

CIRCUIT COURT JUDGE

SUIT NO. C5/315/2023

$$=$$

PETITIONER

HOUSE NUMBER RPL/C23/20

TEMA

VS

$$=$$

RESPONDENT

DANSOMAN – ACCRA

JUDGMENT

Mr. Jonas Kofi Ankrah the Petitioner herein filed a petition on the 15/06/2023 for the following reliefs:

1. That the Honourable Court should by order dissolve the marriage between himself and his wife Eugenia Koshie Lamptey contracted on the 4th of September, 2004.
2. That the Petitioner have full custody of the issues of the marriage:
 - a. Edith Ohenewaa Ankrah - 18 years
 - b. Laura Nyakua Ankrah - 14 years
 - c. Eugene Ekow Ankrah - 11 yearswith reasonable access to the Respondent.

3. And a final order that the parties should bear their respective costs and there should be no order as to the payment of compensation and alimony.

On the 4/7/2023 the Respondent after being served with the divorce petition and notice to enter appearance filed a letter of intention not to contest divorce petition.

At paragraph 3 she informed the Court that she did not intend to contest the divorce in any way and in paragraph 4 agreed to the dissolution of the marriage and prayed the Court (at paragraph 5) to grant Petitioner's request.

On the 5/7/2023 the Petitioner filed to set the matter down for trial.

The Court ordered the parties to file pre-trial checklists and witness statement simultaneously and come to Court on the 10/8/2023 for case management conference.

On the 10/8/2023 case management conference was conducted and the case was scheduled for hearing on the 1st of September, 2023 at 11am.

Though the Respondent had filed a letter of intention not to contest the matter the Court at all material times ordered Petitioner to serve Respondent with Hearing Notices.

On the 1/9/2023 the evidence of Petitioner was admitted and the Court adjourned to 13-10-2023 for judgment.

PETITIONER'S CASE

Petitioner said on the 4th of September, 2004 his marriage journey with Respondent commenced at the Principal Registrar of Marriage Office, Accra on 4/9/2004 under the Marriage Ordinance.

He and his wife cohabited at Adjei-Kojo Suncity Global Manhea, Accra for 4 years after the marriage and later settled at Petitioner's parents' house at Tema. Petitioner

says he worked as an Occupational Health and Safety Officer while Respondent is a seamstress.

The marriage was blessed with three children namely: Edith Ohenewaa Ankrah, 18 years; Laura Nyakua Ankrah, 14 years and Eugene Ekow Ankrah, 11 years. Petitioner says this present petition is because the marriage between himself and Respondent has broken down beyond reconciliation.

According to Petitioner about 8 to 9 years after their marriage Respondent's behaviour changed. She started coming home late and verbally abused the Petitioner with unprintable words and got very furious if he dared ask her why she had come home late.

Additionally Respondent shirked her matrimonial duties and stopped taking care of her biological children.

Respondent in addition to the late nights started taking weekends out without Petitioner and came back highly intoxicated and threatened him with harm upon enquiry in a violent way.

Petitioner says he reported the bad behaviour of Respondent to her parents who were able to resolve their differences with Respondent promising to change.

Like a Leopard to its spots Respondent quickly returned to her unreasonable behaviour soon after and abandoned the matrimonial home and stayed with a friend claiming she was no longer interested in the marriage and asked for divorce.

Petitioner says since 2014 he and Respondent have not lived as man and wife and the care of their children has fallen to him and his family since Respondent has refused to look after them.

He said that in 2014 he met the Respondent in town heavily pregnant for another man and he and his family members reported Respondent to her family.

The families met and Respondent's family confirmed she was pregnant and apologized for the disgrace and shame she had brought to the entire families. On the 16th August, 2014 the marriage was traditionally dissolved.

Petitioner stated further that he had suffered greatly due to Respondent's unreasonable behaviour which had caused him much distress and embarrassment.

