

IN THE CIRCUIT COURT , 28TH FEBRUARY ROAD ACCRA, ON THURSDAY THE 19TH
DAY OF OCTOBER 2023 BEFORE HER HONOUR ELLEN OFEI-AYEH(MRS.)CIRCUIT
COURT JUDGE.

SUIT NUMBER C5/82/2019

OLIVIA MAWUFEMOR ATTIPOE

PANTANG HOSPITAL

V

BENJAMIN GRANT CHARNOR SACKITEY ACCRA

(PETITIONER WILL DIRECT SERVICE)

PARTIES ARE SELF-REPRESENTED

JUDGMENT

The parties were married under the ordinance on 1st June 2013 and have one issue. The petitioner petitioned the court to dissolve the marriage between the parties. Her prayer was as follows;

- a. That the marriage contracted between the parties be dissolved.
- b. That the petitioner be granted custody of the four year old child of the marriage.
- c. That the respondent is ordered to pay a fixed amount towards the education and maintenance of the child of the marriage.

It has been averred by the petitioner that the parties have one issue aged 4 years old. She adds that seven months after the marriage the respondent told her he was no longer

interested in the marriage, and he has been verbally assaulting her. Neither does he contribute financially for the feeding and upkeep of the child of the marriage.

The respondent failed to enter appearance but instead filed a consent to divorce which was struck out by this court as irregular to the rules of court. The matter was set down for trial after hearing Notices and court notes were served on the Respondent.

Pursuant to Order 36 Rule 1 (2) (a) of High Court Civil Procedure Rules, C.I 47 as amended, the court heard the case of the petitioner in the absence of the respondent herein. Guided by the decision of Republic v High Court (Fast track Division); Exparte State Housing Co. Ltd. (No.2) Koranteng Amoako; Interested Party (2009) SCGLR 185 at 190, the Supreme Court per Wood CJ, (as she was then), stated authoritatively that, '*A party who disables himself or herself from being heard in any proceedings cannot later turn around and accuse an adjudicator of having breached the rules of natural Justice.*'

Thus, the respondent cannot now say that the audi alteram partem rule has been breached as she was given ample opportunity to be heard. The issues to determine is whether the marriage celebrated by the parties has broken down beyond reconciliation and custody and maintenance.

Section 2 of the matrimonial Causes Act, Act 367 provides that;

(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 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 differences.

The petitioner has testified that the respondent deceived her about a Lady friend called marvelous whom she later found out that he had had a child with. She also testified that when she confronted the respondent he accused her of witchcraft, and packed his belongings from the house. This was in 2015. She added that the church was informed but they were unable to resolve their differences. At the family level in 2016, she testified that the respondent said that he didn't want the marriage. This piece of evidence has remained unchallenged. I therefore find as a fact that the parties have been separated since 2015, and have not been able to reconcile their differences

In the case of Knudsen v Knudsen (1976) 1 GLR at page 204, in a discussion on what amounts to unreasonable behavior, Amissah J.A (as he then was), held as follows:

“Behaviour of a party which would lead to this conclusion would range over a wide variety of acts. It may consist of one act if of sufficient gravity or of a persistent course of conduct or of a series of acts differing kinds of none of which by itself may justify a conclusion that the person

seeking the divorce cannot be reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.”

I find unreasonable behaviour by the respondent is present.

On the balance of probabilities I find the Ordinance marriage between the parties has broken down beyond reconciliation and grant the decree for divorce prayed.

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ISSUE 2 &3- Custody and Maintenance

Section 22 of the Matrimonial Causes Act 1971(act 367) provides for custody and with regard to making same reasonable for the benefit of the child.

Section 22(2) of the Matrimonial Causes Act, Act 367 provides that; *‘The court may either on its own initiative or on application by a party to any proceedings under this Act make any order concerning any child of the household which it thinks reasonable and for the benefit of the child.*

Section 2 (1) and (2) of The Children’s Act 1998, (as amended) Act 560 states;

The best interest of the child shall be paramount in a matter concerning the child.

2. The best interest of the child shall be the primary consideration by a court, person, an institution or anybody in a matter concerned with a child.

The petitioner has testified that the respondent does not support her and the issue financially and he only pays fees or monies when he feels like doing so. The child is presently going to class 4. She testified that she roughly earns GHC3000.00 per month but is unable to tell how much the respondent earns. Neither does she know where he works. She added that the respondent has three children in all.

The evidence is unchallenged, and in light of the earning capacity of the petitioner and the unknown earnings of the respondent, I am guided by the provisions contained in the

Children’s Act 560 as amended regarding parental responsibility. I exercise my discretion on the balance of probabilities and Order the respondent to pay all educational and medical bills of the issue of the marriage. In addition he is to pay the sum of GHC 600.00 every month to cover the upkeep of the child.

As custody has not been challenged and the issue has been in the continuous care of respondent the issue of the marriage all this while, to ensure the best interest of the child, I award custody to the petitioner and with reasonable access to the respondent every other weekend and 50 % or half the period of school vacations.

FINAL ORDERS

1. The ordinance marriage celebrated between the parties is dissolved having broken down beyond reconciliation. The marriage certificate is cancelled accordingly.
2. The respondent is ordered to pay all educational and medical bills of the issue of the marriage. In addition he is to pay the sum of GHC 600.00 every month to cover the upkeep of the child as part of maintenance.
3. Custody is awarded to the petitioner and with reasonable access to the respondent every other weekend and 50 % or half the period of school vacations.

There shall be no further orders.

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HH ELLEN OFEI-AYEH(MRS)