondent till the children are of age.
- c. The respondent be ordered to pay GH¢1,500 every month as maintenance for the upkeep of the children.
- d. GH¢100,000 as financial compensation.

The petitioner avers that there is a total lack of communication between the parties and that the respondent has exhibited lack of love and interest in the marriage. The petitioner also avows that the respondent is secretive and that she obtained admission to pursue further studies without informing him and failed to disclose her source of funding. According to the petitioner, there is always misunderstanding between them since the respondent does not respect him as her husband. Additionally, the petitioner maintains that few years into the marriage, the respondent was unfaithful but showed no remorse for her conduct. The respondent also threatened to cause his imprisonment by provoking him to assault her. The petitioner further states that they mutually assaulted each other and the matter ended up at the police station.

Additionally, the petitioner asserts that the respondent abandoned the matrimonial home to live with her mother for almost two months. The petitioner states that the unreasonable behaviour exhibited by the respondent caused him to be involved in a motor accident. According to the petitioner, the respondent also reported him to his employer that he was not maintaining his child at a time she was fully aware that he had travelled. The respondent also neglected her wifely duties and left the matrimonial home with the children and for eight (8) months preceding the presentation of the petition

for divorce, there had not been any sexual intimacies between them. On attempts at reconciling the differences between the parties, the petitioner states that there is bad blood between their families. As such, there has not been any room for settlement and the respondent has agreed to the dissolution of the marriage.

The respondent in her answer to the petition denies the allegation of unreasonable behaviour and although she admits that the marriage is fraught with problems, she maintains that the marriage has not broken down beyond reconciliation but if the petitioner insists on the dissolution of the marriage the court can grant same. The respondent states that the problems in their marriage started when the respondent discovered that the second child, they were expecting was a girl since he had warned her not to deliver a baby girl. The respondent maintains that petitioner became disappointed when she delivered a baby girl and failed to assist her in caring for the child after she had undergone Caesarean operation. Again, the petitioner also failed to eat food prepared by her and would go out and return home late in the night drunk. The respondent further testified that communication between them ceased when the petitioner became angry that they had relocated to their new place since he was not in support of their relocation. The respondent testified further that the contents of the petition are fabrications intended to tarnish her image. The respondent states that she reported the petitioner at the Domestic Violence and Victim Support Unit (DOVVSU) because he assaulted her for complaining about his failure to maintain her and the children. The respondent again avers that the petitioner sacked her from the matrimonial home and for fear of her life, she went to stay with her parents. The respondent denies responsibility for the accident the petitioner was involved in and attributed it to drunk driving.

The respondent further denies reporting the petitioner to his employer and states that she rather reported the petitioner his colleague at work who is also a family friend. The respondent further states that the petitioner reduced the monthly maintenance allowance from One Thousand Ghana Cedis (GH¢1,000) to Six Hundred Ghana Cedis (GH¢600). The respondent also states that the petitioner denied her conjugal rights when he moved out of the matrimonial home. The petitioner also failed to avail himself for any reconciliation meeting scheduled by their families and friends. The respondent further states that she has not consented to the dissolution of the marriage because she still loves the petitioner and believes in the possibility of reconciliation and sees the instant petition for divorce as an attempt by the petitioner to Abandon her after going tubal ligation through child birth.

Based on the pleadings and the evidence led, the court set down the following issues for dissolution.

LEGAL ISSUES

1. Whether or not the marriage between the petitioner and the respondent has broken down beyond reconciliation.
2. Whether or not the respondent is entitled to an award of an amount of GH¢1,500 for the upkeep of the two children per month and accommodation for herself and the two children of the marriage.
3. Whether or not the respondent is entitled to an amount of GH¢100,000 as financial provision from the respondent.

BURDEN OF PROOF

The principle of law is that in civil case, he who asserts must prove. In the case of **Adwubeng v. Domfeh [1996-97] SCGLR 660**, the Supreme Court held in its holding 3 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 preponderance of probabilities. No exceptions were made.” The court further stated: “in assessing the balance of probabilities, all the evidence be it that of the Plaintiff or the defendant must be considered and the party in whose favour the balance tilts is the person whose case is more probable than the rival version and is deserving of a favourable verdict”.

The standard of proof as stated applies to a petition for divorce. Thus, the petitioner bears the burden to prove his petition on a balance of probabilities. Also, where, as in the instant case, a respondent cross-petitions, she bears the burden to prove her cross-petition on a balance of probabilities.

ANALYSIS

ISSUE 1: Whether the marriage between the petitioner and the respondent has broken down beyond reconciliation.

Section 1 of the Matrimonial Causes Act, 1971 (Act 367), provides that the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts stipulated under **Section 2(1)** of Act 367, namely; adultery, unreasonable behaviour, desertion, failure to live as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the petition, failure to live as man and wife for a continuous period of five years immediately preceding the presentation of the petition and lastly, irreconcilable differences.

