

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON FRIDAY THE 24TH DAY
OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO.C5/40/22

ALFRED SEDUDZI ----- **PETITIONER**

VRS.

EMELIA YANKSON ----- **RESPONDENT**

PARTIES **PRESENT**

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The petitioner and the respondent lawfully got married on 13th September, 2014 at Hansen Arena, Accra. Thereafter, the parties cohabited at Tema and subsequently relocated to Shai Hills. There is no issue between the parties but prior to the celebration of the marriage, the petitioner had two children. The petitioner was formerly a teacher but currently a trader and the respondent was also formerly a banker but now a trader. There has not been any court proceeding in respect of this marriage. The petitioner filed the instant petition for divorce on 11th January, 2022, alleging that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. Per an amended petition filed on 18th August, 2023, the petitioner prays this Court for the following reliefs;

- (a) A dissolution of the marriage celebrated between the petitioner and the respondent on the 13th day of September, 2014 at Hansen Road Arena, Accra.
- (b) Two plots of land at Asutuare Junction and the car should be settled in the petitioner’s favour and one plot of land at Miotso should be settled in the

respondent's favour.

(c) Damages.

The petitioner in his amended petition states that the respondent has behaved in such a way that he cannot reasonably be expected to live with her. The petitioner further avers that their marriage was blissful until the respondent attended her ex-boyfriend's father's funeral at Takoradi. According to him, the respondent sought permission from him to attend a former classmate's father's funeral in Takoradi but he later found out that she attended her ex-boyfriend's father's funeral. The petitioner states that after the funeral, the respondent confessed in the presence of her cousin that she committed adultery with the said man. The petitioner further states that he was willing to forgive the respondent but requested her to conduct a medical test before he could live with her. However, it took the respondent six months to conduct the test and when she presented the results to him, the report had been doctored. This, according to the petitioner, caused a rift between them and since then, they have not experienced peace in the marriage.

Additionally, the petitioner states that in the year 2020, the respondent moved out of the matrimonial home and since then, the parties have not lived as husband and wife. The petitioner contends that the behaviour of the respondent has caused him so much anxiety and stress which resulted in him suffering from stroke. Again, the conduct of the respondent collapsed the investment he made in his church and truncated his Master's Degree programme in Bible Studies at the Trinity Theological Seminary, Accra. Again, his health condition has also put his employment at the Ghana Education Service at risk due to a decline in his performance. The petitioner further bemoaned the lack of effective communication

between them which has resulted in distrust. The petitioner further states that there is no relationship between them and he has lost interest in the marriage. Also, he maintains that all efforts made by pastors, families and friends to resolve their differences have proved futile. The petitioner contends that the respondent's attitude and behaviour also show that she is no longer interested in the marriage and that the marriage has broken down beyond reconciliation.

On properties acquired during the subsistence of the marriage, the petitioner states that in the course of the marriage, they jointly acquired two plots of land at Asutare Junction, 1 plot of land at Miotso and a car.

The respondent denies the allegation of unreasonable behaviour levelled against her by the petitioner. The respondent admits attending the funeral and further admits committing adultery but denies that the petitioner forgave her. The respondent claims that after conducting the medical test as requested by the petitioner, he was still not satisfied with the results. She states further that the petitioner became moody and was always threatening her making life in the matrimonial home uncomfortable and unsafe for her to live in. According to the respondent, the situation caused her to move out of the matrimonial home and since the year 2020, they have not lived as husband and wife.

Additionally, the respondent denies causing the petitioner to suffer stroke and states that when she received information about the petitioner's illness, she visited him at the hospital but the petitioner sacked her amid insults. The respondent denies that various attempts made by pastors, families and friends to effect

reconciliation have proved futile but rather, it is the conduct of the petitioner towards her which has made it impracticable for them to reconcile their differences. The respondent therefore maintains that their marriage has not broken down beyond reconciliation and that given the opportunity, they will be able to reconcile their differences.

