

**IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS TUESDAY THE 20TH
DAY OF OCTOBER, 2023 BEFORE HER HONOUR EVELYN E. ASAMOAH (MRS)**

SUITNO. C5/305/2022

PAULINA AFOAKWA

VRS

KWAME AFOAKWA

MS. PRECIOUS A. MENSAH HOLDS MS. AMEGASHIE'S BRIEF FOR PETITIONER
MS. EDITH MENSAH FOR THE RESPONDENT

JUDGMENT

- The wife, the petitioner herein accuses her husband of adultery and unreasonable behaviour. They have no issue together. The petitioner stated that she has two children from her previous marriage. According to the petitioner, the respondent has twins with another woman, during the pendency of the marriage. The respondent alternates cohabitation with her and the said woman and even stayed with her during the coronavirus lockdown.

- She further stated that the respondent has behaved in such a way that she cannot reasonably be expected to live with him and that he has caused her much anxiety, distress, and embarrassment. In her particulars of unreasonable behaviour, she stated: The respondent no longer shows love towards her and her children contrary to the representation made by the respondents before the marriage; the respondent does not maintain her sufficiently and regularly and that she bears all utilities bills and

maintenance of the home; the respondent flirts with other women and anytime she complains about his philandering activities, she is assaulted; the respondent on several occasions infected her with a sexually transmitted disease as a result of his extramarital affairs; the respondent has willfully refused to have sex or share any form of intimacy with her for about eight years; the respondent is temperamental, demonstrating erratic moods toward her and would sometimes not talk to her for days; and that when she was pregnant with their child, the respondent asked her to abort the pregnancy without justifiable cause but she refused. She lost their baby during childbirth. That they live as mere flat mates albeit under the same roof. She prays for the following reliefs:

- That the ordinance marriage be dissolved
 - An order directed at the respondent to pay a lump sum of GHC 50,000
 - Equitable share of an uncompleted landed property at Ashiaman Peace land
 - An order directed at the respondent to provide a suitable accommodation for the petitioner for a period of 3 years
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- The husband, respondent herein, in his answer stated that the petitioner has rather caused him much anxiety, distress, and embarrassment. He always provides maintenance money for the petitioner pays electricity and gives the petitioner money to fetch water for the household. He has always shown love to the petitioner and her children. That he does not flirt with women and has never assaulted the petitioner. He added that the petitioner refused to have sex with him for about 1 year and 6 months after he mistakenly impregnated another woman. He pointed out that he pleaded with the petitioner to allow him to go and give birth since she already has her own children and he has none.

That he compensated the petitioner for the mistake but she refused to have sex with him thereafter. He contended that he went to stay in his hometown during the lockdown

because the petitioner brought her sister to live with them in a single room. That the petitioner is more temperamental than him. At one time, the petitioner went to his shop to destroy his machine. That he has never asked the petitioner to abort a pregnancy. As a result of the petitioner having a stillbirth, he followed the petitioner to different hospitals for treatment. He cross-petitioned for the following reliefs:

- That the marriage should be dissolved
 - An order directed at the petitioner to pay GHC 30,000 lump sum settlement
 - Equitable distribution of the uncompleted landed property situated at Ashiaman Peace Land.
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- The first issue for determination is whether the marriage has broken down beyond reconciliation.

In the case of Gilbert **Anyetei V Sussana Anyetei** – Supreme Court CA/J4/67/2021 dated 2/3/2023, Justice Pwamang JSC stated:

“... the law is that the only ground on which a court would order the dissolution of a marriage is that the marriage has broken down beyond reconciliation, particulars of which are required to be specifically pleaded and proved by evidence adduced in court. It is therefore not sufficient for a judge to grant a divorce just because both parties endorsed that relief on their pleadings. Thirdly, evidence of the conduct of the parties during the marriage in most cases is relevant for deciding how any property acquired during the marriage is to be dealt with on its dissolution. Where one spouse claims that she contributed to the acquisition of property standing in the name of the other spouse, the contribution the spouse relies on may be satisfactory matrimonial services offered to the other spouse during the marriage. In such a case, the conduct of the parties in the course of the marriage and what caused the breakdown of the marriage become relevant for a determination of ancillary relief relating to property distribution...”

