

IN THE CIRCUIT COURT HELD AT DANSOMAN ON TUESDAY, THE 12TH DAY OF DECEMBER 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT, THE CIRCUIT COURT JUDGE.

SUIT NO. CCD/C4/09/23

ALBERT ONASIS OSEI

PETITIONER

VS

JOANNE NAA AKU THOMPSON

RESPONDENT

JUDGMENT

Background:

The Petitioner and the Respondent got married on the 24th October, 2015 at Grace Chapel International, Kaneshie, First Light, Accra after which they cohabited at Dansoman but the Respondent lived at Cape Coast and Kumasi respectively. The parties are both citizens of Ghana and whilst the Petitioner is currently unemployed, the Respondent is a hairdresser. There are Three (3) issues of the marriage but it is the Petitioner's case that the marriage has broken down beyond reconciliation as the Respondent has behaved in such a way that he cannot reasonably be expected to live with her as husband and wife. The Petitioner proceeded to particularize the unreasonable behavior of the Respondent to include the fact that the Respondent accused the Petitioner of wanting to kill her and taking custody of the children as well as an accusation of infidelity without any concrete proof which has caused the Petitioner a lot of pain. He stated further that the Respondent has severally requested for a fake divorce from the Petitioner to enable her travel abroad to a male friend of hers who has made that a condition precedent for her travel. The Respondent sends the children to schools the Petitioner cannot afford and then reports to different

persons that he is not maintaining the family. The Petitioner stated that the Respondent has caused him financial distress as a result of causing him to contract several for loans for and on her behalf but she failed to pay. He concluded by stating that the parties have had several irreconcilable differences throughout the pendency of this marriage and all attempts at settlement have proved futile of which he prayed for the following reliefs;

1. Dissolution of the marriage between parties as having broken down beyond reconciliation.
2. An order of the Court granting custody of the boy to the Petitioner and the girls to the Respondent with reasonable access to both parties during school vacations.
3. Any other order the Court may deem fit and just.

On the 9/5/23, the Respondent filed an Answer to the Petition but same was amended pursuant to the Court granting her leave to do so wherein she admitted some of the Petitioner's averments but denied most of the averments in the Amended Answer to Petition and Cross-Petition filed on the 10/10/23. The Respondent Cross-Petitioned as follows;

1. That the marriage celebrated between the parties be dissolved.
2. That the Respondent be granted custody of Gideon Barima Osei, Serwaa Conteh Osei and Maame Abena Pomaa Osei with reasonable access to the Petitioner during school vacations.
3. An order for the Petitioner to make to the Respondent such maintenance regarding Serwaa Conteh Osei and Maame Abena Pomaa Osei pending the suit and thereafter, such periodic payments as may be just.

4. That the Petitioner be ordered to pay the Respondent a lump sum of fifty thousand Ghana Cedis (GH¢50,000.00) as financial provision.

The basis of Respondent's Cross-Petition is that the marriage celebrated between the parties has broken down beyond reconciliation because several attempts made by the family of the Respondent and others reconciling them have proved futile. She stated further that the Petitioner has behaved in such a way that the Respondent cannot reasonably be expected to live with him as he has caused her much anxiety, anguish and distress. The Respondent particularized the Petitioner's unreasonable behavior to include the fact that the Petitioner left the matrimonial home to Kumasi and has refused to come home to visit the Respondent and the children. She concluded by stating that the Petitioner cut off almost all forms of communication with the Respondent due to constant disagreement and at a meeting called by the family of the Respondent to amicably settle all disputes between the parties, the Petitioner informed the Respondent and her family that he was no longer interested in the marriage and that he wanted to divorce the Petitioner.

The Petitioner replied to the Respondent's Cross-Petition wherein he denied most of the Respondent's averments as contained in the Cross-Petition. It is the Petitioner's case that the Respondent is not entitled to paragraph (d) of her Cross-Petition since she has already caused the Petitioner so much financial stress and currently owing the Petitioner so much amount of money for which she has refused, failed and or neglected to pay him back.

