



the Respondent has behaved in a way that he finds it intolerable to live with her hence the instant Petition.

Respondent filed an Answer and Cross Petition on 26<sup>th</sup> April, 2021. She contends that the parties got married under the ordinance on 5<sup>th</sup> September, 2010 at the Church of Pentecost, Northern Outreach Ministry in the Greater Accra Region. She says that the Petitioner runs his own business of car spare parts and second-hand vehicles. She contends that she initiated a suit at the Family Tribunal for maintenance during her pregnancy with the last issue. She says that the Petitioner denied being responsible for the pregnancy and the court made an order for DNA test to be carried out to determine the paternity of the child. She says that on 5<sup>th</sup> August, 2020, the Tribunal ruled that until a DNA test was carried out, the Petitioner was presumed to be the father of the issue and was ordered to pay for the medical expenses.

She says that the Petitioner refused to pay for the medical expenses and the execution of the DNA test so on 3<sup>rd</sup> March, 2021 the Tribunal declared Petitioner as the father of the last issue and ordered him to name the child, but he has failed to do so. She contends that it is the Petitioner who has behaved in such a way that Respondent cannot be reasonably expected to continue to live with him as husband and wife. She states that attempts by the family and the Church members have been unsuccessful due to Petitioner's disrespect. She says that the Petitioner has deserted the Respondent and is currently living with another woman. She says that the marriage has broken down beyond reconciliation and therefore prays as follows:

- a. "That the marriage celebrated between the parties on 5<sup>th</sup> September, 2010 at the Church of Pentecost-Northern Outreach Ministry in the Greater Accra Region be dissolved.
- b. That full custody of the seven children of the marriage should be given to the Respondent with reasonable access to the Petitioner.
- c. That the Petitioner be compelled to name the seventh child.
- d. That the Petitioner should be compelled to be responsible for the education (school classes and feeding fees) and medical needs of the seven children of the marriage.
- e. An order for the Petitioner to maintain the children of the marriage with one thousand Ghana Cedis (GHS1,000) a month.
- f. The Petitioner should reimburse the Respondent for the medical expenses she incurred during her pregnancy and delivery of the

seventh child of the parties amounting to three thousand nine hundred and fifty-four Ghana Cedis (GHS 3,954.00).

- g. An order compelling the Petitioner to give the Respondent an amount of fifteen thousand Ghana Cedis (GHS15,000.00) towards the scheduled medial surgery to remove the abdominal hernia the Respondent developed during the pregnancy.
- h. An order compelling the Petitioner to settle the Respondent financially with an amount of One Hundred Thousand Ghana cedis (GHS 100,000.00) to enable Respondent start a business with the aim of making her financially independent after the dissolution of the marriage to the Petitioner.
- i. That the one storey matrimonial home at Ablekuma-Olebu be declared as jointly owned by the parties and shared equally between the parties.
- j. That the court should order that the chamber and hall unit used as the matrimonial home at Ablekuma-Olebu should remain for the use of the Respondent and children.
- k. Any other orders that the Court may deem fit.”

A notice of appointment of solicitor was filed on behalf of Respondent on 26<sup>th</sup> April, 2021 and on 29<sup>th</sup> June, 2021, Petitioner filed a notice of Change of Solicitor.

Petitioner testified that he got married to Petitioner on 15<sup>th</sup> August, 2008 at the Registrar General’s Department in the Greater Accra Region and cohabited as husband and wife at Ablekuma-Olebu. He testified that there are seven issues to the marriage named Emmanuel Somuah Tuffour, 14 years old, Daniel Tuffour 11 years old, David Ofori Tuffour 10 years old, Ntiamoah Tuffour 6 years old, Yaw Omame Boamah Tuffour 4 years old, Leticia Animah Tuffour 2 years old and Nana Adwoa 4 months old. He testified that he is a labourer at Darkuma-Kokompe and the Respondent is a house wife who does very little to support the family budget. He testified that the marriage between the parties has broken down because the parties are incompatible and by reason of irreconcilable differences, he finds it unreasonable to continue being married to the Respondent.

