

**IN THE CIRCUIT COURT “B”, TEMA, HELD ON FRIDAY THE
22nd DAY OF SEPTEMBER, 2023, BEFORE HER HONOUR
KLORKOR OKAI-MILLS, CIRCUIT COURT JUDGE**

SUIT NO.C5/92/23

JOYCELINE AKOSUA MANTE	-----	PETITIONER
VRS.		

KWESI HAGAN	-----	RESPONDENT
--------------------	--------------	-------------------

PARTIES

PRESENT

FREDERICK GURAH SAMPSON, ESQ FOR RESPONDENT PRESENT

JUDGMENT

FACTS:

The Petitioner and the Respondent got married under the Ordinance Marriage Cap 127 on the 22nd day of January, 2000 at the Registrar General’s Department, Accra. The Petitioner is a petty trader and the Respondent is self-employed. After the marriage, the parties cohabited at New Achimota, next to the Kingsby Hotel. There are three issues in the marriage. On 3rd April, 2023, the petitioner filed the instant petition for divorce alleging that the marriage celebrated between the parties has broken down beyond reconciliation and prayed the court for the following reliefs

- a. Dissolution of the marriage celebrated between the parties at the

Registrar General's Department, Accra on the 22nd January, 2000.

- b. Custody of Sean Kofi Hagan and Denzel Kwame Hagan is granted to the Petitioner with reasonable access to the Respondent.
- c. Monthly maintenance of GHC 1,200.00 for the upkeep of the three (3) children of the marriage.
- d. Respondent to be responsible for the educational and medical bills of the children when they arise.
- e. An order directing the Respondent to provide decent accommodation for the children until they are of age.
- f. Costs

Respondent filed his answer and also cross-petitioned as follows:

- a. The marriage celebrated between the Parties be dissolved as a result of the unreasonable behavior and adultery of the Petitioner.
- b. That the Petitioner be given custody of the children with reasonable access to the Respondent.
- c. That both parties be responsible for providing care for the child.
- d. That each Party bear their legal fees.

ATTEMPTS AT SETTLEMENT

During the pendency of the proceedings, the parties attempted settlement

and filed terms of settlement on 25th August 2023, in which the parties agreed that the marriage has broken down beyond reconciliation and agreed on ancillary reliefs for adoption by the Court upon dissolution. The parties having settled on the ancillary reliefs, the only issue left for the court to determine is the dissolution of the marriage.

LEGAL ISSUE

Whether or not the marriage celebrated between the Petitioner and the Respondent has broken down beyond reconciliation.

ANALYSIS

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. [**Section 2(1) of the Matrimonial and Causes 1971(Act 367)**]. To succeed, a Petitioner is required to prove one of the facts set out in **section 2(1)(a) - (f) of Act 367**. The Petitioner in this instant case has set out to prove section 2(1)(b) of Act 367 namely: *“the Respondent has behaved in a manner that I cannot be expected to live with him as a wife.”*

The Respondent in his witness statement also alleged same basis for the dissolution of the marriage, stating in paragraph 6 that: *“My wife has constantly behaved in a way and manner that is so unreasonable that as a result, I cannot reasonably live with her.”*

The parties are also mandated to inform the court about all attempts at reconciliation and the court shall refuse to grant a petition for divorce if there is a reasonable possibility for reconciliation. **See Section 2(3)** of Act 367 and the case of **Adjetey & Adjetey** [1973] I GLR 216 at page 219. In the case of **Donkor v. Donkor** [1982-1983] GLR 1158, the High Court, Accra, per Osei-Hwere J, held that:

“The Matrimonial Causes Act, 1971 (Act 367), does not permit spouses married under the Marriage Ordinance, Cap. 127 (1951 Rev.), to come to court and pray for the dissolution of their marriage just for the asking. The petitioner must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act for the purpose of showing that the marriage has broken down beyond reconciliation. Section 2(3), which is pertinent, provides that even if the court finds the existence of one or more of those facts it shall not grant a petition for divorce unless it is satisfied that the marriage has broken down beyond reconciliation...the Petitioner is under a duty not only to plead any one or more of those facts in section 2(1) of the Act but he must also prove them. Equally the court is under a statutory and positive duty to inquire so far as it reasonably can, into the charges and counter-charges alleged. In discharging the onus on the Petitioner, it is immaterial that the Respondent has not contested the petition, she must prove the charges and, flowing from all the evidence before the court, the court must be satisfied that the marriage has irretrievably broken down.”