Issues

In view of the processes filed before the Court, the following are the issues for determination;

1. Whether or not the marriage has broken down beyond reconciliation.

2. Whether or not custody of their son be granted to the Petitioner and the daughters to the Respondent with reasonable access to both parties during school vacations.
3. Whether or not the Court should order the Petitioner to pay towards the maintenance for all the children.
4. Whether or not the Petitioner can be ordered to pay the Respondent a lump sum of Fifty Thousand Ghana Cedis (GH¢50,000.00).

To make a determination on the issues raised above, there is the need to examine the testimony of both parties.

The Petitioner's Testimony

The Petitioner testified on oath, among others that the marriage has been filled with unhappiness and misunderstandings and the Respondent has shown in many ways not to be submissive. He testified further that the Respondent makes financial demands on him and if he is unable to meet the demands, she rains with all kinds of insults. To the extent that the incessant financial demands from the Respondent affected his output at work and he almost lost the job in 2020. The Petitioner testified again that the Respondent requested for Three Thousand United States Dollars (US\$3,000.00) belonging to his mother with the assurance that she will pay back but has since failed to do so causing tension to brew between him and his mother. The Petitioner again gave the Respondent Five Thousand Cedis (Ghc5, 000.00) for her brother's business but again failed to do so.

It is the Petitioner's testimony that the Respondent has not cooperated with him on matters relating to the schools for the children as she rather opts for expensive school way beyond what he can afford even though the Respondent knows his financial capabilities. Petitioner testified that the Respondent has lived with the notion that he is from a wealthy family and keeps making demands for money on him, his mother or

his sisters but fails to pay back causing so much tension in the marriage. In the Petitioner's further testimony, he stated that the Respondent requested "false divorce" to enable her travel and marry another man outside Ghana for papers. The Respondent will not yield to his views and is very disrespectful towards him and when she requested to celebrate her birthday in Dubai and he could not afford, the Respondent used unprintable words to describe the marriage. The Petitioner concluded his testimony by stating that on the 1st day of May, 2021, there was a meeting involving both families and some witnesses to resolve the persistent misunderstanding between the parties but the final statement made by the Respondent's uncle at the meeting is that he can proceed to Court to have the marriage dissolved, hence his reliefs before the Court.

Petitioner's witness, one Stephen Prah, a driver, who lives at Elimina testified on oath that he knows the parties as he runs errands for and on behalf of the Petitioner including bringing items to the Respondent and driving the Petitioner home on certain days as well as bringing an air conditioner and a generator set procured by the Petitioner for the Respondent to run the hairdressing business. He stated that the Petitioner once wanted to visit the children but the Respondent threatened him with harm of which the Petitioner because of the threat, left without seeing his children. He testified further that the Petitioner informed her of a series of misunderstandings in their marriage and he was at the family meeting held on the 1st day of May, 2021 but the said meeting ended inconclusively because both sides took entrenched positions.

Respondent's Testimony

The Respondent testified on oath and commenced her testimony by repeating some of the averments contained in her Answer and Cross-Petition. She testified further by denying that she allowed their son to join the Petitioner in Kumasi due to poor academic performance but was rather because the maintenance sum sent by the

Petitioner towards the upkeep of the children was inadequate resulting in a financial burden. She denied being not submissive as she has always loved and supported him throughout the marriage even during the most difficult times. The Respondent in her further testimony insisted that she always consulted the Petitioner on the issues of the children's education although the Petitioner always had issues with the school fees and even proposed sending the children to a public school. When they could not agree on the children's school, the Petitioner enrolled their son in private school in Kumasi when the boy went to live with the Petitioner and his sister in Kumasi. She denied ever requesting for a fake divorce neither is she owing any of Petitioner's family member any money nor has she ever asked for money from the Petitioner's mother.

She testified further that when the Petitioner lost his job, she had to shoulder most of the financial burden of the home using her meagre earnings as a hairdresser with the anticipation that the burden will be lifted once the Petitioner got another job. To her disappointment, the Petitioner contributed little towards the education and maintenance of the children after he was gainfully employed and moved to Kumasi. The Petitioner then cut off almost all forms of communication and refused to check up on the children prompting her to inform her family and subsequent attempts by the family to resolve the couple's issues were inconclusive.