Under **section 2(3)** of Act 367, the court is enjoined to inquire into the facts alleged in support of the dissolution the dissolution of the marriage. The court shall refuse to grant dissolution of the marriage notwithstanding the fact that any of the facts are proved is there is a reasonable possibility for

reconciliation. Thus, in the case of **Adjetey & Anor v. Adjetey** [1973] 1 GLR 216, the court held in holding 2 that:

“On a proper construction of section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367), the court could still refuse to grant a decree even where one or more of the facts set out in section 2 (1) had been established. It was therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage had broken down beyond reconciliation would not be enough.”

The petitioner testified in line with his petition for divorce that there is total lack of communication between them in the marriage since the respondent would rather keep mute on issues bothering her and react unreasonably. The respondent has also demonstrated a total lack of love and interest in the marriage. The respondent is secretive and she does what pleases her in the matrimonial home without informing him. The petitioner further testified that the respondent applied for further studies without his knowledge and when he asked her about her source of funding, she refused to inform him. The petitioner further testified that the respondent does not respect him leading to constant misunderstandings between the parties. The respondent cheated on him with another man and when he confronted her, she was not even remorseful and continued to live her adulterous lifestyle. The petitioner further accuses the respondent of threatening to provoke him to assault her for him to be incarcerated. The respondent also left the matrimonial home with the children and neglected her marital duties. According to him, their families are not on good terms due to the behaviour of the respondent in always reporting him to her family. The petitioner therefore maintains that they are incompatible and that their marriage has broken down beyond reconciliation.

The petitioner, under cross-examination by the respondent was insistent that the respondent committed adultery but he did not provide any further proof of same. The petitioner also under cross-examination testified to the various attempts at reconciliation and that his sisters attempted to reconcile the parties but respondent was not prepared for reconciliation.

The respondent on her part testified that the issues in the marriage started when she got pregnant with second child of the marriage. According to her, when she conceived, the petitioner was eager to know the gender of the baby since he wanted a baby boy and warned her not to deliver a baby girl. Consequently, she did not disclose the gender to the respondent until she was in her ninth month of pregnancy. When she delivered the baby and the respondent set eyes on her for the first time, his countenance changed and he started crying and when she enquired from him why she was crying, he informed her that it was as a result of the gender of the baby. From that time, the petitioner's attitude towards her changed. The petitioner failed to assist her in caring for the child though she went through caesarean operation during delivery. The petitioner then moved out of their matrimonial bed and started sleeping on the floor.

In October 2020, the petitioner informed her that his uncle who owns the apartment they were occupying had requested them to give vacant possession of same. The petitioner instructed her to look for alternative accommodation for them to move into but the respondent rejected any accommodation she found. The petitioner later informed her that a friend called Clifford that he has been drinking with had found an accommodation close to where he lives for them but she also rejected because the said friend is a negative influence on the petitioner. The petitioner then informed her to move in with her parents if she did not like the accommodation When she reported the conduct

of the petitioner to his brother, he became angry. Later, the petitioner gave her money to rent a place of her choice. When they moved to the new place, the attitude of the respondent changed and he started denying her sex and refused to eat food prepared by her. The respondent further testified that the petitioner subjected her to verbal abuse. The respondent further testified that during the delivery of the 2nd child of the marriage, she went through Tubal Ligation due to complications and the petitioner, being aware that she cannot have children again wants to divorce her. The respondent further says that she reported the petitioner to their pastors and some elders including relatives and friends to talk to the petitioner but she did not honour their invitations and did not heed to their advice.

The evidence led by the parties is characterized by accusations and counter accusations of unreasonable behaviour allegedly exhibited towards each other in the course of their marriage. A common thread that runs through the evidence of the parties is that the marriage has been plagued with differences which the parties after diligent efforts have not been able to reconcile within the meaning and intendment of **Section 2(1)(f)** of Act 367. For some time now, the parties have not lived together as husband and wife. The parties testified to the various attempts at reconciliation which have all proved futile. The entire matrimonial history of the parties is indicative of the fact that the parties after diligent efforts have been unable to reconcile their differences. I therefore hold that the marriage between the parties has broken down reconciliation. I accordingly, I decree for the dissolution of the Ordinance Marriage celebrated between the petitioner and the respondent.

ISSUE 2: Whether or not the respondent is entitled to an award of an amount of GH¢1,500 for the upkeep of the two children per

month and accommodation for herself and the two children of the marriage.

Here, custody of the two children of the marriage is not in issue. I hereby grant custody of the two children of the marriage to the respondent with reasonable access to the petitioner. The petitioner shall spend weekends with the children every fortnight and half of their vacation period with the petitioner.