Regarding the petitioner's claim to properties allegedly jointly acquired during the pendency of the marriage, the respondent says that the Asutare land with an uncompleted 3-bedroom house with sand, stones and blocks deposited on it was solely acquired by her. According to her, she gave money to the petitioner as her husband and head of the family to effect the payment and when he brought the documents covering the land, he had caused it to be prepared in their joint names. The petitioner also states that she also acquired 2 acres of land located at Asutare Junction, which the petitioner failed to mention in his petition. The respondent further states that the land located at Miotso was solely acquired by her prior to the celebration of their marriage and the land is a subject matter of litigation which the petitioner is fully aware. She also states she bought the car before the marriage which she later sold to acquire a new one in Kumasi and she went with the petitioner to act as a witness.

On the pleadings and the evidence led by the parties, the court set down the following issues for determination.

LEGAL ISSUES

1. Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

2. Whether or not the parties acquired the properties in dispute during the subsistence of the marriage and so, whether or not the petitioner is entitled to 50% share in the properties.
3. Whether or not the petitioner is entitled to damages against the respondent.

BURDEN OF PROOF

It is trite learning that a party who asserts must prove that which he asserts on a balance of probabilities. In the case of **Bank of West Africa Ltd. V. Ackun** [1963] 1GLR 176, the Court held in its holding 2 that: *“the onus of proof in civil cases depended on the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof.”*

The Supreme Court in the case of **Sumaila Bielbiel (No.3) v. Adamu Dramani & Attorney-General** [2012] 1 SCGLR 370, Date-Bah JSC (as he then was) clearly made a distinction between the burden of leading evidence and the burden of persuasion when he stated at page 371 as follows;

“The distinction between the two burdens of proof, namely the “burden of persuasion” as defined in section 10(1) and the “burden of producing evidence” as defined in section 11(1) of the same Act, is important because the incidence of the burden of producing evidence can lead to a defendant acquiring the right to begin leading evidence in a trial, even though the burden of persuasion remains on the plaintiff. Ordinarily the burden of persuasion lies on the same party as bears the Burden of producing evidence”

Thus, a petition for divorce being a civil case, the petitioner bears the burden to prove the allegations contained in the petition for divorce on a balance of probabilities failing which the court may dismiss the petition for divorce.

ANALYSIS

ISSUE 1: Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

Under the **Matrimonial Causes Act, 1971 (Act 367)**, the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts set out in **Section 2(1) of Act 367**, namely; adultery, unreasonable behaviour, desertion, failure to live as man and wife for two years, failure to live as man and wife for five years and irreconcilable differences. To encourage reconciliation as far as may be practicable, **Section 8** enjoins the petitioner or her counsel, to inform the court of all attempts made to effect reconciliation. A court shall refuse to grant a petition for divorce notwithstanding the fact that a petitioner has proved any of the facts in **Section 2(1)**, if there is a reasonable possibility for reconciliation. The petitioner in the instant petition relies on adultery committed by the respondent. The onus is therefore on the petitioner to satisfy the court that the respondent has committed adultery and that by reason of the adultery, he finds it intolerable to live with her.

Adultery is defined under **Section 43** of Act 367 as “*the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse.*” In the case of *Adjetey v. Adjetey [1973] GLR 216-221*; in holding 1, the court stated the standard of proof for adultery in the following terms:

“adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability. Direct evidence of adultery was rare. In nearly every case the fact of adultery was inferred from circumstances which by fair and necessary inference would lead to that conclusion. There must be proof of disposition and opportunity for committing adultery, but the conjunction of strong inclination with evidence of opportunity would not lead to an irrebuttable presumption that adultery had been committed, and likewise the court was not bound to infer adultery from evidence of opportunity alone.”