Analysis

The first issue is whether the marriage celebrated between the parties ought to be dissolved. Generally, the grounds for the dissolution of a marriage are governed by the Matrimonial Causes Act of 1971 (Act 367). According to Section 1(2) of the Act, *'the sole ground for granting a Petition for divorce is that the marriage has broken down beyond reconciliation'*. However, to prove that the marriage has broken down beyond reconciliation, the Petitioner must satisfy the Court of one or more of the facts listed in Section 2(1) of the Act. The evidence on record as stated above shows that the parties

have had irreconcilable differences to the extent that parties currently live separately and in different geographical locations of Ghana. The evidence further show that the parties have been unable to resolve their differences and attempts by both families to resolve the differences ended inconclusively. I therefore find that the marriage celebrated between the parties has broken down beyond reconciliation pursuant to section 2 (1) (f) of Act 367 which provides that for the purpose of showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the Court 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 custody of the only son be granted to the Petitioner and the daughters to the Respondent with reasonable access to both parties during school vacations. In making a determination, the Court is guided by Section 2 (1) of The Children's Act (1998) Act 560 states that *'...the best interest of the child shall be paramount in any matter concerning a child...'* and Section 2 (2) of Act 560 supra also provides that *'...the best interest of the child shall be the primary consideration by any Court, person, institution or other body in any matter concerned with a child...'*. It must be stated categorically that there is no prima facie right to the custody of a child in either parent, but the Court shall determine solely which parent is for the best interest of the child, and what will best promote its welfare and happiness. At common law, the father was generally entitled as a matter of right to custody of his minor children, but later, the law generally gave the mother preference. Today, the law recognizes the child's best interest as the determinative factor and this is also referred to as the Welfare Principle as posited by Act 560 stated supra. The Welfare Principle implies that the Court determines what would be best for the child despite both parents' good intentions and competing wishes, and the word "welfare" which is said to be paramount or primary has been given various interpretations. In **Re McGrath (Infants)** [1893] 1 Ch 143 at 148, CA it was held that *the word "welfare" of the child must be considered "in its widest sense."* In **R v Gyngall** [1893] 2 QB 232 at 243, CA the Court of Appeal per

Lord Esher MR stated further: *"The Court has to consider, therefore, the whole of the circumstances of the case, the position of the parent, the position of the child, the age of the child, . . . and the happiness of the child."* In **Bentsi-Enchill vs. Bentsi-Enchill** [1976] 2 GLR, the Court held that *'the primary concern of the Court is to ensure that there are appropriate safeguards for a child's general welfare, irrespective of the interests of the parents... Normally the mother should have the care and control of young or sickly children ... or those who for some other reason need a mother's care'*. Again, in the case of **Attu vs. Attu** [1984-86] 2 GLR 743, the learned Judge was of the opinion that *'...in considering matters affecting the welfare of the infant, the Court must look at the facts from every angle and give due weight to every relevant material'*.

Per the evidence on record, the parties herein have split the children and the Petitioner herein wants custody of the son with reasonable access to the daughters. The following ensued during cross-examination of Petitioner by Counsel for the Respondent;

Q: *Can you tell the court what you saw as the benefit of seeing the children growing up under one roof?*

A: *Family togetherness.*

Q: *And you are willing to take that from him rather than growing up with his other siblings?*

A: *I am not willing to do so but it was the Respondent who informed me that she wants the first child to come and stay with me with the help of technology, he is able to communicate with his siblings every day and weekends.*

Q: *Do you know that separating the boy from other siblings can affect him psychologically as well as the bond among siblings?*

A: *It was the Respondent who gave me the opportunity to take the child away no bond has been broken, the siblings are always in contact.*

