

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA FRIDAY, THE 17TH
DAY OF MARCH, 2023 BEFORE HER LADYSHIP ROSEMARY BAAH TOSU
(MRS)- HIGH COURT JUDGE SITTING AS AN ADDITIONAL CIRCUIT
COURT JUDGE.

SUIT NO: C5/92/2022

ELIZABETH SHORMEH ADUAMAH
*NO. 10-15 LANE, FERTILIZER
TESHIE, ACCRA*

PETITIONER

VS

REV. SAMUEL TETTEH AHULU
*140, CASALS PLACE
APT. 15E
BRONX, NY, 10475
USA*

RESPONDENT

.....
JUDGMENT
.....

Parties who are a trader and pastor, respectively, were married customarily, in Kwashieman, Accra sometime in 1989. Though they cohabited in Teshie, Accra after the marriage, Respondent became ordinarily resident in the United States of America but occasionally visited Petitioner in Ghana.

There are no issues in the marriage. Petitioner pleads that the marriage is broken down beyond reconciliation, because, Respondent has behaved in such a manner that she cannot reasonably be expected to live with him.

Petitioner again pleads that Respondent has caused her much anxiety and distress because of his behaviour.

Petitioner says that she found out in the year 2000 that the Respondent had undergone, the surgical procedure called vasectomy without her consent. Petitioner says that as a result of this procedure she was deprived of the opportunity of having a child for thirty two years of the marriage.

As a result of disagreements with Respondent on this matter, Respondent deserted the marriage for twenty one years and has since been in desertion.

Petitioner says that all efforts to reconcile the parties have been futile. She prays for the following reliefs from this Honourable Court.

- a. That the customary law marriage celebrated between the parties in 1989 at Kwashieman be dissolved.
- b. That the property situate at No. 10-15 Lane, Fertilizer, Teshie be settled in favour of the Petitioner.
- c. That the Respondent be ordered to pay to the Petitioner, a compensatory lump sum of GH¢100,000.00.
- d. Any further order(s) that this Honourable Court may deem fit.

Respondent has been served with all processes out of the jurisdiction, however, he failed to enter appearance and or file an Answer to the Petition. Petitioner was therefore ordered to file her witness statements and lead evidence in proof of her case.

Petitioner's evidence in sum is that sometime in the year 2000 during the pendency of the marriage, she found out that Respondent had undergone a vasectomy without her knowledge despite being aware that she was very zealous to have her own children.

Petitioner says that this procedure undertaken by Respondent has deprived her of having her own children during the thirty two years of the marriage. Petitioner further testified that after confronting Respondent, the marriage was inundated with a lot of misunderstanding, which led the Respondent to desert the marriage and the matrimonial home.

Petitioner says that Respondent no longer visits their matrimonial home in Teshie, even though she is aware that he occasionally visits Ghana.

Petitioner says that she has also singlehandedly completed their uncompleted matrimonial home at Teshie and subsequently commenced registration of the property with the State Housing Corporation and the Lands Commission.

Petitioner attaches the following documents in support of her evidence

- Lease Agreement between Petitioner & Nii Adjei Otswenmah Nmashie III- Exhibit A
- Picture of the property – Exhibit B

ISSUES FOR DETERMINATION

Per section 1(2) of the *Matrimonial Causes Act, Act 367, 1971*, the sole ground for the granting of a Petition for dissolution shall be that the marriage has broken down beyond reconciliation.

Based on this finding, the Court goes ahead to deal with other ancillary reliefs. The following issues as set out would help resolve the matter

1. *Whether or not the Marriage celebrated between the parties is broken down beyond reconciliation*
2. *Whether or not the Petitioner is entitled to have the matrimonial home settled on her.*
3. *Whether or not the Respondent is entitled to the alimony of one hundred thousand Ghana cedis. (GH¢100,000)*

The first issue to consider is whether the marriage under consideration is broken down beyond reconciliation. Section 2 of Act 367 provides the grounds which when proven would lead the Court to this conclusion. And it provides as follows

- (1) *For the purpose of showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the Court of 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 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 continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to the grant of a decree; provided that such consent shall not be unreasonably withheld, and where, the Court is satisfied that it has so been 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 lived as man and wife for a continuous period of at least five years 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.

From the evidence led by the parties I surmise that this petition is brought primarily under section 2(1)(e) of Act 367. Jeune P defined desertion in the case of **Frowd vs Frowd (1904) P. 177** as

'Desertion means the cessation of cohabitation brought about by the fault or act of the parties. Therefore, the conduct of the parties must be considered. If there is good cause or reasonable excuse, it seems to me there is no desertion in law'.

