

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 15<sup>TH</sup> JUNE, 2023

SUIT NO. C5/49/23

JOYCE NAA KWALEY ASARE BOADU - PETITIONER

VRS

CHARLES KWESI ASARE BOADU - RESPONDENT

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**JUDGMENT**  
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The parties herein, being convinced of their desire to be yoked together and recognized under the law and by all men as one unit, celebrated their marital union under the ordinance on the 24<sup>th</sup> day of December, 2016 at the Love Way Ministries International, Accra. There is no issue of their marriage although the Petitioner had three issues prior to their marriage. Whereas the Petitioner is a nurse, the Respondent is a pastor.

On the 1<sup>st</sup> day of December, 2022, after almost six years of taking their vows as man and wife, the Petitioner presented the instant Petition for a dissolution of their marriage on the grounds that same has broken down beyond reconciliation. According to her the breakdown of the marriage is due to the unreasonable behavior of the Respondent. Further that they have been separated and not lived together as husband and wife for the past three years.

She sought the following reliefs;

1. Dissolution of the marriage contracted on the 24<sup>th</sup> day of December, 2016 under the Ordinance

2. An order for the Respondent to return the Nissan Sentra vehicle with registration number GS 5201-13 which she gave to him for his personal use in good condition and shape
3. Recovery of an amount of GH¢10,000.00 being expenses incurred for a litigation on Respondent's behalf as well as three years of fuel expenses.

In his Answer to the Petition, the Respondent admitted that their marriage has broken down beyond reconciliation. He denied the claim of unreasonable behavior and said he was a supporting husband and had performed all duties required of him.

Respondent said that it is the Petitioner who took off her marital rings in May, 2020 and together with an uncle of hers, went to the Respondent's uncle for a dissolution of their marriage. His uncle however refused. In August, 2021, the Petitioner packed all his personal belongings out of the matrimonial home and brought same to him at his church at Gbawe. He also claimed that the Petitioner had by her attitude refuted all attempts at reconciliation.

He admitted that he could return the Nissan Sentra vehicle as demanded by the Petitioner. However, she is not entitled to her other reliefs.

In the course of proceedings, the Petitioner indicated to the court that she had abandoned her reliefs 2 and 3 and wished to focus on her first relief. That being so, the only issue for the court to determine is whether or not their marriage has broken down beyond reconciliation.

## **THE CASE OF THE PETITIONER**

In her evidence-in-chief, Petitioner said there is a total lack of love and communication between them. The Respondent shirks his responsibilities and does not provide for the home. He is selfish, self-centered and a deceitful person. Petitioner said that the Respondent was always moody and so this created discomfort in the matrimonial home. Further that he would leave her on her sick bed to travel, and at a point in time, vacated the matrimonial home to live in his church premises.

She continued further to say that they had been separated for the past three years and during that time, the Respondent had failed to perform his conjugal duties. All efforts made by their church, family and friends to reconcile them had failed.

#### **THE CASE OF THE RESPONDENT**

According to the Respondent in his evidence-in-chief, the three children of the Petitioner whom she brought into the marriage adopted his surname due to the good relationship he had with them.

The Respondent said that Petitioner was using a Nissan Sentra 2006 model and in the year 2017, they purchased a Chevy Cruze. They also acquired two plots of land at Prampram which led to the loss of his job because he had to supervise the building process which took most of his time and resources.

The Respondent said that the Petitioner was arrogant, disrespectful and had no regard for him as her husband. That Petitioner removed her wedding rings without any cause or misunderstanding, and his uncle later informed him that Petitioner and her uncle had come to see him to dissolve the marriage but he refused.

The Petitioner's uncle informed him about the Petitioner's decision to change the locks to the house. He reported the actions to their church and family but all attempts to reconcile them failed. Thereafter, Petitioner packed some of his personal belongings and brought them to him at Gbawe.

Respondent claims that the marriage has broken down beyond reconciliation and the court should grant him a share of the properties acquired in the course of the marriage.

### **CONSIDERATION BY COURT**

"Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. Thus although the Respondent in her answer admits that the marriage has broken down beyond reconciliation and also alleges unreasonable behavior and adultery on the part of the petitioner, the Court through evidence must satisfy itself that the marriage has broken down beyond reconciliation". See the case of *Ameko v. Agbenu [2015] 91 G.M.J.*

Blacks' law dictionary, (8<sup>th</sup> edition, 2004 p. 1449) defines divorce as "*the legal dissolution of a marriage by a Court.*" In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*.

In section 1 (2) of *Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a Petitioner must establish one of six causes, that is adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years;

not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner's basis for arriving at the conclusion that their marriage has broken down beyond reconciliation is unreasonable behavior of the Respondent. The respected *Benin JSC* in the case of *John Tagoe v. Accra Brewery Ltd. [2016] 93 G.M.J. 103 @ 123* was convicted that: "It is trite law that he who alleges, be he plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when he has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be."

The burden of proof on the Petitioner is akin to a double edged sword. Akamba JA (as he then was) in the case of *Kwaku Mensah Gyan & I Or. v. Madam Mary Armah Amangala Buzuma & 4 Ors. (Unreported) Suit No. LS: 794/92 dated 11<sup>th</sup> March, 2005* explained: "What is required is credible evidence which must satisfy the two fold burdens stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section.

*Act 367* does not define what constitutes unreasonable behaviour. By virtue of the varied nature of mankind's character and sensibilities, it may very well prove a herculean task if an attempt is made to set in stone what acts constitute unreasonable behaviour. However, the test that is used is whether or not the act committed by one spouse is such that all right thinking men would hold that the act is unfair and unjust and the spouse who has been so offended, cannot be expected to continue to live with the other as husband and wife.

