

**IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 31ST DAY
OF MARCH, 2023 BEFORE HER HONOUR AFIA OWUSUAA APPIAH
(MRS) CIRCUIT COURT JUDGE**

SUIT NO.: C5/385/2021

**RAPHAEL KUMAKO ADOLPHUS
69 RING ROAD WEST ACCRA
P.O. BOX AN 7933**

PETITIONER

V

**JOSEPHINE NAA KORKOR ADENYINAA
CONFIDENCE INTERNATIONAL SCHOOL
OLEBU- ACCRA**

RESPONDENT

JUDGEMENT

Parties herein got married under the ordinance on the 1st of September 2012 at Max Duodu Presbyterian Church Laterbiorkorshie Accra and are blessed with two children namely Michael N.K Adolphus and Richmond N.Y Adolphus. Petitioner on 14/6/2017 issued this petition against the Respondent averring that the marriage celebrated the parties has broken down beyond reconciliation due to the unreasonable behavior of Respondent. He therefore prayed the court for the following reliefs; a. That the said marriage be dissolved.

b. That the Petitioner be granted custody of the two children of the marriage, with visiting rights to the Respondent.

c. That the uncompleted building located at Olebu be declared not to be a matrimonial home and not an asset for the parties to share.

d. An order to the Respondent to relocate from the uncompleted building to a place of her choice with immediate effect.

Respondent upon entering appearance filed her answer and cross-petition denying any unreasonable behavior as alleged by Petitioner and cross-petitioned as follows;

1. Dissolution of the ordinance marriage celebrated between the parties.

2. Custody of the issues of the marriage should be given to the Respondent with reasonable access to the Petitioner.
3. An order for the equitable distribution of property acquired in the course of the marriage including the property at Olebu.
4. An order for the Petitioner to provide suitable accommodation for the Respondent and the issues of the marriage.
5. An order for the Respondent to pay One Thousand Five Hundred Ghana cedis (GH¢1,500.00) monthly for the maintenance of the issues subject to an annual review from the date of judgement.
6. An order for the Respondent to pay the school fees, medical fees and other incidental expenses of the issues.

ISSUES TO BE DETERMINED.

- a) Whether or not respondent has behaved in a manner that Petitioner cannot reasonable be expected to live with her as husband and wife.
- b) Whether or not the marriage celebrated between the parties herein has broken down beyond reconciliation.
- c) Whether or not custody of the children of the marriage should be granted to Petitioner or Respondent.
- d) Whether or not the matrimonial home is a jointly acquired property of the parties.
- e) Whether or not the Respondent is entitled to equitable share in the matrimonial home.
- f) Whether or not Petitioner is liable to provide accommodation for Respondent and the children.
- g) Whether or not Petitioner is liable to pay One Thousand Five Hundred Ghana cedis (GH¢1,500.00) monthly for the maintenance of the issues subject to an annual review from the date of judgment.
- h) Whether or not Petitioner is liable to pay the school fees, medical fees and other incidental expenses of the issues.

Issue 1 and 2 - Whether or not respondent has behaved in a manner that Petitioner cannot reasonable be expected to live with her as husband and wife. & Whether or not the marriage celebrated between the parties herein has broken down beyond reconciliation.

Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 provides that “The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”.

Under section 2(1) of Act 367, 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 **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.”

Both parties prayed the court for the grant of their respective reliefs. They both therefore had to establish their assertions on the preponderance of probabilities. Section 12(2) of Act 323 defines preponderance of probabilities as “*Preponderance of the probabilities*” means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.” 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**. Respondent therefore also must lead evidence to prove his assertions/allegations.

Petitioner alleges unreasonable behaviour of respondent as his ground for seeking the dissolution of the marriage. Section 2(1b) of Act 367 stipulates that if the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with him/her as husband and wife same is proof that the marriage has broken down beyond reconciliation.

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 that 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.”

Petitioner’s case per his Petition filed on 24/7/2020 is essentially the same as his witness statement adopted by the court as his evidence in chief on 1/7/2022. Petitioner evidence is that after the marriage celebration, Respondent started showing signs that suggested she regretted marrying him and kept mentioning a name Carl as the love of her life whom she should have married. He stated that Respondent was quarrelsome with other tenants in their rented matrimonial home resulting in friction between her and the Landlady. He therefore took a loan and discounted 20% of his provident fund

to complete a building he was putting up on a land he acquired before the marriage. After building same to habitable state, Respondent refused to move into same with him. He therefore had to moved into the house alone with hopes that Respondent would join him soon. This turned out not so.

