

IN THE CIRCUIT COURT '5' HELD IN ACCRA ON MONDAY THE 6TH DAY
OF NOVEMBER, 2023 BEFORE HER HONOUR CHRISTINA EYIAH-DONKOR
CANN (MRS.), CIRCUIT COURT JUDGE

W.O.11 WILLIVANS PEPRAH ARTHUR
EMETTS UNITS, BURMA CAMP
ACCRA

SUIT NO: C5/198/2023

... PETITIONER

VRS

MRS JENNIFER OFORIWA ARTHUR
EMETTS UNITS, BURMA CAMP
ACCRA

... RESPONDENT

JUDGMENT

INTRODUCTION

The parties were lawfully married on the 2nd December, 2017 at the Church of Pentecost, Mmeredane District, Sunyani. Whilst the petitioner is a non-commissioned officer of the Ghana Armed Forces, the respondent is unemployed. On the 14th March, 2023, the petitioner filed a Petition for divorce and averred that their marriage has broken down beyond reconciliation and prayed the court for the following reliefs:

"10. WHEREFORE the Petitioner prays as follows

- i. That the marriage celebrated in fact between the parties be dissolved.*
- ii. That the Petitioner is prepared to pay the respondent an alimony of GH¢10, 000.00."*

The respondent filed her Answer to the Petitioner's Petition on the 14th April, 2023 and cross-petitioned for the following reliefs:

"i. An order for the dissolution of the ordinance marriage contracted between the parties as having broken down beyond reconciliation. ii. An order for the Petitioner to compensate the

Respondent with an amount of one Fifty Thousand Ghana Cedis (GH¢150, 000.00) as alimony/lump sum financial settlement. iii. An order for the Petitioner to provide suitable accommodation to the Respondent until Respondent marries.

iv. Any order(s) as the Honourable Court may deem fit."

Since this is a matrimonial cause, it is the direct provisions of the Matrimonial Causes Act, 1971 (Act 367) which should apply.

Section 2 (2) of the Matrimonial Causes Act, 1971 (Act 367) provides that:

"On a petition for divorce it shall be the duty of the court to inquire, so far as is reasonable, into facts alleged by the petitioner and the respondent."

The facts relied on by the parties must therefore be pleaded and placed before the court; otherwise, the court cannot perform its statutory duties under the above section of this Act. The particulars set out in detail the facts relied on by the petitioner and the respondent to establish their respective allegations that the marriage has broken down beyond reconciliation.

The relevant particulars of the petitioner's Petition are as follows:

"8. That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with her and that the respondent has caused the petitioner much anxiety, distress and embarrassment.

PARTICULARS OF UNREASONABLE BEHAVIOUR

- i) That the respondent on learning about a medical condition of the petitioner changed her attitude towards the petitioner by asking the petitioner to wash his own bowls after every meal.*
- ii) That the respondent started making fun of the petitioner that he has been cursed, on learning of the medical condition of the petitioner. iii) That the respondent takes offence for no reason, she has stopped talking to the petitioner, she is always with a frowned demeanour because of this petitioner is always on edge and scared to stay in the house or eat any food prepared by the respondent.*

- iv) *Then respondent taunts the petitioner with his medical condition that it is the reason for his infertility.*
- v) *That all attempts by families of the reconciliation have proved futile.” The relevant particulars of the respondent’s cross-petition are as follows:*
- “14. *That the Respondent states that she has suffered significant hardship in the marriage due to the Respondent’s unreasonable behaviour.*
15. *That Respondent states that the Petitioner is verbally abusive and insults her at the least or without any whatsoever provocation.*
16. *That Respondent states that the Petitioner has remained unsupportive throughout the marriage.*
17. *That Respondent states that the Petitioner refused to contribute to her tuition when she enrolled in cosmetology school although he was gainfully employed and could afford to do so.*
18. *That Respondent states in addition to the above that she only had to rely on her family members to pay for her tuition and provide for her basic needs while she was in school.*
19. *That Respondent states that although she has remained a supportive wife to the Petitioner throughout the marriage, he refuses to treat her with the love and support that is required of a husband.*
20. *That Respondent stated that the Petitioner started showing signs of disinterest in the marriage sometime after they started living together and would constantly threaten to end their marriage.*
21. *That Respondent states that she is currently unemployed and has nowhere else to stay outside the parties’ matrimonial home.*
22. *That Respondent states that she entered into the marriage with the hope that she and the Petitioner could build their future together. However, the Petitioner has continuously behaved in such a way that this dream cannot materialize.”*

The petitioner filed a Reply and Answer to the respondent's Answer and Cross-Petition on the 12th May, 2023.