Section 3 of the Matrimonial Causes Act, 1971(Act 367) states that the court shall disregard any period that the parties lived with each other after discovering the adultery with a view to effecting reconciliation if the period does not exceed six (6) months but where the period exceeds six (6) months in the aggregate, a party shall not be entitled to rely on the adultery to pray for dissolution of the marriage. Thus, to succeed, the petitioner must prove firstly that the respondent being a married woman had sexual intercourse with another man other than the petitioner, that the act of the sexual intercourse was voluntary, and that the petitioner has not lived with the respondent for an aggregate period of more than six months upon discovering the adultery and that he finds it intolerable to live with her after discovering the adultery.

The petitioner testified that the respondent committed adultery with her ex-boyfriend when she attended the funeral of the father of the said ex-boyfriend. According to the testimony of the petitioner the respondent sought permission from him that she was attending a former classmate’s funeral and upon her return her attitude changed and her behaviour showed that she did not regard him as her

husband. Upon persistent confrontation, the respondent confessed in the presence of her cousin that she committed adultery. According to him, he was willing to forgive her after the confession so he requested for medical test to make sure that she did not contract any sexually transmitted infections. The respondent, realising that she had contracted gonorrhoea went into hiding for six months. When she returned after six months with the results, she had doctored the report. This caused a rift between them which led the respondent to leave the matrimonial home in the year 2020.

According to the testimony of the petitioner, the marriage has completely broken down since various attempts made to reconcile their differences have proved futile since the respondent was not prepared for any reconciliation and refused to avail herself for post marital counselling offered her. The respondent was given an opportunity to renew the marriage covenant after she defiled the matrimonial bed but she failed to go through spiritual cleansing. When he suffered stroke, the respondent was living with him under the same roof but she moved out and rented an apartment and abandoned him to his fate and refused to show him where she currently resides until his cousin took him there once briefly. The petitioner states that all efforts made by pastors, family and friends to reconcile their differences have proved futile and that since the year 2020, there has not been any communication between them, no relationship and the marriage has also not been consummated that makes him convinced that the marriage has broken down beyond reconciliation.

The respondent on her part testified that their marriage had a lot of differences and setbacks but she was hopeful that things would get better. The respondent states that the petitioner was very hostile towards her and prevented her from sleeping on

the same bed with him. She testified to the various forms of maltreatment the petitioner subjected her to which caused her to be depressed. Under cross-examination by the petitioner, she again admitted committing adultery but states that she was induced by the petitioner to commit the adultery. In the case of **Quartey v. Quartey** [1972] 1 GLR 6, the court per Kingley-Nyinah J. held that “*a court may act upon an admission of adultery even though there be no confirmatory proof of it, if the court is satisfied that the evidence as to the admission is trustworthy and if the evidence amounts to a clear, distinct and unequivocal admission of adultery.*”

The respondent voluntarily admitted on oath that she committed adultery but states that the petitioner conduced her into committing adultery. It is evident from the record that upon discovering the adultery committed by the respondent, the marital life of the parties deteriorated even after the petitioner had requested the respondent to undergo medical test, the trust in the marriage had broken down to the extent that the petitioner doubted the authenticity of the report. The conduct of the petitioner thereafter shows that he found it intolerable to live with the respondent and that bickering reared its ugly head in the marriage making it impractical for the parties to cohabit. In the case of **Aggrey v. Aggrey & Another** [1966] GLR 726, the court deemed it justifiable for the other spouse to withdraw from cohabitation upon discovering the adultery when it stated in its holding 1 that:

“The petitioner, on discovering his adultery, was entitled to refuse to visit him and to desist from having sexual intercourse. She was therefore not guilty of conduct conducive to adultery.”

In the instant case, with the view to promoting reconciliation, the parties cohabited but the unchallenged evidence is that the petitioner found it intolerable to continue

cohabiting with the petitioner and there is no evidence that the parties continued to live together as husband and wife. The evidence on record shows that since the year 2020 that the respondent was compelled to leave the matrimonial home due to the hostilities between them, they have not lived together as husband and wife and various attempts made by the parties themselves, pastors and family members to reconcile them have proved futile. The court observed the parties during the proceedings, and is convinced that the parties are better off living separately than living together under the same roof.

