

**CIRCUIT COURT OF GHANA HELD IN ACCRA ON 31<sup>ST</sup> DAY OF AUGUST, 2023  
BEFORE HER HONOUR KIZITA NAA KOOWA QUARSHIE, CIRCUIT COURT  
JUDGE**

**SUIT NO. C5/136/2023**

**DOROTHY KASSUM ELESHIN**

**VS**

**ABDUL SALLAM ELESHIN**

---

---

**JUDGMENT**

---

---

Petitioner present

Respondent absent

On the 22/12/2022 the Petitioner commenced the present action by way of a petition for the following reliefs:

- a. Dissolution of the marriage between the parties;
- b. An order for maintenance of the two children of the marriage;
- c. An order for Petitioner to keep custody of the children of the said marriage;
- d. That Respondent should be ordered to leave the matrimonial home and;
- e. An order for reasonable access to the children of the marriage to be given to the Respondent.

On the same 22/12/2022 the Petitioner filed a notice to appear and on the 21/3/2023 filed an Application to set the matter down for trial.

Petitioner attached Exhibits 'DEK I' (An application for an official search) to indicate that the Petitioner had been duly served with the petition for divorce and has subsequently failed to enter appearance and therefore prayed the court to set the matter down for trial.

On the 19<sup>th</sup> of April, 2023, the Respondent filed an answer to the petition and admitted paragraphs 1 to 7 of the Petitioner's petition.

In response to paragraph 8 (i) he said he has not insulted the Petitioner nor her mother and always remits money to the Petitioner when he returns from the United States of America.

Respondent again denied paragraph 9(i) of the petition that he provokes the Petitioner and was only angry with her once telling her she is abusing her body by working always and never resting. He further denied paragraph 9(iv) and (v) of paragraph 9 and paragraph 10 of the petition and stated that the Petitioner has more money than him and is only interested in collecting dollars from him which he is currently unable to do.

Respondent said there has been no sexual intimacy between the parties and he has not assaulted the Petitioner.

He finally stated at paragraph 11 that he is willing to grant all the reliefs of the Petitioner.

On the 16<sup>th</sup> of June, 2023 Case Management Conference was conducted and the Petitioner gave evidence on the 20<sup>th</sup> of July, 2023, whereupon the court gave the parties the 31<sup>st</sup> of August, 2023 for judgment.

### **PETITIONER'S CASE**

It is Petitioner's case that she married the Respondent under the Mohammedan Customary Law in February, 2008, and subsequently the parties married under the Marriage Ordinance in the year 2012.

She stated that their marriage was blessed with two children Yasmin Eleshin (14 years old) and Iman Eleshin (9 years old).

Petitioner said she and her husband lived at Lapaz Race Course before she Petitioner built her house at Amasaman near Sonitra in Accra.

She is a trader whilst Respondent who was working in the United States of America but comes to Ghana on visits, but is now retired. Petitioner said she and her husband are both Ghanaians and that the marriage contracted between them has broken down beyond reconciliation.

Petitioner itemized the reasons for the break down particularly as unreasonable behaviour of the Respondent and cruelty.

She expatiated that Petitioner has a habit of insulting her anytime there is an argument between them and tells her she will suffer till she dies and extents the insults to Petitioner's mother who lives with them in the matrimonial home.

According to Petitioner, Respondent does not give out any maintenance to her and the children. He however pays their school fees, takes them to school daily and pays medical bills of the children.

Petitioner said the persistent quarrels between herself and the Respondent is affecting the children's schooling as their persistent quarrels makes her not to concentrate in school.

Petitioner cited that she is going through pain anxiety and stress to the extent that she is going to hospital for that. Additionally Petitioner does not allow visitors to come to the house and has provided her with only \$500 since the year 2020.

Finally she said there has been no intimacy between the parties and Respondent recently assaulted her.

Wherefore she prays the Honourable Court to dissolve the marriage and grant the ancillary reliefs prayed for.

### **RESPONDENT'S CASE**

On the 19<sup>th</sup> of April, 2023 Respondent who had not previously entered appearance in response to the petition by his wife, filed an answer to her, petition.