The respondent claims an amount of One Thousand Five Hundred Ghana Cedis (GH¢1,500) as monthly maintenance allowance for the upkeep of the two children of the marriage. A person entitled to custody is also entitled to an award of periodic maintenance allowance from the other party for the upkeep of the children. It is also trite learning that it is the responsibility of both parents to cater for their infant children and where they are both working, to contribute financially for the upkeep of their children. **Section 22(3)(c)** of Act 367, which grants the courts power to award maintenance and provide for the education of a child out of the income or property of either or both parties, does not enumerate the factors the court must take into consideration. **Section 49** of the Children's Act, 1996 (Act 560), provides some useful guidance on the factors to consider when making an order for maintenance of a child. The primary consideration is the welfare of the child and the following factors:

- a) The income and wealth of both parents of the child or of the person legally liable to maintain the child.*
- b) Any impairment of the earning capacity of the person who has a duty to maintain the child.*
- c) The financial responsibility of the person with respect to the maintenance of other children.*

- d) The cost of living in the area where the child is resident*
- e) The rights of the child under this Act, and*
- f) Any other matter which the Family Tribunal considers relevant*

The petitioner testified that he is a Mechanical Engineer and earns a net monthly income of Three Thousand Two Hundred and Eighty Ghana Cedis (GH¢3,211.81), out of which he claims to be servicing a loan he took from the bank and maintains himself out of the same amount. The respondent is a student and apart from the two children of the marriage, there are two other children that the respondent is legally liable to maintain. Pending the final determination of the suit, the court awarded an amount of One Thousand Ghana Cedis (GH¢1,000) as maintenance pending suit. The petitioner shall continue to pay the amount of GH¢1,000 per month for the upkeep of the two children of the marriage. The amount shall be paid by the 5th day of each month effective 5th May 2023. The petitioner shall also be responsible for the educational and medical expenses of the two children of the marriage and the respondent shall bear the clothing needs of the two children.

Additionally, the petitioner shall rent a decent chamber and a hall accommodation for the respondent and the two children. The order to rent accommodation for the respondent terminates upon her remarriage.

ISSUE 3: Whether or not the respondent is entitled to an amount of GH¢100,000 as financial provision from the respondent.

The respondent claims an amount of One Hundred Thousand Ghana Cedis as financial provision from the respondent. **Section 20(1)** of the Matrimonial Causes Act 1971 (Act 367), states that:

"The court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the court thinks just and equitable."

The factors a court must consider in determining what is "just and equitable", the court is enjoined to have regard to the income, property, earning capacity, the age of each party to the marriage, duration of the marriage, financial resources which each party has or is likely to have in the foreseeable future and the standard of living enjoyed by parties before the breakdown of the marriage. See the case of **Obeng v. Obeng** [2013] 63 GMJ 158.

The essence of financial provision is not to enrich one spouse at the expense of the other but to cater for a genuine financial need of a spouse upon dissolution of the marriage. Thus, in the case of **Gamble v. Gamble** [1963] 1GLR 416 the court held in holding 2 that: *"the court will not look with sympathy upon a wife who makes no effort to secure employment but is content to subsist on an award of alimony."*

The petitioner describes himself as a mechanical engineer and the respondent is currently a student and unemployed. The parties have been married since the year 2013. Apart from the two children of the marriage, there is no other children that the petitioner is legally liable to maintain but the respondent has two children from a previous marriage that she is legally liable to maintain. There is no evidence of any property that each party is entitled to and the parties did not lead evidence on their respective ages. The parties are relatively young and there is a possibility that they will find love again and remarry. The respondent did not lead a shred of evidence on her claim to amount of On Hundred Thousand Ghana Cedis (GH¢100,000) as financial provision and the resources of the petitioner out of which the award should

be made save that she is a student. Considering the income of the petitioner on record and his responsibilities towards the respondent and the two children of the marriage under this judgment, I will award an amount of Ten Thousand Ghana (GH¢10,000) as financial provision in favour of the respondent.

CONCLUSION

In conclusion, I hold that the Ordinance Marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce and enter judgment in the following terms;

1. I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent on 5th September, 2013 at the Tema Metropolitan Assembly.
2. The parties shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. I hereby grant custody of the two children of the marriage namely Alexia Afi Zordeh, aged seven (7) years and Helen Ann Seyram Zordeh aged one (1) year at the time of filing the instant petition to the respondent with reasonable access to the petitioner. The children shall spend weekends with the petitioner every fortnight and half of their vacations with the petitioner.
4. The petitioner shall pay a monthly maintenance allowance of One Thousand Ghana Cedis (GH¢1,000) to be paid by the 5th day of each month effective 5th May, 2023 and shall be responsible for the educational and medical expenses of the two children. The respondent shall be responsible for the clothing needs of the two children.

5. The petitioner shall rent a chamber and hall accommodation for the respondent and the two children of the marriage within two (2) months from the date of judgment. The order to rent accommodation terminates upon the remarriage of the respondent.
6. The petitioner shall pay an amount of Ten Thousand Ghana Cedis (GH¢10,000) as financial provision to the respondent within three months from the date of judgment.
7. No Order as to costs.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**