To determine whether the behavior of the Respondent is such that the Petitioner cannot reasonably be expected to live with him and likewise, whether the behavior of the petitioner is such that Respondent can also not be expected to live with her[section 2(1)(b) of Act 367], the court must look at the whole history of the marriage. According to HL Justice Hayfron-Benjamin in *Mensah v. Mensah* [1972] 2 GLR 198 citing Lord Pearce in *Gollins v Gollins* [1964] a.c. 644 hl AT P. 696: “The particular circumstances of the home, the temperaments and emotions of both the parties and their status and their way of life, their past relationship and almost every circumstance that attends the act or conduct complained of may all be relevant.”

According to the Petitioner, after marriage, she left her job as an administrative manager to join the respondent in New Achimota in his Pharmacy wholesale business at Okaishie, Accra Central even though she was not remunerated for her services. Petitioner avers that after delivering their first child, Respondent who had travelled to the U.K. returned and both parties left for the UK again where she had her second child. Petitioner states that it was whiles working on her resettlement visa in Ghana that problems arose which resulted in the Respondent not wanting to continue with the marriage. Petitioner claimed that she was engaged in a marriage

of convenience with one Abu to enable her get proper documentation to live in the UK but respondent accused her entering into an actual amorous relationship with the said Abu. Consequently, Respondent called Petitioner's father in Ghana to inform him of his decision to not continue with the marriage and therefore stopped remitting her in Ghana. Petitioner alleged that Respondent sent their daughter to her in Ghana through some friends and she had some difficulty getting her daughter released to her.

Additionally, the Petitioner states that in 2008, Respondent returned to Ghana and sought to reconcile with her and she consented for the sake of her children. However, the marriage has since been a turbulent one as they are always fighting and never agree on anything. Petitioner avers that she contributed to their house in Adjiriganor completing the kitchen and some bathroom. Petitioner maintains that Respondent would not allow her to work so she had to do menial jobs such as catering with little financial support. Petitioner alleges that Respondent's financial difficulty upon his return from the UK forced the family to relocate to Respondent's hometown, Aboase, near Abura Dunkwa, where he promised her a shop but failed to deliver on that. Petitioner states that her unsuccessful mobile money generated more arguments between them.

Petitioner moved back to Accra in 2018 as she said there was no trust

between the parties and they were therefore incompatible. Though her children subsequently joined her in Accra, Respondent stopped maintaining them. Petitioner further avers that the elders of the Jehovah Witness Church counselled Respondent and he started maintaining the three children with Six hundred Ghana cedis (600.00) per month. Petitioner maintains that in June 2022, the extended families met and it was agreed that the customary marriage be dissolved. The Petitioner states that at the meeting, Respondent agreed to pay her alimony of GHC50,000.00 but has failed to pay and is also solely enjoying the Adjiriganor house they built together whiles she is living with her sister as she cannot afford a place of her own. Petitioner avers that the marriage has broken down beyond reconciliation.

The Respondent in his answer and cross-petition, is agreeable that the marriage celebrated between himself and the Petitioner has broken down beyond reconciliation but denies the allegation of unreasonable behavior levelled against him by the Petitioner. The Respondent maintains that it is rather the Petitioner who has behaved unreasonably such that he cannot reasonably be expected to live with her. Respondent lists amongst others the following unreasonable behavior by the Petitioner:

- a. Petitioner lost funds meant to be used for their daughter's surgery.
- b. Petitioner abuses respondent at the least opportunity.

- c. Petitioner moved to Accra, abandoning him and the children though their daughter was sick.