Flowing from above, what the Petitioner, in essence is praying for is for the Court to endorse the splitting of the siblings as has already been done by the parties, a situation in which one parent could theoretically have sole physical custody over one child while the other has sole physical custody over the couple's other child(ren). Thus, the boy lives with the Petitioner full-time, which means seeing the Respondent and his siblings would occur on a limited basis. It must be emphasized that Courts usually view keeping siblings together after a divorce or a separation of parents as in the children's best interest. Rarely will a Court order split custody and the Court would typically not separate siblings simply because it suits one parent or the other. Indeed, Section 45(2)(d) of Act 560 provides that in an Application for custody or access, the Court shall consider that '*... it is desirable to keep siblings together*'. Yet, if splitting siblings truly does serve the children's best interests, the Court may do so, however, the evidence on record and the circumstances surrounding this instant Petition does not warrant the splitting of siblings as there appears to be no extenuating, compelling or overwhelming reasons to do so. It is the considered opinion of the Court that separating the children of the marriage will only serve to further disintegrate the family instead of helping the family heal. The Court appreciates the fact that anyone with a sibling knows the joys of growing up and teasing a sibling, 'a childhood partner in crime' as well as few years of arguments, laughs, fights and memories that these siblings will share as they grow up together, and this Court is not willing to deprive these siblings or 'rob' them of same. Additionally, the Court observes that the child in question is the only male child of the couple and the Court will not endorse a situation where the girls are denied of the love, support and protection of a brother whilst growing up. Indeed, Section 22(2) of Act 367 provides that '*...the Court may...make an order concerning a child of the household which it thinks reasonable and for the benefit of the child*'.

The third issue for determination is whether or not the Court should order the Petitioner to pay towards the maintenance of all the children. Section 22(3)(c) of Act 367 provides that a Court may order for the education and maintenance of the child

out of the property or income of either or both of the parties to the marriage'. Similarly, Section 47 (1) of Act 560 on the Duty to maintain a child 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*'. It is 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. From the record, it is the Petitioner's case that he is currently unemployed whilst the Respondent is self-employed. It must be emphasized that both parties owe the children of the marriage a duty and the Court shall make orders as such. Section 22(3)(c) provides that '*...the Court may ... make an order to provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage*'.

The final issue for determination is on whether or not the Petitioner can be ordered to pay the Respondent a lump sum of Fifty Thousand Ghana Cedis (GH¢50,000.00). The Respondent herein is requesting for a financial provision and financial provision in matrimonial causes refers to the Court's power to order one party to pay a sum of money or convey movable or immovable property to the other party as settlement of property rights or as part of financial provision. The Court examines the needs of the parties and makes reasonable provision for their satisfaction out of the money, goods, or immovable property of their spouse. The factors considered when awarding financial provision include the income, earning capacity, property, and other financial resources of each party, the standard of living enjoyed before the breakdown of the marriage, the age of each party, and the duration of the marriage. The Court aims to make an award that is just and equitable based on the specific circumstances of each case. As stated by **Sarkodie J** in **Aikins vs. Aikins** (1979) GLR 223 at 231, '*... in considering the amount to be paid by way of lump sum the court must look at the realities and*

to take into account the standard of living to which the wife was accustomed during the marriage. She should be awarded such lump sum as will provide her with a standard of living commensurate with that to which she has been accustomed’.

It must be stated that the Petitioner testified on oath that the Respondent is not entitled any alimony since she has already caused the Petitioner so much financial stress and currently owing the Petitioner so much amount of money for which she has refused, failed and or neglected to pay him back. The Respondent however denied this assertion made by the Petitioner of which the burden now shifts to the Petitioner to substantiate his claims. Section 11(1)(4) of the **Evidence Act, 1975 (NRCD 323)** deals with the burden of producing evidence and defines same thus: *For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.* The Petitioner however was unable to adduce further evidence to show that the Respondent owes him any or all the amount of money he claims was owed by the Respondent. The following was captured by the records during cross-examination of the Petitioner by the Respondent’s Lawyer;

Q: *It is your claim the Respondent borrowed money from your mother not so?*

A: *Yes she did borrow money from my mother.*

Q: *How much did she borrow?*

A: *3000 Dollars.*

Q: *I am putting it to you that your mother never gave her any 3000 Dollars?*

A: *She took the 3000 Dollars from my mother through me after she spoke to her.*

Q: *Tell us when your mother demanded that 3000 Dollars from the Respondent?*

A: *My mother requested for the money in the year 2018 after the Respondent had returned from China.*

Q: *Did you pay your mother that money?*

A: *No please I have not paid.*

Q: *I put it to you that you have not paid because the Respondent did not borrow any money from your mother?*

A: *As I am speaking the Respondent has not paid the money and my mother keeps asking for it.*

Q: *There is no evidence before this court to prove any debt owed to your mother not so?*