He stated that the Respondent has behaved in such a way that he finds it intolerable to live with her. He testified that before marriage Respondent promised to love and care for him but upon marriage that has not been the case. He stated that Respondent has denied him sex for a year and a half now and that makes him sad. He says that the Respondent gets annoyed

and verbally abuses him and that causes him severe stress. He stated that Respondent does not cook or wash his clothes and has deserted her matrimonial duties despite good counsel from elders of the family.

He says that due to Respondent's conduct, he has been locked up by the police four times since at the least opportunity the Respondent would report matters in the marriage to the Police and without opportunity to explain himself the police detain him. He testified that the Respondent goes out of the matrimonial home for days without telling him and when questioned she would get offended and hurl insults and abuses on him. He stated that family members and the church have tried to help them resolve their problems, but the behaviour of Respondent does not make it work. He testified that on three different occasions he provided Respondent with startup capital for her to begin her won business, but these efforts failed due to her laziness. He says that the parties have grown apart and that the marriage has been dissolved customarily by their families. He testified that he built the matrimonial home before the marriage and the house has been willed to the 1<sup>st</sup> – 5<sup>th</sup> issues and future developments on the land would be made to the other two children. He tendered the following Exhibits:

- Exhibit A: Electricity payment receipt dated 16<sup>th</sup> November, 2021
- Exhibit A1: Electricity payment receipt dated 6<sup>th</sup> December, 2018
- Exhibit B Series: Receipts for payment of school fees

Respondent testified that the parties got married under the Marriages Act 1884-1985 (CAP 127) on 5<sup>th</sup> September, 2010 at the Church of Pentecost-Northern Outreach Ministry in the Greater Accra Region. She testified that the parties lived at Ablekuma Olebu after the marriage and there are seven issues. According to her, Petitioner refused to name the seventh issue who goes by the name of Nana Adwoa. She stated that the marriage has broken down beyond reconciliation because Petitioner has behaved in a way that she cannot reasonably be expected to live with him. She testified that the Petitioner has caused her pain, anxiety and emotional distress far above the normal wear and tear of married life. She testified that in the course of marriage, they completed a one storey matrimonial home at Ablekuma-Olebu which is made up of five chamber and hall units with an incomplete first floor. She stated that they resided in part of the building as the matrimonial home and rented out part to tenants. She testified that she initiated a suit on 1<sup>st</sup> July, 2020 at the Family Tribunal against the Petitioner for maintenance for herself during her last pregnancy because Petitioner denied that he was the father. She stated that on 5<sup>th</sup> August, 2020

the court ruled that the child was presumed to be that of the petitioner and made orders for a DNA test to be carried out. She testified that Petitioner refused to do the DNA and pay for her medical expenses so on 3<sup>rd</sup> March, 2021 the Petitioner was declared the father of the last issue by the court and ordered to reimburse Respondent for all medical expenses incurred. She stated that the Petitioner has till date failed to comply with the orders of the court and continues to insult her at every opportunity. She testified that whilst pregnant with the last child, she was diagnosed with abdominal hernia as a result of complications she suffered with the 6<sup>th</sup> child, so the 7<sup>th</sup> pregnancy was declared high risk.

According to her, she endured unbearable pain throughout the pregnancy, and this made the relationship between the parties difficult. She testified that due to numerous misunderstandings and the manner in which the Petitioner treated her during the pregnancy, Petitioner moved out of the matrimonial home and currently lives with another woman. She testified that the Petitioner abused her physically, emotionally, verbally and economically throughout the marriage and she has had to report the abuses to the Police each time they occurred which resulted in the Petitioner being arrested several times. She stated that she was always compelled by family members to withdraw the matter from the police for settlement by the family. She says that as a stay-at-home mother with seven children it is impossible to leave home for several days as claimed by Petitioner.