Respondent after months of separation turned up at his work place and openly accused him of having an affair with his married female colleague, an act that could have caused him his job as an accountant of a religious organization. He therefore applied to the court for divorce but parties reconciled and had the petition struck out. Soon thereafter, Respondent joined him at his uncompleted building but was full of bitterness and retribution for no apparent reason. He contended that Respondent would insult him at the least provocation, goes out for long hours, returns late at night and receives calls at late hours. He continued that Respondent continued with her behaviour of insulting him and his family and failed to listen to any advice his mother gave her. He stated that one day whilst replacing the Sim card of Respondent in a new phone he had bough for her, he saw a number save "My Soul" on the sim. He found out the real name of the person behind that number to be one Collins Sackey and also observed numerous phone calls at odd hours by this number. When he confronted Respondent, she boldly told him the said man was her lover and that she considered herself single. Three days after this confrontation, he returned from work and met his children and their aunty taking an unusual stroll in the neighborhood during a black out. He stated that he advised them not to go too far and went to the house but stayed outside the house listening to programme on the radio. After 30 minutes, this Collins Sackey came out of the main house and in less than 5 minutes, Respondent also came out. When he confronted the man on what he was doing alone in a room with his wife in the darkness, the man ignored him and went his way. Respondent continues to provoke him with abusive language and actions intended to draw him into a physical fight. Petitioner continued that after the presentation of the petition before this court, he decided to personally pay the school fees of the children as he had always

done through the Respondent. He found out surprisingly that because of Respondent being a staff at the school, their children were liable to pay only half of the school fees and had been billed and been paying only half school fees contrary to Respondent always taking the full school fees amount from him. Petitioner contends he can no longer reasonable live with Respondent as husband and wife.

Respondent just like the Petitioner case per her answer and cross-petition is substantially the same as her witness statement adopted by the court as her evidence in chief on the 26/8/22. She stated that there had been some altercations between her and other co-tenants but same were not occasioned by unreasonable behaviour on her part. Respondent testified that her refusal to move into the uncompleted matrimonial home with respondent was because she was recovering from surgery. She further testified that the man Petitioner saw coming out of the matrimonial home was a family friend she was seeing off. Under cross-examination however, it came to light that Respondent's refusal to relocate to the matrimonial home with Petitioner was not as a result of recuperation from surgery. Below are excerpts from the cross-examination;

Q: You told the court that page paragraph 11 that you refused to follow me to my new place because you were recovering from surgery not so

A: Yes. I stand by it

Q: You gave birth to our last born on 15/6/2018

A: That is so

Q: You agree with me that from 15/6/2017 to 30/6/2018 is a little over 1 year not so

A: It's less than a year

Q: Within this period apart from the child birth did you have any other surgery

A: No my Lord

Q: I put it to you that you started working after three months of delivery

A: True

- Q: How then did you refuse to follow me to our home after a year of delivery using the surgery
- A: It was because when you go to work you don't come back early and the place was dark. I was also treating my surgery and periodically fell ill. I resorted to my neighbor for assistance. I therefore told you to wait till I was strong enough but you packed all the things and left me in the house.
- Q: I put it to you that you have never stepped into the house let alone know that the place is dark
- A: I wasn't referring to the new place in terms of the place being dark. I meant our old place

Respondent's mother who testified as DW1 told the court that she sent the gentlemen who was seen coming out of the room by Petitioner to give money to Respondent to be sent to her younger sister in school. Petitioner challenged this evidence. This is what ensued under cross-examination of DW1.