Respondent stated that he provided for the Petitioner including caring for her sick mother and paying for Petitioner's sister to take care of Petitioner's sick mother. Respondent further avers that Petitioner sold bitters in his pharmacy shop and kept the profit whiles he took care of all the bills. Respondent claims that the property at Adjiriganor was constructed in 1998 before the parties married in 2000. Respondent testifies that Petitioner was abusive towards him. Respondent avers that he never intended for Petitioner to stay in London, she was only a visit but when she decided to acquire papers, he obliged her. He stated that he paid a man, Abu whom Petitioner found to marry her as a marriage of convenience to enable her get her proper document for the UK. He avers that after paying the Abu the full fee of Six thousand (£6000) pounds, Petitioner entered into an amorous relationship with him. Respondent stated that he decided to end the relationship to Petitioner after he discovered her infidelity to him after she accidentally sent Respondent a love message meant for Abu.

The Respondent says that upon his return, he considered divorcing the Petitioner but reconsidered for the sake of the children and so he gave petitioner a second chance. Respondent avers that Petitioner's lack of transparency with her affairs resulted in the loss of trust in their marriage.

The Respondent maintains that the said Abu abandoned Petitioner and did not refund the £6000 paid him to conduct the marriage of convenience for Petitioner. Respondent accuses Petitioner of destroying equipment at his family business and taking away money. Respondent alleges that they relocated to his hometown to enable them raise money by renting out the East Legon residence to enable them pay for their daughter's surgery which would cost \$18,000.00USD. Respondent indicates that he gave Petitioner GHC2000.00 for business and she reported that fraudsters had stolen the money. The Respondent admits Petitioner's paragraph 32 that they met their extended families and it was agreed that the customary marriage be dissolved. According to Respondent in answer to Petitioner's paragraph 33, he agreed to settle her with the amount of GHC20,000.00 and later to add GHC30,000.00, but since Respondent is not gainfully employed, he has been unable to raise the said amount. Respondent avers that he is willing to part peacefully with Petitioner and would wish to fulfil her demands once he is organized his affairs and sold some lands to realize some funds.

The evidence as presented by both parties indicates that since 2018, they have not lived as a couple as Petitioner testified in paragraph 34 of her Witness statement: *"I have been living with my sister with the children of the marriage since the year 2018 because I have no money to rent a place meanwhile respondent is benefitting from our Adjiriganor house which I*

contributed to put up by renting same and making use of the money along.”

Respondent did not contradict this. The parties’ actions are a violation of the consortium that is their right in marriage, defined by WCE Daniels to include, “The entitlement of a husband and wife to each other’s society...affection, companionship and assistance of each other.” In *Place v. Searle* (1932) 1 KB 497, 512, Scrutton L.J. held, “It seems to be clear that at the present day, a husband has a right to the consortium of his wife, and the wife to the consortium of her husband...”

CONCLUSION

In conclusion, I hold that the ordinance marriage celebrated between the Petitioner and the Respondent at the Registrar General’s Department on 22nd January, 2000 has broken down beyond reconciliation. I accordingly grant the petition and cross-petition for divorce. I hereby enter judgment in the following terms;

1. I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the Petitioner and the Respondent on 20th January, 2007 at St. Peter’s Methodist Church, Ashaiman.
2. The Petitioner shall present the original copy of the marriage certificate for cancellation.

3. The Terms of Settlement filed by the parties, their counsel and witness on 7th March 2023 in the Registry of this court and signed by the parties is hereby adopted as consent judgment. Per the parties' own terms of settlement;

- a. That the Petitioner be given custody of the Children with reasonable (bi-weekly) access to the children;
- b. That the Respondent shall rent a decent accommodation (two-bedroom Flat or apartment) and pay the rent annually until the last child reaches the age of 18 or the Petitioner remarries, whichever comes first.
- c. That the Respondent shall pay the monthly amount of GH1000.00 to the Petitioner for maintenance of the Children payable to the Petitioner's bank account.
- d. That the Respondent shall pay the Petitioner an alimony of GHS50,000.00 in due course as agreed.
- e. That each party shall pay its own legal costs.
- f. That in the event of a default, the other party shall enforce this under the applicable law.

4. No order as to costs.

H/H KLORKOR OKAI-MILLS
(CIRCUIT COURT JUDGE)