Based on the totality of the evidence led, I find that the respondent committed adultery and by reason of the adultery, the respondent finds it intolerable to live with her within the meaning and intendment of **Section 2(1)(a)** of Act 367. I therefore hold that the petitioner proved on a preponderance of probabilities that the ordinance marriage celebrated between the parties has broken down beyond reconciliation. I accordingly grant the petition for divorce and decree for the dissolution of the marriage celebrated between the parties on 14th September, 2014.

ISSUE 2: Whether or not the parties acquired the properties in dispute during the subsistence of the marriage and so, whether or not the petitioner is entitled to 50% share in the properties.

Article 22 (3) (b) of the 1992 Constitution provides that:

"Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of marriage".

In the case of **Arthur (No 1) v. Arthur (No.1)** [2013-2014] 1 SCGLR 543 it was held in holding 3 as follows;

“...Property acquired by the spouses during the marriage was presumed to be marital property. Thus, marital property was to be understood as property acquired by the spouses during the marriage, irrespective of whether the other spouse had made a contribution to its acquisition.”

In the Supreme Court’s decision in **Peter Adjei v. Margaret Adjei** (unreported) [Suit No. J4 06/ 2021] delivered on 21st day of April, 2021, the Court per Appau, JSC (as he then was) reiterated the position of the law on the presumption of joint ownership when His Lordship stated at page 10 as follows:

“...any property that is acquired during the subsistence of the marriage, be it customary or under English or Mohammedan Ordinance, is presumed to have been jointly acquired by the couple and upon divorce, should be shared between them on equality is equity principle. This presumption of joint ownership is, however, rebuttable upon evidence to the contrary... What this means in effect is that, it is not every property acquired single-handedly by any of the spouses during the subsistence of a marriage that can be termed as a “jointly-acquired” property to be distributed at all cost on this equality is equity principle. Rather, it is property that has been shown from the evidence adduced during the trial to have been jointly acquired, irrespective of whether there was direct, pecuniary or substantial contribution from both spouses in the acquisition.”

Therefore, marriage is not a weapon that gives spouses unwarranted access and share in properties acquired by the other spouse through their individual sweat and efforts. The onus is thus on the petitioner who alleges that these properties were acquired during the subsistence of the marriage to first introduce sufficient evidence to show that the properties were jointly acquired and the burden would then shift to the

respondent to rebut the presumption of joint acquisition to show that the properties were not jointly acquired and that she intended to own the properties solely.

The petitioner testified that during the subsistence of the marriage, they jointly acquired a parcel of land at Asutuare Junction and the building is at the foundation level. They also acquired two acres of land at the Asutaure Junction and made part-payment but the land is a subject matter of litigation. The petitioner further testified that the car and the Miotso land were duly acquired during the subsistence of the marriage and that he played his part in all the processes required in acquiring them as a husband. The petitioner, under cross-examination by the respondent, the following ensued;

Q: Do you remember that the uncompleted building at Asutuare junction I was in Takoradi when you called that there are 2 plots at Asutuare junction and you wanted us to buy.

A: The building project is a joint project. I have the documents that I can show for that. You made financial contributions. I also made financial contributions. The project is my initiative and we decided to have a joint project. Till date, I have done all the works there from scratch. You have not gone there to do any work or lift up a grain of sand. I am doing the project but is a joint project.

Under further cross-examination of the petitioner by the respondent, the petitioner denied ever recovering his financial contributions in the project. The petitioner further testified that he was always supervising the project and his students and church members assisted him for free whilst others worked on the project at a subsidised rate because of his relationship with them. The petitioner further testified that he practically forced the respondent to visit the site with him to check on the

stage of the project but the respondent maintained that the petitioner prevented her from going to the site and preferred to handle the project alone since he is the man.

On the two acres of land, the following exchanges took place under cross-examination of the plaintiff by the defendant;

Q: The two acres of land at the school, who paid for it?

A: It was paid for by two of us.