Desertion is said to involve the fact of separation, the intention to desert and lack of consent of the deserted spouse.

The uncontroverted evidence is that Respondent has deserted the matrimonial home for twenty one years, and no longer visits the matrimonial home even when he visits Ghana. Petitioner has also testified that such desertion was without her consent, and it was without just cause too.

In the case of **Kotei vs Kotei (1974) 2 GLR 172** Sarkodee J held

'Where there is proof that the parties had lived apart for a continuous period of five years immediately preceding the presentation of the petition, the court will dissolve the marriage against the will of a spouse who had not committed a matrimonial offence and who could not be blamed for the breakdown of the marriage. But there must be proof that the parties had not lived as husband and wife during that period; there must be a total breakdown of the consortium vitae, mere physical separation was not enough.'

From the evidence led, I find the fact of desertion proved, I therefore conclude that the marriage between the parties is broken down beyond reconciliation and is dissolved accordingly.

The next issue to consider is *Whether or not the Petitioner is entitled to have the matrimonial home settled on her.*

This being a civil matter, the Petitioner must prove her case on a balance of probabilities. Proof on a balance of probabilities has been defined in the Evidence Act, NRC 323 section 12(2) to be the

'the 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/likely than its nonexistence.'

The case of *Bisi vs Tabiri alias Asare (1987-1988) 1 GLR 360* held

'the standard of proof required of a plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on a particular issue. The demand for strict proof of pleadings had however never been taken to mean a call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. Preponderance of evidence became the trier's belief in the preponderance of probability. But probability denoted an element of uncertainty and recognized that where there were two choices it was sufficient if the choice selected was more probable than the choice rejected...'

In the present matter, no alternative has been provided in the form of an Answer to Petitioner's prayer to have the matrimonial property settled on her.

Petitioner has led evidence and provided exhibit A, an indenture between she and the grantors of the land on which the matrimonial home is built. This indenture is duly stamped as LVD21385B/ 2014. In law, Respondent's inability to respond to this suit can be taken as an admission of the matters therein, Respondent is also deemed not to have a defence to the suit.

It was held in the case of *In Re Agbosu vs Kotey (2006) 2 MLRG 137*

"The rule is that where an averment is made that is not challenged, the one making the averment needs not lead any evidence in proof of it."

It is also trite that any allegation which is not denied or challenged in anyway is deemed admitted and proved.

There being no challenge to Petitioner's prayer to settle the matrimonial home on her, house number 10-15 Lane, Fertilizer, Teshie is hereby settled on Petitioner.

The final issue to consider is *Whether or not the Respondent is entitled to the alimony of one hundred thousand Ghana cedis. (GH¢100,000).*

Financial settlement otherwise known as alimony is defined loosely as court - ordered payments awarded to a spouse or former spouse within a separation or divorce agreement. These payments are usually ordered to provide financial support

to the spouse who makes a lower income or no income at all. It is usually paid to help re-establish the receiving spouse. A lump sum payment has the advantage of enabling a spouse to invest and use the income to live on and to meet any liabilities as expenses already reasonably incurred in maintaining themselves or any child of the marriage.

This Court is entitled under section 20 of Act 367 to order that a spouse should make lump sum payments.

- (1) *The court may order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision as the Court thinks just and equitable.*

It is trite that in any lump sum payment a Court ought to consider the financial standing of each of the parties. I refer also to the case of *Obeng vs Obeng (2013) GMJ 158*, which held

'What is just and equitable may be determined by considering the following factors, income, earning capacity, property and any financial resources which each party has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the breakdown of the marriage, the age of each party to the marriage and the duration of the marriage'.

Unfortunately, there has been no evidence led on the standard of living of the parties nor the profession or income of the parties. However, in considering the evidence led, which shows that the parties have been married for about 34 years, the fact of Respondent's desertion of Petitioner for about twenty one years and Petitioner's inability to have her own children due to the actions of Respondent, I find it fair and equitable to award Petitioner the amount of GH¢100,000 prayed for as alimony.

DECISION

Having heard the Petitioner and considered her evidence, I find that the customary marriage celebrated by the parties at Kwashieman in Accra, in 1989 is broken down beyond reconciliation and accordingly dissolved.

Secondly, the matrimonial home at No 10-15 Lane, Fertiliser, Teshie is settled absolutely on Petitioner.

Finally, Respondent is ordered to make financial provision of GH¢100,000 to Petitioner. Costs of GH¢2000 is awarded in favour of Petitioner.

**H/L ROSEMARY BAAH TOSU (MRS)
HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE**