

**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.C5/18/23

LOUIS QUARCOO

PETITIONER

VRS.

PATIENCE CRISELDA HANYABUI

RESPONDENT

PARTIES

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The Petitioner, formerly a bachelor and the Respondent, formerly a spinster, in 2013, got married initially, in accordance with Ewe Customary Law but with Ewe Customary Marriage (Engagement) and later on the 24th day of December, 2016, under **Part III of the Marriages Act (1884-1985)** Cap 127. Thereafter, the parties did not actually cohabit at any particular location in Ghana for any quantifiable timespan before Respondent returned to Canada, where she ordinarily resides prior to the marriage. There are no issues to the marriage. The Petitioner, claiming that the marriage celebrated between himself and the Respondent has broken down beyond reconciliation, filed the instant petition for divorce on 22nd September, 2022 praying the court for three reliefs:

- (a) The dissolution of the marriage
- (b) That the only property jointly acquired by the parties during the marriage; one building plot No. LHA278, Love Hill Annex, Community 25, Tema, be sold and the money shared equally between

the parties cognizant of the fact that the foundation developed on the land was single-handedly financed by Petitioner at a cost of GHC 25,000.00 to which Petitioner is entitled before disbursement.

(c) That each party bears their legal costs.

The Respondent entered appearance on the 3rd day of October, 2022, filed an answer and cross-petitioned as follows;

- a. The Petitioner should withdraw the Respondent's name from the Nigerian High Commissions and the Ghana CID Office, prior to Respondent consenting to the divorce, otherwise Petitioner may pursue legal action for defamation of character.
- b. Respondent to pay Petitioner off per the agreed terms previously for the land jointly acquired or at a minimum, Petitioner should pay the Respondent the \$5000.00 USD she invested into the plot.
- c. Respondent will not bear any legal costs of the divorce and will request alimony unless Petitioner agrees that the matter is settled amicably without attorney fees.

THE CASE FOR THE PETITIONER

The Petitioner avers that the Petitioner and Respondent are acutely ill-assorted so distinctively that it is impossible for them to live as husband and wife. That the differences of the parties has generated and sustained continual suspicion, pain, traumatic fear, sorrow, anxiety, scare, embarrassment and anguish and such mental depression, petitioner can no longer bear. The Petitioner also avows that the trust and confidence have so waned to such an extent, Respondent sets sentinels to watch Petitioner's day-to-day movements, close associates and acquaintances while the latter permanently resides in Toronto, Canada and only pays intermittent visits to Ghana. The petitioner also avows that at 64, and after

nearly 4 decades of laborious public service, he is incapable of mustering the physical and mental strength to endure the vicissitudes of matrimonial warfare at this point in his life. According to the Petitioner, there is no malleable chemistry between the parties due to the telling and yelling. Petitioner also submitted that there is a gap in communication, exasperated by the physical distance between Petitioner domiciled and working in Ghana and Respondent who lives and works in Toronto, Canada. Petitioner asserts that there is constructive desertion on the part of the Respondent, that for the past year, the couple have led separate lives. Petitioner also testified that he has been stressed by Respondent's behavior which further drew them apart and believes them to be generally incompatible.

THE CASE FOR THE RESPONDENT

The Respondent, in her answer to the petition, denies the allegation of unreasonable behaviour and although she admits that the marriage is fraught with problems, she maintains that the marriage has not broken down beyond reconciliation. She indicated that on several occasions, when Petitioner proposed divorce, she had resisted it because as a Christian, she does not believe in divorce. However, she adds that if the Petitioner insists on the dissolution of the marriage the court can grant same. The Respondent states that the problems in their marriage started when after their marriage, the Petitioner kept stalling the submission of his paperwork to apply for an immigrant visa to enable him join respondent in Canada, after his retirement in 2018, as they had previously agreed to and also not communicating.

The Respondent maintains that Petitioner, after the parties had began applying for a new visitor's visa in September 2020 for him, and which was delayed due to covid, responded to her Christmas message with a divorce proposal on 25th December, 2020. The Respondent further testified that she repeatedly pleaded with Petitioner to reconsider his divorce proposal but Petitioner refused to

respond to Respondent's counter proposal messages. The Respondent testified further that when she arrived in Ghana in August 2021, Petitioner refused to accommodate Respondent at Petitioner's Kasoa residence. The Respondent states that she and her sister, Rhoda, subsequently visited Petitioner, gave him gifts and in responding to Rhoda's question as to why Petitioner wanted to divorce her sister, Petitioner stated that Respondent had not wronged him; rather he no longer wanted to join her in Canada because of his health problems and that of his 31-year-old daughter, who was to undergo surgery at the time. The Respondent again avers that Pastors advised Petitioner against the divorce but he maintained that he was doing what is best for him.

The Respondent further denies Petitioner's claim that the parties are acutely ill-assorted, asserting that petitioner's lack of communication skills, harboring ill feelings without addressing issues and withdrawing from people has caused Petitioner's pain, traumatic fear, sorrow, anxiety, embarrassment, anguish and mental depression. The Respondent further states that she equally suffered emotionally, lost a lot of weight and was hospitalized three times. Respondent laments a moment in August 2021 when petitioner put the former's belongings in his hallway when she visited him.

The respondent further states that the petitioner's extra marital affairs in Ghana is what caused the issues in their marriage. Respondent further alleges that petitioner has a lady friend, Lisbeth; this lady friend who informed respondent herself that she Lisbeth and petitioner help each other. Respondent also testifies that in July 2022, petitioner, through his younger brother, informed her that due to the fact that someone had threatened Lisbeth, essentially warning her off petitioner, respondent had been identified as the one behind the threat and consequently, her name had been submitted to the Nigerian High Commission (as Lisbeth is a Nigerian) and also to the Ghana CID office for further investigations;

an allegation which she denies. Respondent avers that she is not aware that there is lack of chemistry between themselves as petitioner alleged but now infers from this as the reason why petitioner has continually emotionally abused her and deprived her of her conjugal rights.

SETTLEMENT

During the pendency of the proceedings, the parties attempted settlement and filed terms of settlement on 5th September 2023, in which the parties agreed that the marriage has broken down beyond reconciliation and agreed on ancillary reliefs. The parties having settled on the ancillary reliefs, the only issue left for the court to determine is the dissolution of the marriage.

LEGAL ISSUES

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

BURDEN OF PROOF

The principle of law is that in civil case, he who asserts must prove. In the case of **Adwubeng v. Domfeh [1996-97] SCGLR 660**, the Supreme Court held in its holding 3 that: “*sections 11(4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by preponderance of probabilities. No exceptions were made.*” The court further stated: “*in assessing the balance of probabilities, all the evidence be it that of the Plaintiff or the defendant must be considered and the party in whose favour the balance tilts is the person whose case is more probable than the rival version and is deserving of a favourable verdict*”.

The standard of proof as stated applies to a petition for divorce. Thus, the Petitioner bears the burden to prove his petition on a balance of probabilities.

Also, where, as in the instant case, a Respondent cross-petitions, she bears the burden to prove her cross-petition on a balance of probabilities.

ANALYSIS

Whether the marriage between the petitioner and the respondent has broken down beyond reconciliation.

Section 1 of the Matrimonial Causes Act, 1971 (Act 367), provides that 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 stipulated under **Section 2(1)** of Act 367, namely; adultery, unreasonable behaviour, desertion, failure to live as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the petition, failure to live as man and wife for a continuous period of five years immediately preceding the presentation of the petition and lastly, irreconcilable differences.

Under **section 2(3)** of Act 367, the court is enjoined to inquire into the facts alleged in support of the dissolution the dissolution of the marriage. The court shall refuse to grant dissolution of the marriage notwithstanding the fact that any of the facts are proved if there is a reasonable possibility for reconciliation. Thus, in the case of **Adjetei & Anor v. Adjetei** [1973] 1 GLR 216, the court held in holding 2 that:

“On a proper construction of section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367), the court could still refuse to grant a decree even where one or more of the facts set out in section 2 (1) had been established. It was therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage had broken down beyond reconciliation would not be enough.”