- Q: At the beginning of the marriage you witnessed the challenges of the marriage and you tried to solve them not so
- A: Yes it was petty quarrels but they always listened to my counsel
- Q: At both meeting Respondent kept saying that help her dissolve the marriage or on day you would met her corpse if she stays in it.
- A: I don't remember
- Q: In 2018 June when my wife refused to move with me to my new house you came to live with her
- A: Yes I did
- Q: That time I used to bring housekeeping of GH1,000 to Respondent
- A: The first time he gave same to me personally so I saw it. Subsequently I cannot tell as I was between him and my daughter
- Q: I put it to you that you don't know ...about our marriage
- A: All I know is you accusing my daughter of having an amorous relationship and I came to apologize.
- Q: You are not aware that in 2018 June when my wife called off the

marriage he later convinced me she is ready to marry me again and I allowed her to come and live with me and I did

A: Yes I am aware

Q: Are you also aware that your daughter's antagonism became worst when she came back and she told me she came back not because of the marriage but to claim the property I had acquired, not so

A: I am not aware

Q: Are you also not aware that mother, my aunties and myself begged Respondent not to leave me/marriage

A: No, I am not aware. What I am aware is me and the elders apologizing to him

Q: You are also not that I bought her a new phone to pacify her not to leave me

A: I was not around, so I did not know. It was later that Respondent told me about it

Q: You are not aware that your daughter saved a man name as my soul and when I confronted her she said she had nothing to do with me and was not interested in the marriage

A: I am not aware

Q: When I found out the name being my soul to be Collins Sackey and confronted Respondent she admitted the said person he is her lover. Are you aware

A: I am not aware but the laborer whose son I sent is called Sackey

Q: Again you are not aware that your daughter told me he was going to bring the aid Collins Sackey to my house and that I could kill myself if I wish and indeed brought Collins to the house three days later

A: Yes I am aware but then Respondent told me about it and I told her it was wrong for her to say that she said she was just teasing the petitioner

Q: On 12/5/2021, there was light out in the area and your daughter send out our children and her sister whilst she hosted Mr. Sackey in my

room, are you aware

A: My other daughter i.e. sibling of Respondent told me about this incident and said the man asked her to buy credit (phone credit) for him so she went to buy same with the children

The answers of DW1 corroborated most of Petitioner's assertions, which were denied by Respondent. Respondent therefore appeared to the court not to be credible witness. Petitioner on the other hand has been consistent in his evidence and appears to the court to be credible witness. The court therefore finds the evidence of Petitioner more probable than the evidence of Respondent. The actions of Respondent as testified to by the Petitioner cumulatively amounts to unreasonable behaviour of a spouse.

The court therefore the court therefore finds on the preponderance of probabilities that Respondent has behaved in a manner that it would be unreasonable to expect the Petitioner to continue leaving with her as husband and wife.

It has been held at holding one in the case of **KOTEI V KOTEI [1974]** supra that "once one of the grounds specified in section 2 (1) of Act 367 was proved a decree of dissolution should be pronounced in favour of the petitioner. It was, however, wrong to contend that proof of total breakdown of the marriage and the possibility of reconciliation should be taken disjunctively so as to require firstly, proof of a breakdown and secondly, proof that it was beyond reconciliation". Per holding 2 of the same case, it was held that "Notwithstanding proof of one of the facts showing that the marriage had broken down the court had a discretion to refuse to grant the decree of dissolution on the ground that the marriage had not in fact broken down beyond reconciliation. The discretion given to the court was not a discretion to grant but a discretion to refuse a decree of dissolution. The burden was not on the petitioner to show that special facts or grounds existed justifying the exercise of the court's discretion; once he or she came within any one of the

provisions specified in section 2 (1) (e) and (f) of Act 367 the presumption was in his or her favour.”

Both parties have testified that there have been several attempts to reconcile them. DW1 testified to several times she has reconciled the parties and attempts she had made to reconcile them after the incident with Collins Sackey to no avail. The court is therefore satisfied and finds that the marriage celebrated between the parties 1/9/2012 at has broken down beyond reconciliation.

Accordingly the court decrees the said marriage celebrate on the 1st of September 2012 at Max Duodu Presbyterian Church Laterbiorkorshie Accra be and same dissolved today, the 31st day of March, 2023.

Issues c, f, g, h

“c. Whether or not custody of the children of the marriage should be granted to Petitioner or Respondent.

f. Whether or not Petitioner is liable to provide accommodation for Respondent and the children.

g. Whether or not Petitioner is liable to pay One Thousand Five Hundred Ghana cedis (GH¢1,500.00) monthly for the maintenance of the issues subject to an annual review from the date of judgment.

h. Whether or not Petitioner is liable to pay the school fees, medical fees and other incidental expenses of the issues.”