RESPONDENT'S CASE

Respondent filed a letter of intention not to contest the divorce petition on the 4/7/2023, agreeing that the Honourable Court grant's Petitioner's request.

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. The main issue in the opinion of this Court is.

1. "Whether or not the marriage between the parties has broken down beyond reconciliation and whether or not the Petitioner is entitled to a dissolution of the marriage between himself and the respondent".

Additionally the Court sets the following issues down for determination.

2. Whether or not the Petitioner is entitled to custody of the issues of the marriage.
3. Whether or not the Court should make no orders as to costs/alimony?

The general rule is that he who asserts must prove. He must prove the essential issues central to his case on the preponderance of probabilities which is the standard of proof in a civil matter.

Section 12(2) of the Evidence Act NRCD 323 defines proof on the preponderance of probabilities to be “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 non-existence.

To determine the issue (1) the Court refers to Section 2 of Act 367 that 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 Petitioner I surmise that this petition is brought primarily under Section 2(1) b, e and f of Act 367. Particularly unreasonable behaviour of the Respondent and the fact that the Respondent has committed adultery for which the Petitioner finds it intolerable to live with her.

The Petitioner's witness statement filed on the 31st of July, 2023, mirrors the averments contained in the petition filed on the 15/6/2023. What the Court is seeking to find out is whether the marriage between the parties has indeed broken down beyond reconciliation.

To determine whether the respondent has behaved unreasonably towards the petitioner the Court refers to some indicators of unreasonable behavior.

Cornelius Ekow Daniels at page 308 of the book **The Law on Family Relations in Ghana** under the heading **Test of unreasonable behavior** states the following "All that the petitioner is required to do in this context is to give particulars or the extent

of the behavior of the respondent which has necessitated the presentation of the petition. Thereafter he is required to establish that as a result of that particular behavior he cannot reasonably be expected to live with respondent.

It was held in the case of **Knusden vrs. Knusden (1976) 1 GLR 204 CA** on the test of unreasonable behaviour that:

'The behavior 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 of sufficient gravity or 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'

In respect of what constitutes unreasonable behaviour by a spouse, it was held by Hayfron – Benjamin J, in the case of **Mensah vs Mensah (1972) 2 GLR 198** 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 behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and mere trivialities will not suffice.'

On Petitioner's assertion that the Respondent has committed adultery, the Court notes that Petitioner took steps to dissolve the marriage between himself and Respondent because Respondent had committed adultery and that by reason of the adultery the Petitioner found it intolerable to live with the Respondent.

From the facts Respondent had already abandoned the matrimonial home however Petitioner only took steps to formally dissolve the marriage after Respondent got pregnant for another man whilst still married to the Petitioner.

At paragraph 1 of the petition Petitioner stated:

“That on the 16th of August, 2014, a meeting was held by both families of the parties at Respondent family house at Odorkor, Accra and the marriage was dissolved the traditional way”.

According to the learned author Frederica Ahwireng-Obeng in her Book: *“At a Glance! Contemporary Principles of Family Law in Ghana at page 107”*.

Adultery may be proved in several ways. She states at paragraphs 2 and 3:

“Adultery may be proved in several ways. Because direct evidence is not easy to obtain adultery may be inferred from the circumstances surrounding a case. The act of sexual intercourse does not have to be proved. The presence of disposition and opportunity may lead a Court to conclude that adultery has been committed opportunity alone is not enough”

In **Blum v Blum** {1963} 107 Sol Jo 512 the Respondent booked a double room in a hotel with a woman who was not his wife. The Court held that adultery could be inferred.

In **Adjetey v Adjetey** the parties lived at Kanda in Accra. The Respondent built a house at Teshie and they agreed to move in. On the day that they moved, they agreed to go in separate cars. Respondent never drove to Teshie she instead drove to her boyfriend’s house. Her uncle subsequently brought her back to her husband after two months but she escaped and never returned to the matrimonial home. The Court decided from the circumstances that adultery could be inferred and the marriage had broken down beyond reconciliation.

