

IN THE CIRCUIT COURT 3 GHANA HELD AT ACCRA ON FRIDAY THE
28TH DAY OF APRIL, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL
(MRS.), CIRCUIT COURT JUDGE

SUIT NO. C5/130/2023

CYNTHIA ABA BENYAH

PETITIONER

VRS

QUINCY KOFI BENTSIL SYLVANUS

RESPONDENT

PARTIES PRESENT AND REPRESENTED

JUDGMENT

The Parties to this suit got married under the ordinance on May 9, 2015 at International Central Gospel Church Christ Temple Accra. The parties have one child of the said marriage. The Petitioner is seeking the dissolution of the marriage on the grounds of unreasonable behaviour on the part of the Respondent. The Petitioner prayed to the court as follows:

1. That the marriage celebrated between the parties be dissolved.
2. An order granting custody of the issues of the Marriage to the Petitioner with reasonable access to the Respondent.
3. That the Respondent be ordered to provide for accommodation and

maintain the issue of the marriage including payment of school fees and all educational needs, medical bills and all other necessities.

4. An order directing the Respondent to pay a lump sum of Fifty Thousand Cedis as Financial Settlement.
5. That the Respondent be ordered to pay the cost of this Petition

The Respondent did not contest the petition, save that reason given by Petitioner for the grant. The Respondent cross-petitioned for the following relief(s)

1. That custody of the issue should be granted to the petitioner with reasonable access to the Respondent. Particularly on weekends.
2. The Petitioner will pay GHC500.00 monthly for the general upkeep of the child
3. The Respondent be made to choose the school for the child, pay school fees, health and feeding whereas the Petitioner takes care of the accommodation and other necessities
4. Petitioner is ordered to return Respondent's property she took away unlawfully when she deserted the matrimonial home. The items are one LG television, one Samsung television, one air NASCO conditioner, a mattress, Kitchen items, gas cylinder, halogen oven and an LG refrigerator in good working condition.
5. The Petitioner be ordered to pay alimony of GHC50,000.00 to the Respondent.

Section 1(2) of the Matrimonial Cause Act, 1971 (Act 367) states that the sole ground for granting a petition for divorce shall be that

the marriage has broken down beyond reconciliation. In addition, the court before which such a petition is presented is required by law to determine as a fact that the marriage, has indeed broken down beyond reconciliation. In Support of this, Section 2(3) of Act 367 provides as follows:

Notwithstanding that 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.

Section 2(1) of Act 367 stipulates the facts which a petitioner or a cross-petitioner may rely on to prove that the marriage which is sought to be dissolved has broken down beyond reconciliation as follows,

- a. That the Respondent has committed adultery and by the 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 two years 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 two years immediately preceding the presentation of the Petition and the Respondent consents to the grant of a decree of divorce: provided 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; or

- e. That the Parties to the marriage have not live as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f. That the parties have after diligent effort been unable to reconcile their differences.

The Petitioner prayed that the marriage between the parties be dissolved on the basis of unreasonable behaviour on the part of the Respondent. Whilst the Respondent prayed that the marriage be dissolved on grounds of desertion on the part of the Petitioner.

The parties have filed terms of settlement on the ancillary reliefs on March 15, 2023.

The only issue remaining for the court to determine is whether or not the marriage celebrated between the parties has broken down beyond reconciliation and same can be dissolved.

Unreasonable behaviour is a conduct that gives rise to injury to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger. In **Ansah v Ansah [1982-1983] GLR 1127-1133, Owusu-Addo J** held that:

“The test under the section, 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.”

In the case of **MENSAH V. MENSAH (1972) GLR** the Court held that ‘the conduct complained of must be sufficiently grave and weighty enough to justify the finding that the Petitioner cannot reasonably be expected to live with the Respondent. Mere trivialities will not suffice. The parties must be expected to put up with what has been described as reasonable wear and tear of married life”

In **Mensah v Mensah [Supra]**, Hayfron-Benjamin defined what amounts to unreasonable behavior when he held as follows,

“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 behaviour 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 Casanova’s Charter. The test is objective.”

In considering whether one party has good cause for leaving the other much depends on whether the conduct of the other is of a grave or weighty character as to amount, in law, to cruelty: **see Gollins v. Gollins [1963] 2 All E.R. 966, H.L.** Conduct which is of a grave or weighty nature may sometimes fall short of cruelty if it lacks the element of injury to health as in **Edwards v. Edwards [1950] P. 8, C.A.**

The main issue for determination is; whether or not the marriage celebrated between the Petitioner, Francisca Naa Aku Allotey and the Respondent Max Nii

Amartey on December 23, 2017 at Prisons Interdenominational Church Cantonments Accra has broken down beyond reconciliation?

