IN THE CIRCUIT COURT ONE HELD AT ACCRA ON MONDAY, 15TH DAY OF MAY, 2023 BEFORE HER HONOUR, AFIA OWUSUAA APPIAH (MRS) THE CIRCUIT COURT JUDGE.

SUIT NO: C5/169/2023

MAVIS OWUSU SEKYERE
H/NO PR AB/093
NEWLAND- AFIENYA **PETITIONER**

V

BAFFOUR AGYEMANG SARKODIE
ACCRA **RESPONDENT**

JUDGMENT

Petitioner herein on the 7/9/2021 instituted the instant petition against Respondent herein praying the court for the reliefs below;

i. That the said marriage between the parties be dissolved.
ii. That the Respondent be ordered to refund to the Petitioner an amount of Forty Four Thousand, Seven Hundred and Fifty Five United States Dollars ($44,755.00.) she gave to the Respondent to purchase cars for commercial activities which he has failed to account.

Respondent upon service of the Petition entered appearance and filed an answer and cross petition against Petitioner for a sole relief ie that the marriage contracted between the parties be dissolved.

The unchallenged facts from the pleadings of the parties are that parties herein got married on the 13/4/2013 under the ordinance (Cap 127) in Accra. After the marriage, parties cohabited at Kuntunse Damas 2 for some time before Petitioner left for the United States of America where she ordinarily reside and is currently domiciled whilst Respondent on the other hand

resides in Ghana. There are no issues of the marriage neither has there been any previous court proceedings in respect of the marriage. Both parties aver that they have not lived together as husband and wife for the past two years and that the marriage celebrated them has broken down beyond reconciliation citing unreasonable behaviour of the other as the cause of the break down of the marriage.

The court per the pleadings of the parties has to determine the following issues

1. Whether or not Petitioner or Respondent has behaved in a manner that is unreasonable to expect the other spouse to continue living as husband and wife.
2. Whether or not the marriage celebrated between the parties has indeed broken down beyond reconciliation as claimed by Petitioner.
3. Whether or not Respondent is liable to refund the sum of Forty-four thousand US Dollars to the Petitioner.

There is only one ground for dissolution of a marriage under the laws of Ghana. Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 states "The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation." Section 2(3) of Act 367 provides "Although the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation." The court is therefore mandated to satisfy itself by evidence that indeed the marriage between the parties has broken down beyond reconciliation before a grant of dissolution. Section 2(1) of Act 367, has outlined several instance which suffice as proof of break down of a marriage. A petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation.

In the case of **ADWUBENG V DOMFEH (1997-98) 1 GLR 282** it was held per holding 3 as follows: *"...And sections 11(4) and 12 of NRCD 323 clearly provided that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities".* In the case of **ARYEH & AKAKPO V AYAA IDDRISU [2010] SCGLR 891**, the

Supreme Court unanimously held that a party who has counterclaimed bore the burden of proving his counterclaim on the preponderance of probabilities and would not win on that issue only because the original claim had failed. See the cases of **Malm v Lutterodt [1963] 1 GLR SC & Apea v Asamoah [2003-2004] 1GLR SC 226, 246**.

Both Petitioner and Respondent therefore assume the onus to lead sufficient evidence in support of their assertions and their relief(s).

Parties testified solely without calling any witnesses in support of their cases. Petitioner tendered in evidence the marriage certificate as exhibit A, Hospital records of Rochester Fertility Care as Exhibit B, B1 to B13, Money gram receipts as exhibit C, C1 to C 38, Loan forms as exhibit D, D1 to D6, Email correspondence between Petitioner and USCIS as exhibit E, E1 and Econolodge Choice Hotel receipt as exhibit F. No exhibit was tendered by Respondent

Issue one- whether or not the Petitioner or Respondent has behaved in a manner that is unreasonable to expect the other spouse to continue living as husband and wife.

Section 2(1)(b) of Act 367 provides that where the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the

respondent same suffice as proof of the break down of the marriage beyond reconciliation.