SUMMARY OF EVIDENCE BY THE PETITIONER AND THE RESPONDENT

The petitioner testified himself and called no witness.

The respondent also testified herself and called no witness.

In several decided cases, the superior courts have held that there are situations where the testimony of a single witness will suffice to prove a case.

In the case of **Kru vrs Saoud Bros & Sons (1975) 1 GLR 46**, the Court of Appeal held:

"Judicial decisions depend on the intelligence and credit and not the multiplicity of witnesses produced at the trial."

Also, in the case of **Takoradi Flour Mills vrs Samir Faris (2005-2006) SCGLR**, the Supreme Court held affirming the position of the law that:

"(a) A tribunal of facts can decide an issue on the evidence of one party. A bare assertion on oath by a single witness might in the proper circumstance of a case be enough to form the basis of a judicial interpretation. The essential thing is that the witness is credible by the standard set in section 80 (2) of the Evidence Act, 1975."

Again, in the case of **Ghana Ports and Harbours Authority vrs Captain Zavi & Nova Complex Ltd (2007-2008) SCGLR 806** the Supreme Court held thus:

"It is true that witnesses are weighed but not counted and that a whole host of witnesses are not needed to prove a particular point."

THE PETITIONER'S CASE

The petitioner testified that he got married to the respondent in Sunyani where he was stationed at the time and they later moved to Accra when he was transferred.

After their marriage, there was no conception so he submitted himself to a medical checkup and the result revealed a medical condition azoospermia as the reason. Devastating though, he nonetheless, communicated the result of the medical checkup to the respondent herein. The respondent upon receipt of this information changed her attitude towards him completely. She became arrogant, would not say sorry even where she was evidently wrong and household chores she was hitherto performing, she asked him to start performing same. The respondent categorically asked him to wash his own bowl after every meal and she demanded money before having sex with him. The respondent started making fun of him by rubbing it in by saying that he is infertile, he cannot father a child and that he had been cursed. However, despite these taunts, he made an effort to have the respondent recruited into the Ghana Immigration Service which she flatly rejected as she did to an effort to rent a container within the military barracks to engage her in some form of income generating activity. The respondent never had any discussion on a course in cosmetology but only informed him when it was getting to the closing date and when he asked her why she had to wait until the very last moment before informing him, she retorted by saying that she had her own money to pay her fees and that it was not his business but was only telling him.

As far as the petitioner is concerned, the marriage has broken down and he would never be reconciled with the respondent. He would not go back to the respondent and no more diligent efforts at reconciliation would succeed. He therefore prayed the court to dissolve the marriage.

THE RESPONDENT'S CASE

It is the evidence of the respondent that she got married to the petitioner on the 2nd December, 2017. After the marriage, they cohabited at Sunyani and Accra. They have no issue in the marriage. She respects the decision of the petitioner to have the marriage dissolved. She has at all material times remained a committed and loving wife towards the petitioner. She has remained committed to and supportive towards

the petitioner even after finding out about his medical condition. She continued to cook for the petitioner and washed his dishes after she found out about his medical condition. She also had to wash the petitioner's handkerchiefs even after the petitioner refused to use tissue instead to contain his phlegm and nasal emissions. The petitioner would often take offence for no reason and constantly start arguments with her. The petitioner also poisoned the emotional climate of their marriage so much that they could no longer engage in any meaningful conversation as a married couple. She suffered significant hardship in the marriage due to the petitioner's unreasonable behaviour. The petitioner is verbally abusive and insults her at the least or without any provocation. The petitioner has remained unsupportive throughout the marriage. The petitioner refused to contribute to her tuition when she enrolled in cosmetology school although, he was gainfully employed and could afford to do so and she only had to rely on her family members to pay for her tuition and provide for her basic needs while she was in school. According to the respondent, although she has remained a supportive wife to the petitioner throughout the marriage, he refused to treat her with the love and support that is required of a husband. The petitioner started showing signs of disinterest in the marriage sometime after they started living together and would constantly threaten to end their marriage. It is further the evidence of the respondent that she is currently unemployed and has nowhere else to stay outside the parties' matrimonial home. She entered into the marriage with the hope that she and the petitioner could build their future together. However, the petitioner has continuously behaved in such a way that this dream cannot materialize.