In support of her Petition, the Petitioner stated in her evidence to this Court that the parties were married under Ordinance on May 9, 2015 in Accra. She tendered Exhibit A, their marriage certificate to prove the existence of their marriage. According to the Petitioner, the Respondent has behaved in such a way that she the Petitioner cannot be expected to continue in the marriage. The Petitioner stated that after their marriage they cohabited at Banana Inn in Accra. Their union is blessed with one child, Daryl Bentsil – Sylvanus aged 5. Petitioner stated that the Respondent leaves home and returns late after 7:00pm. This means she has to live in the house alone. As a result, there is no one available to lend her a hand when she suffers any medical condition at home. She has suffered miscarriage of pregnancy and has also had still birth before having their only child. The Respondent also has amorous relationship with other women as a result one of the women walked to their matrimonial home to confront Petitioner on the issued. During the confrontation, it came

to light that the Respondent had amorous relationship with the said woman. The Respondent as a result of his relation to other women has two children who are not children of the Petitioner during the subsistence of their marriage. Again, the parties tried to relocate to United Kingdom with their child but they were refused visa. Thereafter the Respondent kept threatening that he will relocate with the child alone. This made the Petitioner apprehensive as the parties only have one child. Petitioner reported the matter to the Police. At the Police station the Respondent misbehaved and he was arrested. The Police advised Respondent to leave the matrimonial home for the Petitioner and the child or that the Respondent will find another accommodation and leave the matrimonial home Two months after this incident, the family of the Respondent, comprising of his mother, uncle and sister come to the matrimonial home in the absence of the Respondent to tell Petitioner that she should let her family bring the drinks to dissolve the marriage. When Respondent was informed about this situation by his family he did not contest it. Thereafter the Respondent behaviour changed towards the Petitioner and he would leave the matrimonial house for about 3 months without returning and without notice to the Petitioner. The situation caused the Petitioner to be depressed and could not live alone in the house so, she had to go out and rent an accommodation and leave to the new accommodation with their child. The Petitioner prayed that the court dissolves the marriage as the parties have for the past 6 years not lived as husband and wife.

In response, the Respondent denied the Petitioner assertions and told the court in evidence that the Petitioner deserted the marriage about 3 years ago and has also behave unreasonably. Respondent further stated that the Petitioner took his son with her and has since denied him of having access to his son. According to Respondent the Petitioner left the matrimonial home voluntarily and she went along with some household items. The Petitioner uses the police to harass Respondent any time he tries

to take his son overnight. On this issued the Petitioner has caused the Police to arrest him on two different occasions. The Petitioner also disrespects him. She is abusive, she even caused her maid of honour to insult him miserably on phone. The Petitioner is also not in any employment. Respondent tried to set her up and sponsored her to Dubai for that purpose, it yielded no results. The Respondent prayed that the court grants his reliefs.

The parties prayed that the court adopts the terms of settlement filed on March 15, 2021.

Both parties have indicated that they have for the past 3 years not lived as husband and wife.

After considering the evidence of the parties as a whole, the court finds from the Petitioner's evidence that indeed the parties have differences. The parties have not been able to settle their differences. Each party has complained of some differences, which has brought the separation between the parties. Consequently, the court finds that it is the parties inability to reconcile their difference as provided under **section 2(1)(f) of the Matrimonial Causes Act, 1971 (Act 367)**, is the ground necessitating the situation which the parties find themselves and not unreasonable behaviour on the part of either party. This Court, can only conclude that indeed this marriage relationship has broken down beyond reconciliation.

DECISION

1. The Court hereby declare that the marriage celebrated between the Petitioner, Cynthia Aba Benyah and Quincy Kofi Bentil – Sylvanus the Respondent, herein on May 9, 2015 at the International Central Gospel Church, has broken down beyond

reconciliation and same is hereby dissolved. The marriage certificate No. ICGC 29/2015 is accordingly cancelled. A decree of divorce is hereby granted.

2. I will make no order as to cost.

On the ancillary reliefs, filed by the parties on March 15, 2023, as stated below, it is adopted as consent judgment.

1. That the Custody of the issue of the marriage namely Darly Bentsil-Sylvanus to remain in the custody of the Petitioner with the Respondent having reasonable access to him more particularly on official school vacations, weekends and holidays.
2. That the Respondent shall be responsible for school fees, health and other educational needs and feeding of the minor. In addition,

- the Respondent shall pay the amount of GHC500.00 monthly to the Petitioner for the general up keep of the minor.
3. Either party shall seek the consent of the other if he/she intends to travel out of Accra or outside the territory of Ghana with the minor.

LEGAL REPRESENTATION

EDITH MENSAH FOR THE PETITIONER

MAXWEL TETTEH FOR THE RESPONDENT

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT COURT JUDGE)**