A: *Yes, there is no evidence but she took the money from my mother and the Respondent is aware of it.*

Q: *Did the Respondent borrow money from your sister?*

A: *Yes she did.*

Q: *Have you shown any proof to this court for the demand of money by your sister to the Respondent?*

A: *This issue concerning money to my sister is not in my Petition nor my witness statements.*

The evidence on record further shows that the Respondent had to shoulder certain financial responsibilities of the family especially when the Petitioner lost his job. It seems to suggest that whilst the Petitioner was not gainfully employed, the Respondent had to maintain herself and the children with the proceeds of her work as a hairdresser as the Petitioner was then not living with the family. The following ensued during cross-examination of the Petitioner by the Respondent's Lawyer;

Q: *Apart from the school fees do you know how it costs monthly to cater for the needs of the children specifically the feeding, hospital bills clothing etc.?*

A: *I have been responsible father since marriage, and always sends money to the Respondent and she does specifying what the money is meant for.*

Q: *So it was your wife's singular efforts to ensure that the matrimonial home was intact, is that what you are saying?*

A: *I have done my best to keep the family since we got married and that was the reason why as a good husband I equipped her saloon for her to assist with financial difficulties and it was not that she was single handedly taking care of the matrimonial home.*

Q: *Please tell the court the current amount paid for rent in your matrimonial home?*

A: *I do not know.*

Q: *I put it to you that you do not know because you do not care about your family, where they stay or what they eat?*

A: *Currently I do not know because she informed me that the rent is GH¢7,000.00 a year, then I told her the amount is too much so we should rent an affordable home. I paid for 2 years but she refused to move but the landlady increased the rent to GH¢8,000.00. The Respondent informed me that the landlady told her to continue to stay and so she refused to move out no matter the increase in rent.*

Q: *I put it to you that you are only speculating and you do not know how much the rent is?*

A: *The Respondent denied me from having access to where we lived especially when I was warned in May 2017 when I met the family.*

Q: *I put it to you that because you do not want to make adequate financial contributions in the upkeeps of your family, you have not concerned firstly with the financial burdens of your family?*

A: *I have always carried my financial responsibilities as a father.*

The above creates an impression in the mind of the Court that the Petitioner appears not to have met his financial responsibility towards his family adequately. Section 19 of Act 367 on Financial provision for spouse 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*'.

Conclusion

On the totality of the evidence before this Court, I find and Order as follows;

1. That the marriage celebrated between the parties on 24th October, 2015 under Ordinance Marriage (CAP 127) at Grace Chapel International, Kaneshie, First Light, Accra is hereby dissolved this 12th day of December, 2023 on the ground that same has broken down beyond reconciliation. The Marriage Certificate is cancelled.
2. The Respondent shall have custody of all the children of the marriage. The Petitioner shall ensure that their son is brought back to the Respondent and the Respondent shall immediately take steps to enroll the boy in a new school and preferably the school his sisters attend as soon as the 2nd Term for the 2023/2024 Academic year begins in January 2024. The Petitioner shall have reasonable access to all the children as follows;
 - (i) The children shall be with the Petitioner during school vacations. The Petitioner shall pick all the children up the weekend upon vacation but

shall return the all children back to the Respondent at least One (1) week before the resumption of school.

- (ii) The Petitioner is at liberty to visit the children anytime he deems fit but must adequately notify the Respondent of his intentions to visit the children and the Respondent must not unreasonably withhold consent.
- 3. The Petitioner shall pay an amount of One Thousand Ghana Cedis (Ghc1,000.00) monthly towards the maintenance of all the children. All other costs towards the maintenance of the children including but not limited to school fees, clothing, shelter and medical bills shall be jointly shared by both parties with each party paying 50% each or any amount involved.
- 4. The Petitioner shall pay an amount of Twenty-Thousand Ghana Cedis (Ghc20,000.00) as alimony to the Respondent payable in Four (4) instalments.
- 5. There shall be no orders as to costs.

Parties Present

Joseph Tetteh holding the brief of Ita Tetteh for the Petitioner present

Claudius Efui Tamakloe holding the brief of Isreal Ackah for the Petitioner present

HALIMAH EL-ALAWA ABDUL-BAASIT
CIRCUIT COURT JUDGE.