As far as the respondent is concerned, the marriage has irretrievably broken down and she would never be reconciled with the petitioner. She would not go back to the petitioner and no more diligent efforts at reconciliation would succeed. She therefore prayed the court to dissolve same.

FINDINGS OF PRIMARY FACTS

From the evidence on the record, the following facts are not in dispute:

1. That the parties were lawfully married on the 2nd December, 2017 at the Church of Pentecost, Mmeredane District Sunyani
2. That there is no issue of the marriage.
3. That both parties agree to the dissolution of their marriage.

ISSUES FOR DETERMINATION

The **main issues** for determination are as follows:

1. *Whether or not the marriage contracted between W.O.11 Willivans Peprah Arthur the Petitioner herein and Mrs. Jennifer Oforiwa Arthur the Respondent herein on the 2nd December, 2017 at the Church of Pentecost, Mmeredane District, Sunyani has broken down beyond reconciliation?*
2. *Whether or not the respondent is entitled to a lump sum of one Fifty Thousand Ghana Cedis (GH¢150, 000.00) as alimony/lump sum financial settlement from the petitioner.*
3. *Whether or not the petitioner can be compelled to provide a suitable accommodation for the respondent until she marries?*

ANALYSIS OF THE RELEVANT SECTIONS OF THE MATRIMONIAL

CAUSES ACT, 1971 (ACT 367)

Before I deal with the only issue, I now wish to set out the relevant sections of the Matrimonial Causes Act, 1971 (Act 367) namely sections 1 (2), 2 (1), and 2 (3).

The only ground upon which a marriage may be dissolved is where the Petitioner proves that the marriage has broken down beyond reconciliation.

Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367) provides thus:

“The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.”

The grounds upon which a marriage would be said to have broken down beyond reconciliation are six (6) and the proof of one or more of them to the satisfaction of

the Court may be a valid ground to the dissolution of the marriage. The six grounds are provided in section 2 of the Matrimonial Causes Act, 1971 (Act 367). They are as follows:

“2 (1) For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one of the following facts:

- a. That the respondent has committed adultery and 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 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, 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 differences.*

Under section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367):

“Although 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.”

BURDEN ON THE PETITIONER AND THE RESPONDENT

In a petition for divorce, the burden that is cast on a petitioner is to lead sufficient evidence to enable a finding of those facts in issue to be made in his favour as required by sections 10 and 14 of the Evidence Act, 1975 (NRCD 323).

See: **Dzaisu v Ghana Breweries Limited [2009] 6 GMJ 111 S.C**

Ackah v Pergah Transport Limited [2011] 31 GMJ 174 S.C

Sections 11(4) and 12(1) of the Evidence Act 1975, (NRCD 323) provides that the standard burden of proof in all civil matters is proof by the preponderance of probabilities and there is no exception to it except where the issue to be resolved in the civil suit borders on criminality such as fraud and forgery.

The Supreme Court also in the case of **Adwubeng v Domfeh [1996-97] SCGLR 660** unambiguously resolved the question of standard burden of proof.

In the case of **African Mining Services v Larbi [2010-2012] GLR 579**, the Court held that the burden of persuasion in civil matters requires the person who has the evidential burden to discharge, to produce sufficient evidence such that a reasonable mind, such as this Court, will come to the conclusion that the existence of the fact is more probable.

It is therefore the petitioner's duty as required by law to produce the evidence of the facts in issue such that a reasonable mind, such as this Court, will come to the conclusion that from the existence of the facts, it is more probable that their marriage has broken down beyond reconciliation and that duty must be satisfactorily discharged.

In this case, since the respondent also cross-petitioned, she is equally required to prove her case by the preponderance of probabilities, having regard to sections 10 and 14 of the Evidence Act, 1975 (NRCD 323).

Furthermore, the ground upon which the petitioner seeks the dissolution of the marriage contracted between himself and the respondent is unreasonable behaviour which the respondent denies. The respondent also alleged in her cross-petition unreasonable behaviour by the petitioner which the petitioner does not deny. Therefore, the onus is on each one of them to lead cogent and credible evidence to prove their respective allegations.

ANALYSIS OF THE EVIDENCE ON RECORD

ISSUE ONE

Whether or not the marriage contracted between W.O.11 Willivans Peprah

Arthur the Petitioner herein and Mrs. Jennifer Oforiwa Arthur the Respondent herein on the 2nd December, 2017 at the Church of Pentecost, Mmeredane District, Sunyani has broken down beyond reconciliation?