He admitted paragraph 7 of the Petition and as earlier stated by the court denied some paragraphs of the petition.

He further told the court in paragraph 11 of his answers that he is willing to grant all the reliefs of the Petitioner.

### **ISSUE(S) FOR DETERMINATION**

Under the Matrimonial Causes Act, 1971, Act 367 S(1) A petition for divorce may be presented to the court by either party to the marriage.

(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. The court therefore sets the aforementioned issue down for trial and also the following:

- b. Whether the Respondent maintenance the two children of the marriage?
- c. Whether Petitioner should have custody of the children of the said marriage?
- d. Whether Respondent should be ordered to leave the matrimonial home?

e. Whether the Respondent should be given reasonable access.

### **ANALYSIS/EVALUATION OF THE FACTS**

Burden of proof generally

Since the Petitioner has initiated this action the Burden of Proof on a preponderance of probabilities lies with her. This learning finds legislative space **per section 10(1) of the Evidence Act** which states in the relevant part that the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court. It is therefore the duty of the Petitioner to adduce evidence of such quality that on all the circumstances, the trier of fact would not rule against him on the issue.

**Section 10(1) of the Evidence Act 1975 (NCRD 323)** provides that, for the purpose of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

**Section 10(2) of the Evidence Act, 1975 (NCRD 323)** states that, The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

In **Section 11(1) of the Evidence Act** it is provided that, burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issues. By section 11(4) such a party is required to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

Section 14 of the Evidence Act states that;

“Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

In **ACKAH V PERGAH TRANSPORT {2020} SCGLR 728 @ 736**

The Supreme Court per Adinyira JSC said at page 736

*“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 include the testimonies of the party and material witnesses admissible hearsay, documentary and things (often describe 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 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”.*

Section 1(1) of the Matrimonial Causes Act, 1971 Act 367 states that:

The law governing the dissolution of monogamous marriage in Ghana is the Matrimonial Causes Act 1971 (Act 367) Section 1 of Act 367. It states that a petition for divorce may be presented to the court by either party to a marriage and the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under section 2 of Act 367, it further states that 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 factors:

- a. That the Respondent has committed adultery and that by reason of the adultery, the Petitioner finds it intolerable to live with the Respondent;
- b. That the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent;
- c. That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- d. 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;
- e. That the parties to the marriage have not lived as husband 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 difference.

*“A petition for divorce may be presented to the court by either party to a marriage”.*

The only ground upon which the court will grant a petition for divorce is when the marriage is broken down beyond reconciliation, **(section 1(2) of Act 367)**.

The court surmises that the current petition fall under section 2(1)(b) and (f) of Act 367.

At this Juncture the court’s task is to ascertain if the marriage between the parties has broken down beyond reconciliation.

In Knusden vs Knusden (1976) 1GLR 204 CA on the test of unreasonable behaviour it was held:

*“The behaviour of a party which will lead to this conclusion would range over a wide variety of acts”.*

*It may consist of one act if it is sufficient ground of a persistent course of conduct or 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 learned author William Cornelius Ekow Daniels page 308 of the book The Law on Family Relations in Ghana under the heading Test of unreasonable behavior states the following at page 308 of the book.

*“All that a Petitioner is required to do in this context is to give particulars or the extent of the behaviour of the Respondent which has necessitated the presentation of the petition. Thereafter he is required to establish that as a result of that particular behaviour he cannot reasonably be expected to live with the Respondent”.*

The court will refer to some paragraphs of the Petitioner’s witness statement to ascertain if unreasonably behaviour the Respondent can be established.

Petitioner in her evidence before the court dated 20<sup>th</sup> July, 2023 said the following during her evidence-in-chief.

Q. You want the court to dissolve your marriage right?

A. Yes my lady.

Q. On the grounds of unreasonable behaviour and cruelty as you have stated in your witness statement.



A. Yes

Q. Can you briefly tell the court a few things about his behaviour?

A. Yes. The Respondent physically abuses me, insults me in front of the children, which is affecting the children's education. The children's teacher once called me to inform me that your constant quarrel is affecting the education of the children. He does not pay electricity bill, buy gas, give feeding money, no feeding, fee nothing (except the fees that he pays).