As earlier stated the Petitioner must find it intolerable to stay with the Respondent after the adultery of the Respondent is discovered.

The author again at page 108 of the book “**At a Glance! Contemporary Principles of Family Law in Ghana** (supra).

Under the heading “What does the intolerability test mean?

Said that the test means that the Court must decide whether the particular petitioner finds it intolerable to live with the Respondent and not what a reasonable person found intolerable.

The test therefore is subjective and not objective.

From the facts above the Court notes that in addition to unreasonable behaviour, Petitioner has been to prove that Respondent has committed adultery and he finds it intolerable to live with her.

The 2nd issue to consider is whether or not the Petitioner should be granted custody of the issues of the marriage with reasonable access to the Respondent?

The petitioner in his pleadings said Respondent shirked her matrimonial duties and responsibility to look after the children to him and his family.

To buttress whether or not Petitioner should be granted custody the court referred to Respondent’s letter to the Court where she said she will not contest the case and Petitioner can be granted all his wishes per his petition.

Section 22(1) of the Matrimonial Causes Act states that “*In pleadings under this Act, the Court shall inquire whether there are children of the household*”.

- (2) *The Court may, either on its own initiative or on application by a party to proceedings under this Act, make an order concerning a child of the household which it thinks reasonable and for the benefit of the child.*
- (3) *Without prejudice to the generality of subsection (2) 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.*
 - (c) Provide out of the property or income of either or both of the parties to the marriage”.*

In the case of **Opoku-Wusu v Opoku-Wusu** {1973} 2GLR 349 where in the course of divorce proceedings, the father a Ghanaian, applied for custody of all the four children of the marriage whilst the German mother prayed for the custody of the only daughter aged Ten and youngest child aged Four Sarkodee J. in his judgment said:

“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”.

This Court guided by Section 22 and case law and averting its mind to the welfare of the children of marriage notes that being the parent known to the children with the natural bond between them, and the fact that Petitioner has acted as both mother and father to the children the Petitioner has been able to tip the scales in his favour and the Court will make the necessary orders for the Petitioner to have custody of the children.

The 3rd issue is whether or not the Court should order the parties to pay their own costs.

Order 74 of High Court Civil Procedure Rules, 2002 C.I. 47 is on costs.

Order 74 r1 states that *“Subject to this order, the costs of and incidental to proceedings in the Court shall be at the discretion of the Court and the Court shall have full power to determine to whom and to what extent the costs are to be paid”*.

Respondent from the letter of intention did not incur any costs as she declined from participating in the proceedings.

Again although Petitioner and Respondent have been married for a while since 2004, the Respondent shirked her responsibilities as a wife and mother and caused Petitioner so much pain for which the Court after a careful evaluation finds that there should be no need to add *“insult to injury”*.

BY COURT: After a careful evaluation of the facts on record and analysis of the evidence before the Court and guided by section 1 and 2(1) of the Matrimonial Causes Act, Act 367, the Court notes that the marriage celebrated between Jonas Kofi Ankrah and Eugenia Koshie Lamptey has broken down beyond reconciliation.

The Court makes an order for the marriage celebrated on the 4th of September, 2004 to be dissolved this 13th day of October, 2023. The marriage Certificate No. GRM 1799/2004 is hereby cancelled.

The Court guided by section 22 of the Matrimonial Causes Act grants custody of the children of the marriage listed below to the Petitioner, with reasonable access to the Respondent to be agreed upon between the parties.

- | | | |
|--------------------------|---|----------|
| a. Edith Ohenewaa Ankrah | - | 18 years |
| b. Laura Nyakua Ankrah | - | 14 years |
| c. Eugene Ekow Ankrah | - | 11 years |

The Court makes no orders as to the award of alimony or cost.

No legal representation.

(SGD)

H/H KIZITA NAA KOOWA QUARSHIE

CIRCUIT COURT JUDGE