

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 23RD DAY
OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE

SUIT NO.C5/2/23

STEPHANIE HARRIET AKUFFO ----- PETITIONER

VRS.

AIKINS OKRAKU ----- RESPONDENT

PETITIONER

PRESENT

RESPONDENT

ABSENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The petitioner and the respondent, both teachers by profession, got married under **Part III of the Marriages Act, (1884-1984), Cap 127** at the District Magistrate Court Mampong Akuapim on the 21st December 2017. After the marriage, the parties cohabited at Takoradi and subsequently relocated to Kapitalime Duga. There is one issue to the marriage by name Nana Ama Eyram aged five years at the time of filing the instant petition for divorce. On the 15th day of August, 2022, the petitioner filed the instant petition for divorce alleging that the Ordinance marriage celebrated between herself and the respondent has broken down beyond reconciliation and prayed the court for the following reliefs;

- a. Dissolution of the Ordinance Marriage contracted at the District Magistrate Court Mampong Akwapim on the 21st December, 2017.
- b. Custody of the child of the marriage with reasonable access to the respondent.

- c. Maintenance of the child with an amount of GH¢500 per month, school fees and medical bills.
- d. Any Order the court may deem fit.

The petitioner alleges that the marriage celebrated between herself and the respondent has broken down beyond reconciliation due to the unreasonable behaviour exhibited by the respondent in the course of the marriage. According to her, after the marriage, the attitude of the respondent changed towards her and there is a total lack of love between the parties. The petitioner states that the respondent is courting with one Pearl Theresah Kokofi. Consequently, she contends that the respondent has neglected his duties as a husband and a father. According to the petitioner, due to the respondent's amorous relationship with the said lady, she is no more interested in the marriage and therefore prays for dissolution of the said marriage contracted between them to afford her the peace of mind to start her life afresh. The petitioner avers that there has not been any form of sexual intimacies between the parties for over a year and all efforts made by both parties to resolve their differences have proved futile. She therefore prays for the marriage to be dissolved.

The respondent in his answer to the petition denied the allegation of unreasonable behaviour levelled against him. According to him, his behaviour towards the petitioner changed because the petitioner became seriously sick and needed a psychiatrist assessment but she refused treatment after a series of medical tests were conducted on her. According to him, he became depressed and confused about the behaviour of the petitioner in refusing treatment and because of the medical condition of the petitioner, her behaviour changed and she started hallucinating and calling his female friends on phones just to insult and warn them about the respondent.

According to the respondent, the petitioner and her family have already returned the customary drinks to dissolve the customary marriage. The respondent is therefore agreeable that the marriage has broken down beyond reconciliation. The respondent therefore cross-petitioned for dissolution of the marriage and for the court to order him to pay GH¢300 as monthly maintenance allowance for the upkeep of the child of the marriage.

The respondent was duly served with all processes in the suit and after entering appearance and filing an answer to the petition for divorce, he appeared in court twice when the matter was set down for trial but subsequently failed to appear upon numerous hearing notices served on him. The court therefore granted leave to the petitioner to lead evidence to satisfy the court that indeed the marriage celebrated between the parties has broken down beyond reconciliation.

LEGAL ISSUES

1. Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.
2. Whether or not the petitioner is entitled to the award of custody of the only issue of the marriage and maintenance for the said child.

ANALYSIS

Under **section 1** of the Matrimonial Causes Act, 1971 (Act 367), 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 must plead and prove at least one of the six (6) facts set out in **section 2(1) of Act 367**. Section 2(1) provides that:

“for the purpose of showing that the marriage has broken down beyond reconciliation, the Petitioner shall satisfy one or more of the following facts:

- (a) That the Respondent has committed adultery and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent; or*
- (b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; or*
- (c) That the Respondent has deserted the Petitioner for a continuous period of at least 2years immediately preceding the presentation of the petition; or*
- (d) That the parties to the marriage have not lived as man and wife for a continuous period of at least 2years 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 be withheld, and where the court is satisfied that it has been so withheld, the court may grant a petition for divorce under this paragraph withstanding not the refusal; or*
- (e) That the parties to the marriage have not lived as man and wife for a continuous period of at least 5years immediately preceding the presentation of the petition; or*
- (f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences.”*

