

IN THE CIRCUIT COURT HELD AT DANSOMAN ON TUESDAY, THE 10<sup>TH</sup> DAY OF OCTOBER 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT, THE CIRCUIT COURT JUDGE.

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SUIT NO. CCD/C4/19/23

DELPHINA GLADYS COFIE

CAMARA – ACCRA

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PETITIONER

VS

PAUL CHARLES OTCHERE

DANSOMAN – ACCRA

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RESPONDENT

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### JUDGMENT

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#### **Background:**

The Petition was filed on 4/5/2023 and the Petitioner prayed for the following reliefs;

- i. That the marriage celebrated between them be dissolved.
- ii. That the Respondent be ordered to maintain the children, pay school fees, medical bills and rent a place for them.
- iii. Respondent to pay alimony and cost.

The basis for the instant Petition and the accompanying reliefs as narrated by the Petitioner is that on the 21/12/2013, the parties got married and over the years had Three (3) issues who are aged 12, 8, and 5 years respectively, as at the time of filing this instant Application. It is the Petitioner's contention however, that the marriage has broken down beyond reconciliation as a result of Respondent's unreasonable behaviour. According to the Petitioner, the problems started in 2016 when she lost her job and was pregnant with the last child. Immediately she lost the job, the Respondent started misbehaving towards her and failed to maintain her and the children to the extent that after exhausting her funds, she had to rely on some friends and relatives for financial

assistance. She stated further that the Respondent subsequently resorted to insulting her over trivial issues and threatens her with physical assaults of which on one of the days, the Respondent tried to strangle her when they had a misunderstanding. She stated again that despite the physical and verbal abuse, the Respondent is having extra marital affairs with other women and has neglected her and the children. She concluded the Petition by stating that the Respondent has behaved in such a manner that has caused her emotional and psychological trauma to the extent that she cannot continue to live with him and her husband. She concluded further that all attempts at resolving the differences have been futile of which the church advised that they live separately as a couple for some time for tempers to cool down.

On the 27/6/23, the Respondent filed an Answer to the Petition and insisted that the problems started when the Petitioner started schooling and the resultant financial issues they had as a couple because he was also schooling himself. He denied all the Petitioner's averments and stated that the Petitioner was disrespectful, spoke to him in a manner that he disliked and was unappreciative of his efforts in the marriage. He denied having any extra marital affairs and says the woman the Petitioner referred to in her Petition is his colleague at work. He stated that there was a quarrel between them when the Petitioner sold their wedding rings without his knowledge. The Respondent concluded by indicating that it is the Petitioner who has behaved in such a manner that has affected him physically, emotionally and psychologically. He concluded further by stating that he has not neglected his children because the Petitioner leaves them in his care whilst she pursues her education. He admitted that the marriage has broken down beyond reconciliation and cross petitioned for the following;

- i. That the marriage celebrated between them be dissolved.
- ii. That the maintenance of the children and the payment of rent be the joint responsibility of both parties
- iii. Payment of alimony and cost should be dismissed by both parties.

### **Issues for Determination**

In view of the processes so far filed, the main issues for determination are as follows;

- i. Whether the marriage has broken down beyond reconciliation.
- ii. Whether or not the Respondent should solely maintain the children or should be a joint responsibility of both parties.
- iii. Whether or not the Respondent should pay alimony.

### **Analysis:**

The first issue for determination is whether the marriage has broken down beyond reconciliation. Indeed, the Matrimonial Causes Act, 1971 (Act 367) provides in its Section 1(2) that *“The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”*. Section 2 of Act 367 is on Proof of breakdown of marriage and Section 2(1) of Act 367 provides that *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.*

Petitioner therefore has to satisfy the court of one or more of the grounds under section 2(1) of Act 367 as proof that the marriage has broken down beyond reconciliation. The court also has to satisfy itself that the grounds for dissolution canvassed by the Petitioner falls within Section 2 of Act 367. The Petitioner, per her evidence in chief repeated the averments contained in the Petition and attributed the breakdown of the marriage to the failure of the Respondent to maintain the family, having extra marital affairs as well as being verbally, physically and emotionally abusive. Specifically, she testified that the Respondent once pushed her against the wardrobe and almost completely strangled her. It was at that point that she resorted to leave the marriage for fear of losing her life. She concluded her testimony by stating that both families have tried to resolve the issues in the marriage on several occasions but to no avail including the church, although the church advised that they live separately for a while. The Respondent per his evidence in chief testified that the marital issues started when both parties started schooling and this was mainly financial issues especially when the Petitioner was unemployed. He denied the allegations that he does not maintain the family and insisted that he does so by paying school fees, rent, utility bills and other needs as a father will do. He testified further that the Petitioner is disrespectful, unappreciative of his efforts and resorts to quarrels at the slightest provocation. He concluded his testimony by indicating since November 2021, they have not had sexual intimacy of which he has now come to the realization that they are not compatible as a couple and every effort he made at resolving the issues amicably did not yield results.