She testified that Petitioner caused her distress when he alleged he was not the father of the 7<sup>th</sup> issue. She stated that despite his acknowledgment of parentage in the instant Petition, Petitioner has still refused to name and maintain the last child in compliance with the court order. She says that she has been embarrassed because she had to borrow money from family and friends to pay medical expenses for her last pregnancy. She says that she filed an Entry of Judgment of Three Thousand Nine Hundred and fifty-four Ghana Cedis at the Registry of the Family Tribunal. She stated that attempts at reconciliation have failed because of the disrespectful manner in which Petitioner treated all those who attempted to reconcile them. She tendered the following Exhibits:

Exhibit 1: Marriage Certificate

Exhibit 2: Family Tribunal Proceedings dated 2<sup>nd</sup> September, 2020

Exhibit 3: Family Tribunal Proceedings dated 3<sup>rd</sup> March, 2021

Exhibit 4: Medical Records

Exhibit 5 Series: Police Medical forms, Extract from Station Diary, Warning Letter, Withdrawal letter and Photographs

The sole ground for divorce under Ghanaian law is found in Section 1(2) of the **MATRIMONIAL CAUSES ACT, 1971 (ACT 367)**. It states as follows:

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

In proving the breakdown of marriage, the Petitioner has a burden of proving one or more of the factors listed under Section 2(1)(a) -(f) of Act 367.

In showing that the marriage has broken down beyond reconciliation, Petitioner relies on the factor of behaviour.

The following provisions of the Evidence Act, 1975 (NRCD 323) guide the courts on the Burden of Proof required of a party:

***“10. Burden of persuasion defined***

*(1) For the purposes of this Act, 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.*

*(2) The burden of persuasion may require a party*

*(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or*

*(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

***11. Burden of producing evidence defined***

*(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.*

*(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.*

***12. Proof by a preponderance of the probabilities***

*(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*

*(2) “Preponderance of the probabilities” means that 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 than its non-existence.”*

As Respondent has a Cross Petition, she bears the same burden of proof as the Petitioner. One basic issue which needs to be determined is the kind of marriage contracted between the Parties and the date on which it was contracted. While the Petitioner claims that the marriage was celebrated on 15<sup>th</sup> August, 2008 at the Registrar General’s Department in Accra, Respondent states that it was contracted on 5<sup>th</sup> September, 2010 at the Church of Pentecost- Northern Outreach Ministry, Accra. Petitioner failed to attach evidence of the said marriage contracted Respondent on the other hand tendered Exhibit 1 which is marriage certificate. During Cross Examination of Respondent however by counsel for Petitioner, the following ensued:

“Q: You are married to the Petitioner on 15/08/2008

A: That is so

Q: You married at the Registrar General Department

A: Yes”

It is a trite principle of law that documentary evidence should prevail over oral evidence. See **FOSUA AND ADU POKU V DUFIE (DECEASED) AND ADU-POKU MENSAH (2009) SCGLR 310**. I note that Exhibit 1 is a certificate of marriage which bears the names of the Parties with an indication that the marriage was celebrated at the Church of Pentecost-Northern Outreach Ministry, Accra on 5<sup>th</sup> September, 2010. Indeed, this document was tendered without objection and was not impeached by counsel for Respondent. I therefore find that the marriage between the parties was a marriage under the ordinance contracted on 5<sup>th</sup> September, 2010 at the Church of Pentecost-Northern Outreach Ministry.