Permit me to discuss issues c, f, g, h together as same relates to custody and maintenance of the to children of the marriage and analysis may lead to repetitions. Petitioner in his petition prayed the court for custody of the two children of he marriage. Respondent also crossed-petitioned for custody of the children, monthly maintenance of GHc1,500 subject to annual review from date of judgment, order for Respondent to pay the school fees, medical

fees and other incidental expenses of the children as well as accommodation for her and the children. Respondent who made all these claims against Petitioner failed to lead any evidence to justify same but merely repeated these reliefs on oath.

Petitioner in his evidence in chief acceded the grant of custody of the children to Respondent. Petitioner testified that his net salary is GHC1551.6 and that he was agreeable to pay GHC800 as monthly maintenance for the upkeep of two children on the 30th of each month and GHC100 or less a month for accommodation.

The court is mandated under section 22(2) of Act 367 either on its own initiative or on application by a party to proceedings under the Act, make an order concerning a child of the household, which it thinks reasonable, and for the benefit of the child. An order under that subsection may award custody of the child to any person; regulate the right of access of any person to the child; provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage. The court must consider the best interest of the child, the age of the child, the desire to keep siblings together, the need for continuity in the care and the control of the child among others. Section 45 of Children's Act 1998, Act 560, specifically on custody provides that in making an order for custody and or access, a family tribunal/court shall consider the best interest of the child and the importance of a young child being with the mother; the age of the child, preferable for a child to be with the parents except where the rights of the child are persistently being abused by the parents, the views of the child if the views have been independently given, desirability to keep siblings together, the need for continuity in the care and control of the child, and any other matter that the family tribunal/court may consider relevant. There is therefore the legal inclination for children the age of the children herein to be with their biological mother.

Under section 6 of the Children's Act, 2008, Act 560, it is the responsibility of parents of a child whether married at the time of the birth of the child or separated to provide the basic necessities of life for a child including protecting the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression, provide good guidance, care, assistance and maintenance for the child and assurance of the child's survival and development. It is therefore the responsibility of both the mother and father of the child to ensure that a child is provided with all the necessities of life. Both parties therefore have a responsibility to maintain the children and educate them. In making maintenance orders, the court is obliged to consider the financial strength and obligations of the parties. The income of Petitioner is known to the court ie GHC1,551.6 whilst the income of Respondent is unknown although record reflects she was a teacher but now a trader.

From the evidence on record, Petitioner has been a responsible for paying the educational expenses of the children and providing monthly maintenance to Respondent for the upkeep of the home. Considering that parenting is a joint responsibility of both parties, the income of Petitioner, Respondent being a trader and the proposal of Petitioner, the court orders as follows in respect of the custody maintenance and accommodation of the children of the marriage.

- i. Custody of the two children of the marriage is granted to Respondent with reasonable access to the Petitioner especially during weekends, holidays and vacations.
- ii. Petitioner shall pay to the Respondent as monthly maintenance for the two children the sum of GHC1000 to be paid on or before the 30th day of every month save February which payment should be made on the 28th.
- iii. Petitioner shall bear fully the educational expenses of the children of the marriage until they complete tertiary or attain majority.
- iv. Petitioner shall enroll the children unto a Health Insurance Scheme and shall be responsible for the periodic renewal of same.

- v. Any medical expenses not covered by the Health Insurance Scheme shall be borne equally between the parties herein.
- vi. The parties shall take all decisions regarding the educational and medical issues of the children jointly.

Issue d - Whether or not the matrimonial home is a jointly acquired property of the parties.

Respondent claims the matrimonial home situate at Olebu is a jointly acquired property of the parties and prays the court for equitable distribution of same. Petitioner denied the property being a jointly acquired property. From the evidence of both parties, the land on which the matrimonial home is situated was acquired by Petitioner prior to the marriage but same was developed during the subsistence of the marriage. Petitioner's evidence that he solely financed the building is not in dispute.