Q: You said the land was GHC2,000 and I said you should buy 2 acres which is 8 plots, do you remember?

A: This land in question was also an opportunity given to teachers teaching in the community. That is the more reason why the price of the land was so low. The old man or head man of the village gave us the opportunity for serving his community. I sold the idea to you that that was the opportunity the old man gave to us. It was part of the money we put together for the project at Asutua Junction.

Q: Do you know that I paid GHC6,500 and you did not put 1 pesewa in the purchasing of that land?

A: The money we put together for the Asutua Junction project was part of the money I advised that we use to pay for the land in my school area.

The respondent on her part testified that the petitioner did not contribute to the acquisition of the two plots of land at Asutua Junction with an uncompleted 3-bedroom with sand, blocks and stones deposited on it to complete the project. Again, the respondent states that the one plot of land located at Miotso was solely acquired by her and the petitioner did not contribute to its acquisition and that the said land is under litigation. The respondent further states that she sold her personal car and added it to a loan she took from the bank to acquire the land in dispute. He never contributed to it. That there is also two (2) acres of land at Asutua Junction, water

works where the petitioner is teaching. The petitioner informed her that the headman in the community was offering teachers land at a subsidised price but he had no money to pay for it. Based on that, she gave petitioner an amount of Six Thousand Five Hundred Ghana Cedis (GH¢6,500) with an outstanding balance of GH¢2,500 to be paid. The petitioner has since refused to discuss that land with her and whenever she raises the issue about the land, the petitioner becomes irritated. The respondent under cross-examination by the petitioner, the following ensued;

Q: The Asutuare junction project, the car and the land at Miotso, these 3 properties are for both of us. I put that to you.

A: My Lord, this project he never contributed a penny. Even the little he put in, he took his money. I was using a Mitsubishi Outlander, sold the car and bought Suzuki Grand which is about my 4th car. The petitioner did not contribute anything and you want my car to be given to you. The land at Miotso, it is my own land I bought in my name. By that time I had not met the petitioner. I do not know the petitioner's stake in this land. There are four acres of land he lured me to pay for around 2016 at an amount of GH¢6,500. He took the money and I have never seen the land. When I ask he will insult and threaten me. I do not know what he has done for himself as an individual for him to take a stake in it.

Q: Do you know the person I bought the Asutuare land from?

A: I do not know anybody he bought land from.

Q: I put it to you that we were in the process of acquiring 8 plots of land when you left and that truncated the whole process. There is not even an inch of land.

A: This is not an individual land. It was with a Teacher's Group. The petitioner took my GH¢6,500 so if the land is not available, he should return my money.

From the evidence led by the parties it is clear that the parties jointly acquired the land at Asutuare junction and the building thereon jointly during the subsistence of

the marriage. The assertion of the respondent that the petitioner made no financial contribution to the said project strains credulity since she testified under cross-examination that the petitioner informed her that he would no longer live in the said building and requested for a refund of the money he had invested in the project. It is therefore strange for the petitioner to demand a refund from her if he never contributed financially to the project. She states that the petitioner demanded a refund of his contributions in the presence of one Agbeko but failed to call him as a witness to corroborate her testimony. The evidence shows that the petitioner was solely in charge of the building project and used some of his students during the construction project to the extent that the respondent states that she was not visiting the site to check on the progress of work since the petitioner was the man to handle the project. I therefore find as a fact that the parties jointly acquired the land at Asutuare with the uncompleted building thereon during the pendency of the marriage and the parties are entitled to equal share and interest in it.