Both Petitioner and Respondent ground for seeking the dissolution of their marriage is unreasonable behaviour of the other. Per marriage certificate, exhibit A, the marriage between parties herein was held on the 19/4/2013 at the Principal Registrar of Marriages Office Accra and not 13/4/2013. Petitioner testified that Respondent denies her sex, finds fault with whatever she does, treat her with total lack of affection and consideration causing her distress, embarrassment and anxiety. According to Petitioner she had undergone two fertility test that disclosed she had no issues conceiving (see exhibits C, C1) however Respondent's became irritated whenever he was called to join her in the bedroom and his ulterior motive for marrying her was for her to file documents for him to attain US Citizenship. Petitioner further stated that Respondent had squandered her money given to him to buy cars for commercial activities amounting to Forty-Four Thousand Seven Hundred and fifty United States Dollars. Respondent denied these alleged acts and contended on the other hand that Petitioner had on several occasions informed him that she was no longer interested in the marriage and would botch any attempts at reconciliation and issued a stern warning to him that if the family does not abate their reconciliation, she would subject him to much torment in the marriage. He averred that Petitioner continuously accuses him of adultery without any justifiable reasons and on one occasion when he visited Petitioner abroad, she drove him out of the home and threw out his things into the street amidst hooting and shouting subjecting him to the mercy of the cold weather abroad. Respondent further averred that Petitioner has vowed to concoct stories to have him arrested by the police or the immigration in the US.

What suffices as unreasonable behaviour has been discussed in the case of **Mensah v Mensah [1972] 2 GLR 198. Hayfron-Benjamin** held that "In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all

circumstances constituting such behavior including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova's Charter. The test is objective".

Also in the case of **Knudsen v Knudsen [1976] 1GLR 204, Amissah JA** stated that "the question therefore is whether the Petitioner established that the Respondent behaved in such a way that he could not reasonably be expected to live with her. Behaviour of a party which would lead to this conclusion would range over a wide variety of acts. It may consist of one act if of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so."

The evidence of the parties in respect of their assertions of unreasonable behaviour remained the evidence of one against the other or the oath of one against the other's oath. Marriage understandable is not like commercial transactions that are usually documented and other forms of evidence available. This notwithstanding he severity of the allegations of unreasonable behaviour made against each other by the parties require cogent evidence to warrant a finding of such against one or both parties. The disputed evidence of the parties and the insufficient evidence in support of same, the court unable to find unreasonable behaviour against either of the parties as claimed in the case of both Petitioner and Respondent.

ISSUE 2-Whether or not the marriage has broken down beyond reconciliation.

Parties herein both aver in their pleadings that their marriage has broken down beyond reconciliation and pray the court to dissolve same. It has been held that in a divorce petition, the court should carefully consider all the evidence before it: for a mere assertion by one party that the marriage has

broken down will not be sufficient. See the case of Ash V. Ash (1972) 1 ALL ER 582.

Unchallenged evidence on record discloses that parties had and not lived as husband and wife for a period of 2 years immediately preceding the presentation of the petition. **Section 2 (1d) of Act 367** provides that where a petitioner proves "that the parties to the marriage have not lived as husband 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 the 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 despite the refusal".

Respondent herein does not only consent to the dissolution of the marriage but also cross-petition for dissolution of the marriage. The evidence on record discloses that there have been lots of disagreements, distrust, confrontations and differences between the parties. Petitioner believes the intentions of Respondent in marrying her was solely to attain US Citizenship and has not gone further to report her suspicions to the US immigration Services halting/stopping the process (see exhibits B, B1) Parties further testify that attempts at settlement of their disagreements, confrontations and differences by their respective families failed leading to the parties not living together as husband and wife for a period of 2 years preceding the presentation of this petition and about 4 years now.

In the case of **KOTEI V KOTEI [1974] 2 GLR 172, Sarkodee J** held as follows, "The sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. But the petitioner is also obliged to comply with section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that section... It is accepted that proof of one or more of the facts set out in section 2 (1) is essential and that proof of one of them shows the marriage has broken

down beyond reconciliation. It is also conceded thatnotwithstanding proof the court can refuse to grant the decree of dissolution on the ground that the marriage has not broken down beyond reconciliation. It will be noted that the discretion given to the court is not a discretion to grant but to refuse a decree of dissolution. This means that once facts are proved bringing the case within any of the facts set out in section 2 (1) a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that special grounds exist justifying the exercise of the court's power. Once he or she comes within any one of the provisions in section 2 (1) (e) and (f), the presumption is in his favour; proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation. Proof of five years' continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage."

The court is therefore satisfied based on the evidence on record that parties have failed to live together as husband and wife for over 2 years leading to break down of the marriage celebrated between the parties on the 19/4/2013 beyond reconciliation.

Accordingly, the court decrees the said marriage celebrated between parties herein at the Roman Principal Registrar of Marriages Office Accra on the 19/4/2013 be and same is dissolved today the 15th day of May, 2023.

Issue three- Whether or not Respondent is liable to refund the sum of Forty-four thousand US Dollars to the Petitioner.

Petitioner claims against the Respondent the refund of $44750 being monies she remitted to Respondent for the purchase of auction vehicles. According to the evidence of Petitioner, in the year 2024 and 2015 she took loans totaling $44,750 and sent them to Respondent for the purchase of auction vehicles for

repair and sale through money Gram. Petitioner tendered exhibit D series as proof of the loans she took and exhibit C series as evidence of the remittances she sent to Respondent. Petitioner's case is that Respondent failed to purchase the vehicles with the monies and had squandered the entire sums. She therefore prays the court for a refund of the amount of $44750.