Article 22 (2) of the 1992 constitution of the Republic of Ghana

provides "Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses." *With a view to achieving the full realization of the rights referred in article 22 clause (2) of the 1992 constitution of Ghana which guarantees property rights of spouse, article 22 (3)(b) provides that Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.* In the latest Supreme Court case of **PETER ADJEI vs. MARGARET ADJEI [2021] DLSC 10156**, His Lordship Justice **Appau** delivering Majority decision held "We wish to emphasize that there is a reason behind the abandonment of the substantial contribution principle, which was hitherto used to determine the nature of property acquired during the subsistence of a marriage where it was established that only one spouse, particularly the male spouse, single-handedly did physically acquire the properties. It was buttressed on the understanding that the role of the wife in keeping the home by cooking for the family and preparing and performing

other chores that enables the man to have a peace of mind to acquire the properties, is a form of contribution.” This presupposes that evidence of the type of contribution i.e financial or the spouse making that assertion must establish whatever services and support he or she may have contributed i.e domestic contribution to aid the acquisition of the said property.

Respondent failed to lead any evidence on any substantial contribution she made towards acquisition of the property. From the evidence, Respondent refused to move into the said house with the Petitioner upon completion for several months compelling Petitioner to file for dissolution of the marriage. It was not until the withdrawal of the petition or divorce by Petitioner that Respondent moved into the matrimonial home. the record does not disclose any acts done substantial contribution made by Respondent towards the acquisition of the said property. Accordingly, the court declares the said property i.e house situate at Olebu the sole property of the Petitioner. Respondent is therefore not entitled to equitable share of same.

Issue e – Whether or not Petitioner is liable to provide accommodation for Respondent and the children.

Petitioner in his evidence in chief admits liability to provide accommodation for Respondent and the children. He proposes to pay GHC100 or less monthly for the accommodation of Respondent and the children. Petitioner contends that Respondent can secure a good accommodation around her workplace with GHC100 or less. Respondent did not challenge this evidence and also failed to tell the court the monthly rent of the accommodation she seeks Petitioner to provide. The court considers the maintenance orders made in respect of the children against Petitioner supra, his income and the fact that Respondent as a mother also has responsibilities to discharge towards the upkeep of the children. The court however taking consideration of the current accommodation situation of the country is of the opinion that rent at GHC100 would be inadequate to secure a standard accommodation for the children of

the marriage and Respondent. Accordingly, the court orders Petitioner to pay two years accommodation at a monthly rent of GHC200 to Respondent to enable her find suitable accommodation for herself and the two children of the marriage. Currently Respondent and the children reside in the matrimonial home. Petitioner is ordered to pay the said two years rent to Respondent within six (6) months from date of judgment. Until the payment of the two years rent advance to Respondent by the Petitioner, the former and the children shall continue being in occupation of the matrimonial home. Respondent shall however vacate and yield vacant possession of the matrimonial home to the Petitioner within 30 days after receipt of the two years rent.

Conclusion

The court at the close of the entire case determines enters judgment in favour of Petitioner as follows;

- i. The marriage celebrated between the Petitioner and Respondent herein 1st of September 2012 at Max Duodu Presbyterian Church Laterbiorkorshie Accra be and same is decreed dissolved today the 31st day of March 2023 forthwith.
- ii. Custody of the two children of the marriage is granted to Respondent with reasonable access to the Petitioner especially during weekends, holidays and vacations.
- iii. Petitioner shall pay to the Respondent as monthly maintenance for the two children the sum of GHC1000 to be paid on or before the 30th day of every month save February which payment should be made on the 28th.
- iv. Petitioner shall bear fully the educational expenses of the children of the marriage until they complete tertiary or attain majority.
- v. Petitioner shall enroll the children unto a Health Insurance Scheme and shall be responsible for the periodic renewal of same.
- vi. Any medical expenses not covered by the Health Insurance Scheme shall be borne equally between the parties herein.

- vii. The parties shall take all decisions regarding the educational and medical issues of the children jointly.
- viii. Petitioner is declared the sole owner of the matrimonial home situate at Olebu.
- ix. Petitioner shall pay two years rent at GHC200 per month to Respondent within 6 months from date of judgment.
- x. Respondent shall vacate and yield vacant possession of the matrimonial home to Petitioner within 30 days after receipt of the two years rent from Petitioner.
- xi. Until the payment of the two (2) years rent amount in (ix) supra, Respondent and the children of the marriage shall continue living in the matrimonial home at Olebu.
- xii. Parties to bear their respective cost.

**PETITIONER PRESENT
RESPONDENT ABSENT**

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