To succeed under Section **2(1) (b)**, the petitioner must prove the conduct of the respondent constituting unreasonable behavior, and the fact that she cannot reasonably be expected to live with him as a result of the unreasonable behaviour alleged. In the case of **Ansah v. Ansah** [1982-83] GLR 1127, the court held in holding 1

“...The test under the section (section 2 (1) (b) of Act 367) was whether the petitioner could reasonably be expected to live with the respondent in spite of the latter’s behaviour. The test was therefore objective. But the answer obviously had to be related to the circumstances of the petition in question. That had to be a question of fact in each case. It followed that the conduct complained of must be sufficiently serious - since mere trivialities would not suffice.”

The petitioner in her testimony repeated her averments on oath that the respondent has behaved in such a way that she cannot reasonably be expected to live with him. The petitioner alleges that the respondent is in an amorous relationship with one Pearl Theresah Kokofi and because of that, he has neglected his duties as a husband. Additionally, the petitioner says that the respondent complains about anything that goes on in the matrimonial home to his friends and family members which made her feel uncomfortable living with him. According to her, she had a miscarriage which led to depression because of the respondent's behaviour. Again, the unreasonable behaviour of the respondent has caused her so much emotional and psychological trauma. There are no sexual intimacies between them and there is also a lack of effective communication between them. The parties have separated over two years now and there is no peace in the marriage. Consequently, the marriage has broken down beyond reconciliation.

The testimony of the petitioner regarding the behavior of the respondent is not controverted. The respondent having failed to contest the petition, there is nothing on record which the court can base on to evaluate the evidence of the petitioner to come to a different conclusion that he has not behaved in such a way that the petitioner cannot reasonably be expected to live with him. The evidence led by the petitioner also shows that for two years now, the parties have been separated and there are no sexual intimacies between the parties. Additionally, all attempts made to reconcile the differences between the parties have proved futile and that the marriage between the parties has broken down beyond reconciliation. I therefore grant the petition for divorce and decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent.

The petitioner also prays the court to grant her custody of the only child of the marriage. The respondent has not appeared to contest custody and the only child of the marriage has been living with her since the parties separated. I therefore award custody of the only child of the marriage by name Nana Ama Eyram aged 5 years to the petitioner with reasonable access to the respondent. The child shall spend half of her vacations with the respondent.

The petitioner also prays the court for a monthly maintenance award of GH¢500 against the respondent and for the respondent to be responsible for the payment of school fees and medical expenses of the child. A person having custody of a child is also entitled to the award of maintenance of the child. It is trite learning that it is the responsibility of both parents to maintain their children and to contribute financially towards the upkeep of the 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 specify the facts the court must take into consideration. Under **Section 49** of the Children's Act, 1996 (Act 560), the main consideration is the welfare principle and the best interest of the child. The factors a court may consider in awarding maintenance include the income and wealth of both parents of the child, any impairment in their earning capacities, the financial responsibilities towards other children they are legally liable to maintain, the cost of living in the area where the child is resident and the rights of the child under the Act.

The respondent did not challenge the claim of the petitioner and she did not lead evidence on their respective earning capacities save that they are both teachers. The petitioner is currently 36 years and the respondent is aged 44 years, there is also no evidence of any child which any of the parties is liable to maintain apart from the child in issue. The petitioner at the time of filing

the petitioner was resident at Community 9, Tema. Considering the rising cost of living, I will award an amount of GH¢500 as monthly maintenance allowance to be paid by the respondent towards the upkeep of the only child of the marriage.

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 for the petitioner 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 21st December, 2017 at the District Magistrate Court, Mampong Akwapim.
2. The petitioner shall present the original copy of the marriage certificate number *MDMC 90/18* for cancellation by the Registrar of the Court.
3. I hereby grant custody of the only issue of the marriage namely Nana Ama Eyram aged 5 years to the petitioner with reasonable access to the respondent. The child shall spend half of her vacation period with the respondent.
4. The respondent shall pay a monthly maintenance allowance of GH¢500 for the upkeep of the child to be paid by the 5th day of each month. The respondent shall bear the educational and medical expense of the child. The petitioner shall be responsible for the clothing needs of the child.
5. No order as to costs.

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