In determining what constitutes unreasonable behavior, the test to be applied is an objective one. Hayfron Benjamin J (as he then was) held in the case of *Mensah v. Mensah*

(1972] 2 G.L.R. 198 that “In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova's Charter. The test is objective”.

In the case of *Ansah vrs. Ansah [1982-1983] GLR 1127, Owusu Addo J.* held that “the test under the section, was whether the Petitioner could reasonably be expected to live with the Respondent in spite of the latter’s behavior. The test was therefore objective, but the answer obviously had to be related to the circumstances of the petition in question. That had to be a question of fact in each case. It followed that the conduct complained of must be sufficiently serious since mere trivialities would not suffice”.

There is no dispute that the Respondent moved to live with the Petitioner after their marriage. He does not deny that between his one room home in his father/mother’s house and the Petitioner’s self-acquired property, Petitioner’s was much more comfortable and spacious.

There is also no dispute that the Respondent moved out of the matrimonial home at a point in time to live at his church premises. There is no dispute that Petitioner and her uncle made an attempt to dissolve the traditional marriage between the parties in May, 2020, and that thereafter, she asked the Respondent to move out of the matrimonial home.

The evidence of the Petitioner as to the unreasonable behavior of the Respondent is that he is selfish and self-centered. He failed to maintain the home as a husband should and shirked his responsibility of care towards her when she was ill.

The evidence on record is one of oath against oath. As matrimonial matters are usually couched in privacy, the Court in making its enquiry does not require proof of events by mathematical precision. The evidence of the parties through their evidence-in-chief, their answers and questions under cross-examination, their demeanour as well as any documentary evidence presented to the Court are considered as sufficient evidence.

Although the Respondent denied the claims of the petitioner, I find that between she and the Petitioner, hers is much more credible. Petitioner had not only testified but provided documentary evidence in proof of some of her claims when ordered to produce same.

Under cross-examination, her answers had provided further evidence of facts, circumstances and events from which the court could ascertain the veracity of her claims. In cross-examining the Respondent, she asked questions to which the Respondent provided answers that were evasive at best.

Petitioner insisted that although her children had taken on the surname of the Respondent upon their marriage, his change in character made the children revert to their maiden surnames. The Respondent denied this and demanded for proof.

Petitioner provided EXHIBIT A, B and C series. They are the bio data pages of her children's passports, birth certificates as well as gazette notifications. They bear out her claim that as far back as November, 2021 and more than a year before the Petitioner presented this petition, the children had reverted to their maiden names. I believe the case of the Petitioner that it was due to the drastic change in the attitude of the Respondent towards her children that led them to revert to their maiden names.

Although the Respondent maintained under cross-examination that he provided for the home, I found his answers to be more of afterthoughts and others to be premeditated. For instance, when asked whether he maintained the home and also whether he maintained the Petitioner herself, he responded with the same answer as to the amount he provided and the addition of food stuffs.

Again, although he testified in his evidence-in-chief that he lost his job, he denied ever losing his job under cross-examination and said he had always worked and provided for the home. He insisted that he always bought foodstuffs every weekend on his way home from work. This is despite the fact that in his own evidence-in-chief, he stated that he lost his job as a result of supervising the construction of a house.

Respondent admitted receiving a car from the Petitioner in the course of the marriage, and he admitted taking money from her to renovate a house. He also testified of taking money from her to run his day to day activities. From the evidence on record, the Respondent appeared to have contributed nothing to the marriage financially and emotionally.

It appears he rather lived off the Petitioner. For instance, although in his evidence-in-chief he said he used his time and resources in supervising construction works on Petitioner's land, and under cross-examination he denied taking any moneys from the Petitioner for the said supervision, he had early on in paragraph 5 of his Answer contended that he received GH¢ 2,000.00 from the Petitioner to run his day to day activities at the site. That is an admission that he received money from the Petitioner primarily because he was going to the site. The question here is, if he considered it to be their joint property and if he was still working while doing the supervision as he wants this court to believe, why did he have to take money from Petitioner to run his day to day activities?



Again, the Respondent gave evasive answers under cross-examination as to his payment of utility bills in the matrimonial home. His evasive answers lead me to an inference that he was not the one who paid the said utility bills. I also believe the claim of the Petitioner that he abandoned her while she was bleeding and left the matrimonial home.

From the evidence, it appears that the Petitioner had footed all the bills in the home. She had not only maintained the home, but provided for the Respondent by taking care of his basic needs as well as taking care of other needs such as renovating a house that belonged to the Respondent. She had also provided him with money for his day to day activities. She had provided completely for his needs to the point that when she expressed her disinterest in the marriage, Respondent 's church had asked her about providing him with accommodation.

In exchange, the Respondent had provided nothing financially and only washed clothes because he insisted he did not want a washing machine to do so. That he would become moody and make the home uncomfortable in the circumstances where all his needs were provided is an action that many a person cannot be expected to continue to live with. That he would then vacate the matrimonial home at a time when the Petitioner is ill and leave with the car that he had acquired in the marriage, is an act that many a person cannot be expected to live with.

At the end of my enquiry, I find that the Petitioner has led evidence to establish her claims in my mind. I accordingly find that the Respondent has behaved in such an unreasonable manner that she cannot be reasonably expected to continue to live with him as husband and wife. On that basis, I hereby decree a dissolution of their marriage on the basis that that their marriage has broken down beyond reconciliation. Their marriage certificate is

accordingly cancelled and the registrar of the Court is to notify the administrator of the Church of the said cancellation to enable them amend their records accordingly.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**  
**(CIRCUIT COURT JUDGE)**