Respondent vehemently denied receiving monies from Petitioner for the purchase of auction cars. He contended that he when they decided to file for US Visa for him, upon advice from Petitioner's lawyer and others helping, Petitioner sent monies she would spend when she comes to Ghana to him He stated that the monies sent by Petitioner to him were for her use when she comes to Ghana and he did not use same for his personal use and that he was only to keep the receipt for presentation at the embassy to prove that Petitioner can take care of him till he gets a job should he join her in the USA. Respondent admitted that Petitioner contributed an amount to add up to money he had for the purchase of a private vehicle for their personal use but denied receiving $44755 for his personal use or the purchase of vehicles or squandering same. Respondent further denied knowing about the loans Petitioner took from financial institutions in the USA during the subsistence of the marriage.

Counsel for Respondent in his submission contends that Petitioner has failed to establish the basic requirement of a valid contract especially the intention to create legal relations. Counsel for Petitioner contends that exhibits D and E series are proof of the loans she took and remitted to Respondent for the auction car business.

It is trite learning that marriages unlike contracts are usually not documented and proper accounts kept for evidential and accountability purposes. Both counsel for Petitioner and Respondent in their written addresses to the court refers the court to the Balfour v Balfour (1919)2KB 571 and Anan v Tagoe (1989-90) 2 GLR 8 in support of their argument for the court to grant and refuse the relief for Respondent to refund the said $44,750.

In the English case of **Balfour and Balfour, ArtkinLJ** at page 576 held that common law does not regulate the form of agreements between spouses. The promises are not sealed with seals and sealing wax. The consideration that really obtains for them is that natural love and affection which counts for so little in these cold courts. In the Ghanaian case of **Anang v Tagoe, Brobbey J** as he then was also held that in the normal run of affairs, transactions between a man and his wife cannot be viewed with the same scrutiny which is associated with commercial transaction pertaining to business people for purchases and such like matters to be formally documented or receipted.

This notwithstanding, for the court to make a determination in favour of the Petitioner in respect of this contested issue, she must lead evidence that establishes her case as more probable than that of the Respondent. This evidence may be in any form so long as it makes her story more probable than that of the Respondent.

The Supreme Court in the case of **DON ACKAH V PERGAH TRANSPORT LTD [2010] SCGLR 728 at 736,** held as follows "It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence".

From the evidence before the court, the loans allegedly taken by Petitioner and remitted to Respondent were taken in the year 2014 and 2015 as evinced by exhibit D series. A perusal of exhibit E series which Petitioner tenders as

evidence of remittance of the said loan amounts to Respondents dates from 2014 through to 2018 i.e a period of 5 years. Exhibit E series further reveal varied remittances between $100 and $500 save one time when $1900 was remitted (see exhibit E3). The sums remitted to Respondent per exhibit E series over a period of five (5) years does not appear to be remittances for a business transaction as claimed by Petitioner. Further, Petitioner contends that although she came to Ghana every year and never saw any of the said auction cars, she did not raise issues about it because of her marriage to Respondent.

Going by her own evidence, monies for the auction car business were supposedly sent to Respondent in 2014 and 2015. Respondent never established the said business. Despite evidence keeping and accountability in marriages not being the same as in commercial transactions, ordinarily considering the quantum of money allegedly taken as loan by Petitioner and remitted to Respondent in 2014 and 2015, same would have been a subject matter for discussion or consideration between the parties at a point in time. Petitioner admits she came to Ghana every year for a visit and not once saw any of the cars she had sent a whooping total sum of $44,750 for their purchases but she never probed or raise an issue with Respondent over same.

The conduct of Petitioner in respect of the alleged loans and their remittance to Respondent by not demanding accountability since 2014 till 2021 in the application for dissolution of the marriage in 2021 i.e over 5 years on negatives any suggestion that any remittances were meant for commercial transaction. The court is therefore unable to find that Petitioner sent $44750 to Respondent for auction car business.

Accordingly relief 2 of the Petition is dismissed. There shall be no order as to cost.

PETITIONER'S LAWFUL ATTORNEY PRESENT.
RESPONDENT ABSENT

MICHAEL YEBOAH HOLDING THE BRIEF OF MR ERIC ASSUMAN FOR PETITIONER PRESENT

MR ODEI KROW FOR RESPONDENT PRESENT

(SGD)
H/H AFIA OWUSUAA APPIAH (MRS)
CIRCUIT COURT JUDGE