Though Petitioner relied on the ground of behaviour in seeking to prove that the marriage has broken down beyond reconciliation, he failed to produce evidence of the said allegations made. In the case of **ZABRAMA v. SEGBEDZI [1991] 2 GLR 221** it was stated per curiam as follows:

*“...The correct proposition is that, 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 the fact or facts he asserts can properly and safely be inferred. The nature*

*of each averment or assertion determines the degree and nature of that burden...”*

Besides repetition of his pleadings, Petitioner failed to adduce credible evidence before this court to prove his claim. Respondent tendered Exhibit 5A and 5B which are police medical forms and Exhibit 5C which is an Extract from Station Diary. I note from Exhibit 5C that the reports made by Respondent were against the Petitioner concerning physical assault. I note also that Exhibit 5E is a letter dated 10<sup>th</sup> May, 2017 written by Respondent to the Police withdrawing a case of Assault reported against Petitioner. I note also that Exhibit 5F is a photograph of Respondent with a swollen right eye which Respondent tendered as evidence of the abuse suffered at the hands of Petitioner. On a balance of probabilities, I find that Respondent has produced credible evidence in proof of the factor she relies upon and therefore she has a right to be protected by a decree of the court for the dissolution of the marriage. See **OSEI-KOOM v. OSEI-KOOM [1967] GLR 274**. I am satisfied under section 2(3) of Act 367 that the marriage between the Parties has broken down beyond reconciliation. I therefore decree on the Cross Petition that the marriage under the ordinance celebrated between the parties on 5<sup>th</sup> September, 2010 at the Church of Pentecost – Northern Outreach Ministry, Accra is hereby dissolved on the ground that the marriage has broken down beyond reconciliation.

Having read Exhibits 2 and 3, it is not in dispute that a court of competent jurisdiction has determined issues relating to the paternity, naming and maintenance of the seventh issue and the payment of medical expenses of Respondent. Exhibit 3 operates as res judicata as same is still binding on the parties herein. See: **AKIM AKOROSO STOOL AND OTHERS V. AKIM MANSO STOOL AND OTHERS [1989-90] 1 GLR 100; LARTEY V. OTOO [2001-2002] SCGLR 80**. On this basis reliefs ‘c’, ‘f’ and ‘g’ of the cross petition fail.

I shall turn to the issue of custody of the issues. Both Parties pray for the custody of the issues. Petitioner on the other hand prays for custody of the first five issues. The evidence of Respondent is that she is a stay-at-home mother taking care of the issues. In granting custody, the paramount consideration was the welfare of the children. The court's duty was to protect the children irrespective of the wishes of the parents. See **OPOKU-OWUSU v. OPOKU-OWUSU [1973] 2 GLR 349**. Section 45 of the **CHILDREN'S ACT, 1998 (ACT 560)** sets out the considerations for



custody. One of such factors to be considered is the desirability to keep siblings together. Having considered that all the issues have grown up together in the same home, I do not consider it in the interest of the issues to grant custody of the first to fifth issues to the Petitioner. I therefore order that custody of the issues is granted to the Respondent with reasonable access to the Petitioner.

During cross examination of Respondent by counsel for Petitioner the following ensued:

“Q: And he is the one who pays school fees and maintains the family

A: As for the school fees, he pays but for maintaining the house, I also take part”

Thus, Respondent herself does not dispute that Petitioner pays the school fees of the issues. Petitioner is to continue paying the school fees of the issues and their medical expenses as and when they fall due. It is also undisputed that the Petitioner maintains the issues except that Respondent claims an amount of One Thousand Ghana Cedis instead of the Two Hundred Ghana Cedis paid by Petitioner. In view of the orders already made which bind Petitioner financially and in the absence of evidence of the financial position of Petitioner, I order that Petitioner is to pay maintenance of Five Hundred Ghana Cedis a month for the maintenance of the issues.

I shall turn to the issue of Property settlement. Petitioner prays that the matrimonial home should be declared jointly owned by the parties and shared equally between them. While Respondent claims that the matrimonial home was completed in the course of the marriage, Petitioner claims to have built the matrimonial home before the marriage and the said house has been willed in the name of the 1<sup>st</sup> – 5<sup>th</sup> children and future developments would be made for the other two issues. Petitioner produced no evidence of having completed the matrimonial home before getting married to Respondent in 2010. Respondent also failed to produce evidence that the said house was constructed during the pendency of the marriage.