A. UNREASONABLE BEHAVIOUR BY THE RESPONDENT

The petitioner in paragraphs 8 of his Petition averred that the marriage has broken down beyond reconciliation as the respondent has behaved unreasonably towards him in a way that he cannot reasonably be expected to live with her by:

- i) changing her attitude towards him by asking him to wash his own bowls after every meal upon hearing about his medical condition;
- ii) making fun of him that he has been cursed, upon learning of his medical condition;
- iii) ceasing any form of communication with him, and
- iv) taunting him with his medical condition that it is the reason for his infertility.

The respondent in her Answer to Cross-petition denied the various acts of unreasonable behaviour against her. Therefore the petitioner had the burden of leading cogent and credible evidence in proving the various acts of unreasonable behaviour against the respondent.

The petitioner apart from mounting the witness box and repeating the averments on oath was not able to adduce cogent and credible evidence or bring any credible

witness to corroborate his claim that the respondent has behaved unreasonably towards him in a way that he cannot reasonably be expected to live with her.

B. UNREASONABLE BEHAVIOUR BY THE PETITIONER

The respondent in paragraph 14 of her cross-petition averred that the marriage has broken down beyond reconciliation as the petitioner has behaved unreasonably towards her in a way that she cannot reasonably be expected to live with him by:

- i. verbally abusing and insulting her at the least or without any whatsoever provocation;
- ii. unsupportive behaviour of the petitioner throughout the marriage;
- iii. refusing to contribute to her tuition when she enrolled in cosmetology school although he was gainfully employed and could afford to do so;
- iv. refusing to treat her with the love and support that is required of a husband;
- v. showing signs of disinterest in the marriage sometime after they started living together; and
- vi. constantly threatening to end their marriage.

The respondent was not able to adduce cogent and credible evidence or bring any credible witness to corroborate her claim that the petitioner has behaved unreasonably towards her in a way that she cannot reasonably be expected to live with him.

In the case of **Zabrama v Segbedzi (1991) 2 GLR 221**, the Court of Appeal restated the time honoured principle in **Majolagbe v Larbi (1959) GLR 190** as follows:

“A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which that fact or facts he asserts can properly and safely be inferred.”

Takoradi Flour Mills vrs Samir Faris (2005-2006) SCGLR 883.

Courage Adonoo vrs Fan Milk Ltd (2006) 6 MLRG 211 CA. T. K.

Serbeh &Co Ltd vrs Mensah (2007) MLRG SC 1.

Delmas America Africa Line Incorporation vrs Kisko Products Ghna Ltd (2007) 11 MLRG 141 SC.

The petitioner and the respondent's charges of unreasonable behaviour against each other are therefore mere allegations without a scintilla of evidence. It was as if the petitioner and the respondent was shopping for any available ground in an attempt to convince the court so that their marriage could be dissolved. No doubt they failed to lead any evidence to that effect.

The petitioner and the respondent failed to prove by the preponderance of probabilities that they have each behaved unreasonably towards each other in a way that they cannot reasonably be expected to live with each other.

Although the parties failed to prove that they have each behaved unreasonably towards each other, there is evidence on record to prove that after the petitioner informed the respondent that their inability to conceive is as a result of his medical condition (azoospermia), it brought about some differences between them and they have after diligent efforts been unable to reconcile their differences.

I am satisfied that the parties proved their case by the preponderance of probabilities that they, after diligent efforts have been unable to reconcile their differences as provided under section 2 (1) (f) of the Matrimonial Causes Act, 1971 (Act 367) and this court holds same.

The next question to consider is the requirement of section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367) whether the marriage between the Petitioner and the Respondent has broken down beyond reconciliation.

On a proper construction of this sub-section of the act, the court can still refuse to grant a decree even when one or more of the facts set in section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367) have been established. It is therefore

incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one party that the marriage has broken down will not be enough.

See: **Dictum of Bagnall J in the case of Ash v. Ash [1972] 1 ALL ER 582 at page 586.**

From the evidence on record, the parties are no longer living together. There is no indication that the parties are prepared or willing to cooperate once again to find a solution to their differences. The court finds that the marriage has broken down and there is no hope or reconciliation at this stage as the parties themselves have told this court and it is better for this court to dissolve this marriage so that the parties can go their separate ways and be put out of their miseries.