On the two acres of land at Asutuare junction, the court finds that the parties jointly acquired the property. From the cross-examination conducted by the respondent of the petitioner, the offer was made to the petitioner who was a teacher in the community and he informed her that the price per plot was Two Thousand Ghana Cedis(GHC2,000) based on which she requested the respondent to buy 8 plots of land. The respondent states that she gave an amount of Six Thousand Five Hundred Ghana Cedis (GHC6,500) to the petitioner to pay for the land. This piece of evidence shows that she did not fully pay for the eight (8) plots of land since per her testimony, the eight (8) plots would have amounted to Sixteen Thousand Ghana Cedis (GHC16,000). I therefore hold that the parties jointly acquired the two acres of land during the pendency of the marriage and they are each entitled to equal share and interest in the property. If the petitioner claims that the transaction was not

successful, then in the alternative, I deem it just and equitable to order the petitioner to refund the amount of GH¢6,500 he received from the respondent to purchase the land together with interest.

On the land at Miotso, the petitioner stated under cross-examination by the respondent that during the purchase of the land, he contributed his share and also went to the real estate office himself to pay money and the day of signing the agreement, the two of them were present. In my view, the petitioner failed to prove his contributions to the acquisition of the land in the face of the evidence that the property was acquired by the respondent prior to the celebration of the marriage with the petitioner. I therefore hold that the respondent solely acquired the land located at Miotso and the petitioner has no legal or equitable interest in the said property.

On the issue of the ownership of the car, the petitioner admits that the respondent sold her old car and used the proceeds to acquire the new car in issue and there is no indication that the respondent contributed to the acquisition of the said vehicle. I therefore declare the respondent the sole owner of the Suzuki vehicle in dispute.

ISSUE 3: Whether or not the petitioner is entitled to damages against the respondent.

The petitioner claims damages from the respondent but the petitioner led no evidence to prove same. Damages is not a relief under Act 367 for a matrimonial offence and as such, the onus is on the petitioner to establish facts and circumstances to justify the award of same. The court has found as a fact that the respondent committed adultery and the consequence under the law is the dissolution of the marriage which the court has decreed in favour of the petitioner.

Furthermore, in his pleadings and the evidence led, the petitioner states that the behaviour of the respondent towards him caused him to be distressed to the extent that he suffered from stroke and he is still recuperating from the sickness and all the pain the respondent caused him in the marriage. The petitioner states that the respondent was cohabiting with him when he suffered from stroke but left the matrimonial home to live elsewhere and all attempts to locate where she lives have proved futile. The respondent denies being the cause of the stroke the petitioner suffered and also states that the treatment she suffered in the hands of the petitioner in the marriage which caused her to be stressed, depressed to the point that she had suicidal thoughts. The petitioner has not produced medical evidence to show a causal link between the matrimonial problems and his stroke neither has he shown that he contracted any sexually transmitted diseases as a result of the respondent's conduct to entitle him to damages against her. I therefore hold that the petitioner failed to prove his claim for damages against the respondent and I accordingly dismiss same.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce and enter judgment for the petitioner as follows;

1. I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent on 13th September, 2014 at Hansen Road, Arena, Accra.
2. The Registrar of the Court shall cancel the original copy of the marriage certificate number *RGM 3398/2014*.
3. I hereby declare the uncompleted building and the two (2) acres of land located at Asutaure junction to have been jointly acquired during the subsistence of the

marriage. The parties shall agree to appoint a valuer to value the property, sell same and share the proceeds equally. In the event that the parties are unable to agree, a court appointed valuer shall value the property for the parties to trade the property among themselves. The respondent shall have the right of first refusal to be exercised within three months from the date of the valuation. The cost of valuation shall be borne equally by the parties. In the event that the two acres of land are not available, the petitioner shall refund the amount of GHC6,500 he received from the respondent to purchase land for her together with interest from the date of receipt of the money till date of final payment at the prevailing commercial bank rate.

4. I hereby declare the petitioner as the sole owner of the land located at Moitso and the Suzuki car and same is settled on her.
5. The claim for damages is dismissed.
6. The petitioner waives costs.
7. The petitioner shall grant the respondent access to the matrimonial home to pack her personal belongings. To ensure that the packing is done peaceably, the respondent shall file a list of her personal belongings in the matrimonial home and serve same on the petitioner and the Registrar of the Court shall ensure that the packing is done in a peaceful manner.

SGD.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**