The Petitioner testified in line with his petition for divorce that the two parties are so acutely ill assorted and there is very little communication between them. The Respondent, though denying the ill assortedness, did admit that petitioner barely responds to her messages so clearly there is an established lack of communication. The evidence led did indicate that the petitioner has on several occasions abandoned the paperwork for a Canadian visa to enable him join the respondent in Canada. Respondent also testified that petitioner has only visited her once in Canada and he has denied her conjugal rights. This lack of sexual relations is also confirmed by Petitioner's testimony that there is no malleable chemistry between them. The Petitioner further testified that the Respondent, while sitting in Canada, has set spies on him, ostensibly to monitor who he associates with. Petitioner also testified that the trust and confidence in the marriage has waned. From the foregoing is a clear indication that at the very least, there is no trust between the two parties. Respondent testified that petitioner is engaged in extra marital affairs in Ghana. The petitioner further alleges that there is constructive desertion on the part of the Respondent

The evidence led by the parties is characterized by accusations and counter accusations of unreasonable behaviour allegedly exhibited towards each other in the course of their marriage. A common thread that runs through the evidence of the parties is that the marriage has been plagued with differences which the parties after diligent efforts have not been able to reconcile within the meaning and intendment of **Section 2(1)(f)** of Act 367. For some time now, the Parties have not lived together as husband and wife. The parties testified to the various attempts at reconciliation which have all proved futile. The entire matrimonial history of the parties is indicative of the fact that the parties after diligent efforts have been unable to reconcile their differences. At the end of the hearing of the parties, Petitioner opted to make a statement in which he indicated that he takes full responsibility for the break down of the marriage and alludes his behavior to

mental health challenges on his part. I therefore hold that the marriage between the parties has broken down reconciliation. I accordingly grant the petition of divorce and decree for the dissolution of the Ordinance Marriage celebrated between the Petitioner and the Respondent.

CONCLUSION

In conclusion, I hold that the Ordinance Marriage celebrated between the Petitioner and the Respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce and 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 24th December, 2016 at the Word of Life Christian Centre.
2. The parties shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. The terms of settlement filed in the Registry of this court on 5th September, 2023 is adopted as consent judgment. Per the parties' terms;
 - a. The parties agree that GH30,000.00 be paid to the petitioner by the respondent as his share of the land. Building plot No.LHA278, LOVE HILL, ANNEX AT COMMUNITY 25.
 - b. The parties agree that the respondent will pay the money by installment in the following manner:
 - i. The first installment of GH15,000.00 will be paid to the Petitioner through the Respondent lawful attorney on the 22nd September, 2023.
 - ii. The second installment of GH5,000.00 will be paid to the Petitioner in October, 2023.

- iii. The final installment of GH10,000.00 will be paid to the Petitioner in November 2023.
 - iv. The parties also agree that the Petitioner should swear an affidavit to PS Global informing them to effect the Building plot No. LHA278, LOVE HILL ANNEX AT COMMUNITY 25 into the name of the Respondent. And give the affidavit to the Respondent's lawful attorney before the GH15,000.00 would be given to him in Court on 22nd September, 2023.
 - v. That the Petitioner would ensure that all necessary documents to effect the transfer of Building plot no LHA278, LOVE HILL, ANNEX AT COMMUNITY 25 into the name of the Respondent is being done.
 - c. Petitioner agrees to return the laptop and the desktop monitor.
 - d. Respondent agrees to return Petitioner's personal belongings.
 - e. Parties agree that each party shall bear its own legal cost and there shall be no order as to cost in this proceeding.
 - f. Parties agree that for peace to prevail between them, although the petitioner did not make report to the Nigeria High Commission and the Ghana Police CID department, he promised to take step to go to the Ghana Police service to find out from them and report back to the court for further directions.
 - g. Parties finally agree that there shall be no order as to alimony or financial compensation to either party.
 - h. These terms shall not in any way be considered admission of liability by parties herein.
 - i. The parties pray that these terms of settlement be adopted as the consent judgement and or orders of this honorable court.
4. No order as to costs.

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