Q. So now you are telling the court that you don't want the marriage again?

A. Yes

Q. Now where you live who owns that property?

A. I bought the land myself

Q. What about the building?

A. I built the house. He only dug a borehole tiled the floor of the house and built a security fence on the wall.

Q. So in effect you are saying you built the structure?

A. Yes

Q. Now if he is to come and insist that you pay for the additions are you prepared to do so?

A. Yes my lady. I will pay in installments to feed the children and myself.

Q. Now the children do you want to keep custody?

A. Yes

Q. So in effect you want him to pay fees, medical bills, maintenance anything concerning the children is that right?

A. Yes my lady

From the fore-going the Petitioner on a balance of probabilities has been able to prove that the marriage between the Respondent and herself has broken down beyond reconciliation due to his unreasonable behaviour.

The second issue is whether or not the court should make an order for Respondent to maintain the children of the marriage?

Section 22 of Act 367 states:

Custody and financial provision for children:

1. In proceedings under this Act, the court shall inquire whether there are any children of the household.
2. The court may either on its own initiative or an application by a party to proceedings under this Act, make an order concerning a children of the household which it thinks reasonable and for the benefit of the child.

Without prejudice to the generality of subsection:

An order under that subsection may.

- (a) Award custody of the child to any person;
- (b) 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 Petitioner in her petition stated that paragraph 8 II and III that the Respondent pays school fees of their children, it makes them to school daily and pays the medical bills of their children, but does not pay for maintenance.

Guided by the law, and also noting the facts on record, it is very evident that Petitioner is entitled to an award of maintenance of the children of the family.

Petitioner also prayed for custody of the children to determine this issue, the court again refers to Section 22(3) of Act 367 (supra) specifically 2 (a). That without prejudice to the generality of subsection (2) an order under subsection

a. Award custody of the child to any person

In the case **Opoku-Wusu vs Opoku-Wusu {1973} 2 GLR 349**

Sarkodee J in his judgment amongst others stated:

*“In such an application the paramount consideration is the welfare of the children.*

*The court’s duty is to protect the children irrespective of the wishes of the parents”*

Again in **Gray v Gray {1974} 2 GLR 186**

The legal custody was given to the mother, whilst the father who was responsible for the education and maintenance of the children was given their care and control which in effect meant that the children lived with their mother whilst attending school at Winneba.

In this present case the children who are 11 and 14 have predominantly lived with their mother, since the Respondent who was previously only coming for visits during the subsistence of the marriage worked in the United States of America and therefore better accustomed to their mother, it is in their children’s interest that their mother be given custody to .

Again Respondent has stated that he wants the court to grant Petitioner all her reliefs. The court will be minded to do so when giving its final order.

The third issue is whether the Respondent is to leave the matrimonial house. The Petitioner asked the court to order Respondent to leave the matrimonial home after the dissolution.

Respondent neither led evidence to prove that the house belongs to him nor opposed this relief. The court will proceed to grant that relief since it is not contentious.

### **DECISION**

After a careful evaluation of the facts and analysis of the evidence, the court notes firmly that the marriage contracted between the Petitioner Dorothy Kassum Eleshin and Abdul Sallam Eleshin in the year 2012 has broken down beyond reconciliation.

The court also minded by paragraph 11 of the Answer of the petition filed by the Respondent on the 19<sup>th</sup> of April, 2023 that Respondent is willing to grant all the reliefs of the Petitioner makes the following orders:

- a. That the marriage celebrated between the parties in 2012 be dissolved.
- b. That the Respondent pays GH¢2,000.00 as maintenance that is school fees and medical for the two children of the marriage as maintenance.
- c. That the Petitioner is given custody of the two children of the union that is Yasmin Eleshin (14 years old) and Iman Eleshin (9 years old).
- d. That the Respondent upon service of the entry of judgment upon him leaves the matrimonial home
- e. Finally that the Respondent is granted reasonable access of the children to be agreed upon by the parties.

EVE QUARTEY FOR THE PETITIONER.

**(SGD)**

**H/H KIZITA NAA KOOWA QUARSHIE**

**CIRCUIT COURT JUDGE**