To insist that the petitioner and the respondent continue to live together as man and wife would be turning a contract of marriage into one of slavery regardless of the psychological and emotional trauma on the parties or one of them and allowing this marriage to strive on hopelessly, helplessly, and lack of trust. This is because matrimonial causes are unique because they involve two persons who are physically, emotionally and spiritually involved with each other unlike other causes of action like land cases, contract, constitutional, chieftaincy etc. which do not involve intimacy between two people. No doubt the Bible declares the unique relationship as the two becoming one flesh.

I cannot but agree with *Osei-Hwere J (as he then was)* in the case of **Donkor v. Donkor (1982-83) GLR 1156 at page 1158** as follows:

"The Matrimonial Causes Act (1971) Act 367 does not permit spouses married under the Ordinance to come to pray for dissolution of a marriage just for the asking. Where the court is satisfied from the conduct of the parties that the marriage has in truth and in fact broken down beyond reconciliation it cannot pretend and insist that they continue as man and wife. To do so would be turning a contract of marriage into one of slavery regardless of the psychological effect on the parties or one of them."

Despite the both parties failure to prove their wild allegation of unreasonable behaviour against each other there are several other compelling grounds which prove that the marriage between the parties has gone beyond retrieval. I am satisfied that regarding the burden of persuasion, the petitioner and the respondent produced sufficient evidence to persuade me to come to the conclusion per the existence of the fact that the marriage had broken down beyond reconciliation.

Thus, a *prima facie* case has been made by the petitioner and the respondent that warrants the dissolution of the marriage. The requirements of section 1 (2) of the Matrimonial Causes Act, 1971 (Act

367) has thus been met by the petitioner and the respondent.

I find and hold that from the totality of the evidence on record that, the marriage contracted between W.O.11 Willivans Pephrah Arthur the Petitioner herein and Mrs. Jennifer Oforiwa Arthur the Respondent herein on the 2nd December, 2017 at the Church of Pentecost, Mmeredane District, Sunyani has broken down beyond reconciliation and the justification is that from the evidence the parties after diligent efforts have been unable to settle their differences.

I hereby declare the marriage contracted between W.O.11 Willivans Pephrah Arthur the Petitioner herein and Mrs. Jennifer Oforiwa Arthur the Respondent herein on the 2nd December, 2017 at the Church of Pentecost, Mmeredane District, Sunyani dissolved.

ISSUE TWO

Whether or not the respondent is entitled to a lump sum of One Fifty Thousand Ghana Cedis (GH¢150, 000.00) as alimony/lump sum financial settlement from the petitioner?

The respondent in her Cross- Petition prayed the court for an alimony of One Fifty Thousand Ghana Cedis (GH¢150, 000.00) from the petitioner.

Interestingly, she did not lay any basis for claiming an alimony of One Fifty Thousand Ghana Cedis (GH¢150, 000.00).

The petitioner prayed the court as part of his reliefs to pay an amount of Ten Thousand Ghana cedis (GH¢10, 000.00) to the respondent as alimony.

From the evidence on record, it is very clear that it is the petitioner who has brought the respondent to court for a dissolution of their marriage. It is fair, just and equitable that the respondent be compensated for that.

For the above reasons, it will be fair, just and equitable for the petitioner to compensate the respondent with an amount of Twenty-Five Thousand Ghana cedis (GH¢25,000.00).

Taking into consideration the means of the petitioner and the evidence on record, the petitioner is accordingly ordered to compensate the respondent with a lump sum of Twenty-Five Thousand Ghana cedis (GH¢25,000.00).

ISSUE THREE

Whether or not the petitioner can be compelled to provide a suitable accommodation for the respondent until she marries?

The respondent in her Cross-Petition prayed the court to compel the petitioner to provide suitable accommodation for her until she marries.

Surprisingly, she did not lead any evidence on that.

Her relief (iii) therefore fails.

CONCLUSION

1. The marriage contracted between W.O.11 Willivans Peprah Arthur the Petitioner herein and Mrs. Jennifer Oforiwa Arthur the Respondent herein on the 2nd December, 2017 at the Church of Pentecost, Mmeredane District, Sunyani is dissolved.
2. The petitioner is ordered to compensate the respondent with a lump sum of Twenty-Five Thousand Ghana cedis (GH¢25,000.00).
3. I make no order as to cost.

COUNSELS:

**SAMUEL TSATSU TAMAKLOE FOR THE PETITIONER
PRESENT
MITSUI ODIDJA FOR YVONNE AMEGASHIE FOR THE
RESPONDENT ABSENT**

(SGD)

H/H CHRISTINA EYIAH-DONKOR CANN (MRS.)

(CIRCUIT COURT JUDGE)