According to the petitioner, the respondent moved out of the matrimonial home in February 2021 and has not returned home. A meeting was held by their church elders for an attempt at an amicable resolution of the matter but the respondent failed to comply with all the agreements made at the meeting. The respondent admitted that he had children out of wedlock. In paragraphs 16 and 17 of his witness statement, he stated: "Petitioner reported the matter to the church. I admitted my mistake and pleaded for her forgiveness. Petitioner demanded that in order for her to forgive me, I would have to compensate her. I agreed and took her for shopping to buy clothes. I also gave her GHC 800 as monetary compensation. However, three days after I had compensated her, I received this divorce petition."

- The parties in this case agree to the dissolution of the marriage. The evidence in this case reveals that the parties have not been living as husband and wife for about 2 years. The respondent's extramarital affairs and having children out of wedlock are the main issues that resulted in the breakdown of this marriage. The parties have been unable to reconcile their difference after diligent efforts. The court finds that the marriage has broken down beyond reconciliation and same is hereby dissolved.

● **Alimony.**

Section 20(1) of the Matrimonial Causes Act, 1971 [Act 367], provides:

"On any decree for dissolution of marriage, the Court may, if it thinks fit- (a) Order a spouse (hereinafter in this section referred to as the contributing spouse) to secure the other spouse (hereinafter in this section referred to as the dependant spouse), to the satisfaction of the Court – (i) Such gross sum of money; or (ii) Such annual sum of money for any term not exceeding the life of the dependant spouse, as having regard to the means of the

dependant spouse, the ability of the contributing spouse and to all the circumstances of the case, the Court thinks reasonable”.

In Erskine V, Erskine (1984-1986) IGLR 249, the court held:

In a matrimonial proceeding such as the instant one where one spouse succeeded in the action of dissolution of the marriage on some ground of misconduct committed by the other spouse, the successful spouse should be entitled to costs against the unsuccessful spouse.

The court finds that the actions of the respondent, as indicated above, contributed greatly to the breakdown of the marriage. In the circumstance, he is ordered to pay alimony of GHC 10,000 to the petitioner in four equal installments. He is ordered to pay an amount of GHC 5000 to the Petitioner to rent a place- for a year.

● **Matrimonial Property.**

The respondent stated that he solely paid for the land at Ashiaman and he is currently building a two-bedroom apartment on it, which is at the lintel level. The petitioner stated that he took up maintenance and running of the home with her own money and that cooked for the respondent and the laborers. She also did labor jobs such as fetching water and lifting items. She pointed out that she did not give the respondent any money to purchase building materials. The respondent admitted that the petitioner used her money to support the home but he also financed same. He admitted that she fetched water and did minor labor work. He maintained that he gave her money to cook for the laborers.

In the case of **Ernestina Boateng V. Phyllis Serwah and 2 Others** Civil Appeal No. J4/08/2020 dated 14th April 2021, Justice Pwamang JSC stated:

“...As a court of equity, having taken the view that the properties were jointly acquired, we are to try as much as possible to decide the case in a just and fair manner taking into

consideration all the circumstances surrounding the acquisition of the properties and the contributions of the parties...”

In the case of **Peter Adjei Vs. Margaret Adjei**, Civil Appeal No. J4/06/2021 21st April 2021 -Justice Pwamang JSC indicated that the “highest policy of the law is to be just to all parties who come before the court’. His Lordship stated:

*“Being an evidential presumption, it is rebuttable by the spouse whose ostensible property is in question or any person challenging the presumption by adducing evidence to prove that the other spouse contributed nothing in the acquisition of the property. See **Fynn v Fynn & Osei [2013-2014] 1 SCGLR 727**. When sufficient evidence in rebuttal is introduced by the spouse who is the ostensible owner of the property, or a party challenging the presumption, the evidential burden shifts onto the other spouse to also introduce any evidence of her contribution to the acquisition of the property... The highest policy of the law is to be fair to all parties who come before the court. Our thoughts ought not to focus only on protecting female spouses where the ostensible owner is the male spouse, which is more frequent, but the principles we evolve should equally aspire to protect female spouse when she is the ostensible property owner and a male spouse wants to take advantage of her. That explains why the Constitution uses the gender-neutral term, spouse...”*

In this case, the evidence reveals that the land was acquired by the respondent. However, the petitioner contributed substantially to the construction of the building and therefore has an equitable share in the matrimonial property. In the circumstance, the respondent is ordered to pay an amount of GHC 12,000 to the petitioner in lieu of her share of the matrimonial property.

(SGD)

H/H EVELYN E. ASAMOAH (MRS)

CIRCUIT COURT JUDGE