Having denied the allegations leveled against him, the burden shifts to the Petitioner to prove all her allegations as Section 11 (1) of the Evidence Decree, 1975 (NRCD 323) provides that the *'burden of producing of evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.'* The Petitioner however failed to adduce further evidence to support her allegations, yet the Respondent also failed to cross examine the Petitioner on all the allegations she leveled against him. It is important to state that cross-examination serves the purpose of challenging and testing the credibility, reliability, and accuracy of a witness's testimony. It allows a party to

question the opposing party's witness in order to clarify or challenge their version of events, highlight inconsistencies or contradictions in their testimony, and elicit information that supports their own case. It is trite that when a party fails to cross-examine a witness on a particular matter, it is deemed to be an acknowledgment of that averment by the party. This means that the court will consider the averment as admitted by the party who failed to cross-examine. Indeed it was also held in the case of **Quagraine vs Adams** [1981] GLR 599, the court held that *'where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by failure to cross-examine. Therefore, if a party fails to cross-examine a witness on vital matters testified to in the witness box, it will be deemed as an admission of those matters. As a result, the party may not need to call further evidence on those matters.* In view of the above, the court is satisfied that the marriage between the parties has indeed broken down beyond reconciliation as provided in Sections 2(1)(b) of Act 367 that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent; as well as Section 2(1)(f) of Act 367 which states that *the parties to the marriage have, after diligent effort, been unable to reconcile their differences.*

The next issue for determination is whether or not the Respondent should solely maintain the children or should be a joint responsibility of both parties. Section 47 of the Children's Act, 1998 (Act 560) states that *'a parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, education and reasonable shelter for the child'*. Section 19 of Act 367 provides that *'the Court may, whenever it thinks just and equitable, award maintenance pending suit or financial provision to either party to the marriage, but an order for maintenance pending suit or financial provision shall not be made until the Court has considered the standard of living of the parties and their circumstances'*. Additionally, Section 22(2) of Act 367 provides that *'the Court may, either on its own initiative or on application by a party..., make an order concerning a child of the household which it thinks reasonable and for the benefit of the child.* It is therefore trite that in making Maintenance Orders, the court must consider the family member from whom maintenance is claimed and he or she

should be able to afford the maintenance that is claimed. Thus, that person must have the means to pay and the means test is such that the person who is liable to pay maintenance must have the MEANS and the maintenance so claimed must be REASONABLE. In the instant case, the Petitioner prays for maintenance all three (3) children of the marriage per her Affidavit of Means filed on the 5/10/23, indicated that she earns Seven Hundred and Fifty Ghana Cedis (GHc750.00) as a part-time Healthcare Assistant as she is currently a student at Wisconsin University. The Respondent's Affidavit of Means also filed on the 5/10/23 revealed that he is Pupil's Teacher and earns One Thousand Five Hundred Ghana Cedis monthly. The Respondent currently pays Four Hundred Ghana Cedis (GHc400.00) towards the maintenance of the children but the Petitioner prays for an amount of One Thousand Ghana Cedis (Ghc1, 000.00) as maintenance sum. It appears the amount demanded for by the Petitioner is unreasonable as far as the Respondent's means are concerned. The court will however, ultimately order a maintenance sum that is just and in the best interest of the children.

The final issue for determination is whether or not the Respondent should pay alimony to the Petitioner. Alimony refers to the financial support provided by one spouse to the other after the dissolution of marriage. The amount and duration of alimony payments are determined by the court based on various factors such as the financial needs of the recipient spouse and the ability of the paying spouse to provide support. The **Black's Law Dictionary**, 6<sup>th</sup> Edition defines Alimony as "... sustenance or support of the wife by her divorced husband and stems from the common law right of the wife to support by her husband. Allowances which the husband or wife by court order pays to the other spouse for maintenance while they are separated or after they are divorced (permanent alimony)..." Section 20 of Act 367, recognizes the payment of a lump sum financial provision to a party in the following terms; "20. *Property settlement* (1) *The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable.* (2) *Payments and conveyances*

*under this section may be ordered to be made in gross or by instalments.” It must however be emphasized that the award of alimony or financial provision is not automatic as the court considers several factors including but not limited to the circumstances of the parties. In **Aikins vs. Aikins** 1979 [GLR] 223, the Court realizing among others, that the Wife had no capital assets of her own, and had not worked for several years before the Petition was issued, and also acknowledging that she indeed needed money to rent premises for herself and her children and set herself up as a dressmaker, awarded the Wife-Petitioner a lump sum payment. Similarly, in the case of **Quartson vs. Quartson** [2012] 2 SCGLR 1077, the Supreme Court granted the Petitioner a lump sum financial provision, on the basis that the Petitioner needed to have some money to live on while she re-organised her life. The award of alimony or financial provision to a wife upon dissolution of a marriage, is therefore dependant on the circumstances of each case and must be just and equitable as required by section 20 (1) of Act 367, supra. In the instant case, however, the Petitioner later abandoned her prayer for alimony, costs as well as the prayer for the Respondent to rent a place for her and the children. Since the Petitioner abandoned some of her reliefs as captured by the Record of Proceedings, the court shall make no orders to that effect.*

### **Conclusion**

The evidence on record shows that right the couple have had series of misunderstandings and they have been unable to resolve their differences over time coupled with the fact that the parties have not had sexual intimacy since 2021. In view of the above, the court is satisfied that the marriage between the parties has broken down beyond reconciliation. The Court therefore orders as follows;

1. That the marriage celebrated between the parties at the Royal House Chapel International, Accra on the 21<sup>st</sup> day of December, 2013 is hereby dissolved this 6<sup>th</sup> day of October, 2023.
2. That the Respondent shall maintain the children with an amount of Eight Hundred Ghana Cedis (GHS800.00) monthly and same shall be paid to the Petitioner through her Bank Account or her Mobile Money Account.

3. The Petitioner shall have custody of the children and the Respondent shall have reasonable access to the children in a manner that is agreeable to both parties and in the best interest of the children.
4. The Respondent shall pay school fees as well as medical bills of the children and the Petitioner shall be responsible for the payment of rent.

*Petitioner present.*

*Respondent present.*

*No Legal Representation for both parties.*

**H/H HALIMAH EL-ALAWA ABDUL-BAASIT  
CIRCUIT COURT JUDGE**