During cross examination of Respondent by counsel for Petitioner, she stated as follows:

“Q: Mr. Tuffour built his house in 2000 before he married you in 2010 so you do not deserve any half share same has been willed for the children

A: That is ok by me”

It is trite that the provisions of a Will would only take effect upon the death of the testator. Thus, any disposition made under a Will would only pass upon the death of the person who made the said Will. See **WILLS ACT, 1971 ACT 360**. As things stand, there is no evidence of the contents of the Will of the Petitioner before the court however Petitioner by his own showing admits that just five of the issues have the matrimonial property willed to them. It is not in dispute from the evidence that the matrimonial property is still in an uncompleted state with some of the chambers and halls rented out to tenants. Therefore, to that extent, I consider that the said construction of the matrimonial property could not have been said to have been acquired and completed prior to the marriage. In the case of **BARAKE V. BARAKE [1993-94] 1 GLR 635** it was held as follows:

*“Under section 20 (1) of Act 367, the court had power to grant financial provision where married couples were divorced. The basic consideration was not based on proof of ownership or contribution towards acquisition of the properties to be awarded but on the needs of the parties...”*

Having regard to how long the parties have been married, the number of issues involved and the fact that there is no other property owned by Respondent on the evidence. I consider that it would be just and equitable to make orders for property settlement under Section 20 of the Matrimonial Causes Act, 1971 (Act 367). I therefore declare the matrimonial property as the jointly acquired property of the parties; same is to be shared equally between the parties.

Respondent prays for an amount of One Hundred Thousand Ghana Cedis (GH¢100,000.00) from Petitioner to enable her to start a business. Petitioner testified that he set Respondent up three times in a business however the business collapsed due to Respondent’s laziness. This was denied by Respondent however during cross examination of Respondent by Counsel for Petitioner the following ensued:

**Q:** You were set up on 3 occasions to work is that not so

**A:** It is not true

**Q:** You were first set up to trade in provisions I put it to you

**A:** That is right. He set me up to sell and there is a Poly Tank I use to sell water but because I give birth every 2 years, there was nobody to take care of the provision store whenever there is a fight he takes the shop from me and hands it over to another person and till now I don't work again"

She also admits that the Petitioner bought a freezer and stocked it with meat for business though she stated that they fought when he bought the meat. From the above, I find it probable that the Petitioner did in fact set up the Respondent for businesses which did not thrive for one reason or the other which is indistinct from the evidence before me. It is however undisputed that Respondent is unemployed and thus financially dependent on the Petitioner. It has been held in the case of **GAMBLE V. GAMBLE (1963) 1 GLR 416** by Djabanor J that:

*"I do not think it would be right or just for the court to allow a wife to remain content with doing no work and just subsisting on the award of alimony."*

In this case, Respondent does not seek alimony but rather an amount to start up a business. This notwithstanding, the factors the court needs to consider remains unchanged; a key factor the court is to consider is whether or not the person making the claim for alimony is financially dependent on the other party. The court must also have regard to the earning capacities of the Parties in order not to cripple a Party's earning power. I do not consider from the evidence that it has been shown that Petitioner is in a position to pay One Hundred Thousand Ghana Cedis (GH¢100,000.00) to the Respondent to set her up for a business undisclosed by the evidence. This is especially so when this court has already ordered Petitioner to be responsible for the payment of school fees, medical expenses and maintenance. I therefore order that Petitioner pays an amount of Ten Thousand Ghana Cedis (GH¢10,000.00) to Respondent to enable her start up a business.

Counsel for Respondent in her written address to this court made a prayer that Petitioner be made to pay a security for payment under section 23 of Act 367 since he had failed to pay what is due Respondent in the Judgment

of the District Court. There is no credible evidence before this court which gives the court reason to believe that Petitioner, if ordered to make a payment may be unwilling or unlikely to pay. The prayer to order Respondent to give reasonable security for any payment is therefore refused. There shall be no order as to costs.

**H/H ENID MARFUL-SAU  
CIRCUIT JUDGE  
AMASAMAN**