

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 23RD MARCH, 2023

SUIT NO. C5/87/22

COMFORT FYNN - PETITIONER

VRS

JOSEPH BENTUM - RESPONDENT

JUDGMENT

On the 12th day of July, 2022, precisely two (2) years and two (2) weeks from the 27th day of June, 2020 when the parties celebrated their union as husband and wife under the ordinance at the Rhema Calvary Centre, Kwabenya –ACP Accra, the petitioner presented the instant petition for the dissolution of their marriage on the basis that same has broken down beyond reconciliation.

There are no issues of the marriage and according to the petitioner, the marriage has broken down beyond reconciliation due to the unreasonable behavior of the respondent. She particularized the basis for her claim of unreasonable behavior and contended that the marriage has now become an empty shell as both parties are now uninterested in same. That the respondent has on several occasions asked her to go ahead with divorce proceedings.

She prayed the court to:

1. Dissolve their marriage

2. The respondent be made to pay her the sum of thirty thousand Ghana cedis (Ghs 30,000) as financial settlement
3. Cost inclusive of legal fees
4. Any other reliefs as the court deem meet.

In his answer, the respondent denied that their marriage has broken down beyond reconciliation or that he has behaved in an unreasonable manner. He urged the court to dismiss the claims of the petitioner and make an order for reconciliation.

THE CASE OF THE PETITIONER

In her evidence in chief, petitioner said the respondent withdrew himself from her one week after the celebration of their marriage and has since then not communicated with her as a married couple should. That he has also expressed no desire to have children with her and does not eat food that she prepares.

Also that he brings in family members to their home without her consent and they end up staying for long periods. That the respondent only has sexual intercourse with her at his instance and rudely awakens her to do so at dawn. That he has refused to maintain her as a husband should maintain a wife. That he now spends his nights in the living room.

Further that she has made several attempts at resolving their issues by involving pastors and other family members all to no avail. That the respondent has also refused to respond to her questions as to why he behaves unreasonably towards her. She tendered in evidence a copy of their marriage certificate as EXHIBIT A.

THE CASE OF THE RESPONDENT

In his evidence in chief, respondent says the petitioner does not regard him as her husband and talks to him anyhow. That she also brings her friends into the matrimonial home at will without informing him and also goes out and returns at will without expecting him to be annoyed or question her as to her whereabouts.

That the petitioner is authoritative and wants to rub shoulders with him as the man of the house and control everything concerning the home. That she does not perform her duties as a wife and behaves strangely whenever there is an issue to be solved. That petitioner does not regard his family but expects him to be close to her family.

ISSUES FOR DETERMINATION

The issues for the court to determine is

1. Whether or not the marriage between the parties has broken down beyond reconciliation
2. Whether or not the petitioner is entitled to financial settlement of thirty thousand Ghana Cedis (Ghs 30,000) from the respondent

CONSIDERATION BY COURT

Within this jurisdiction, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. Divorce is defined as "*the legal dissolution of a marriage by a Court.*" See Blacks' law dictionary, (8th edition, 2004 p. 1449).

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 his answer admits that the marriage has broken down beyond

reconciliation and urges the court to dissolve same, 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.

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 i.e. 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. Thus the petitioner who is asserting the positive bears the burden of establishing her case on a balance of probabilities. The burden on her 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 11th 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.

Petitioner's basis of presenting this petition is that the respondent has behaved in such an unreasonable manner that she cannot be expected to live with him and also that all diligent efforts made by their families to reconcile them has failed. As it is with most

matrimonial matters, she testified alone and did not call any witnesses or rely on any documentary evidence. The respondent also did same. That being so, their evidence was oath against oath.

The respondent in cross examining the petitioner did not deny her claims as his actions which constitute unreasonable behavior. He did not deny that he does not eat food that she prepares and rather sought to find out from her why he did so. That is an admission on his part that he did not eat food prepared by the petitioner.

Again, per the line of questioning and answers under cross examination, the respondent appeared to be of the opinion that he could “beat the petitioner when she misbehaved” and the only thing that held him back was her threat to report him to the police if he did so.

Although the petitioner claimed that the respondent withheld himself from her and only wanted sex at his instance, the evidence showed that at a point, she had refused to have sexual intercourse with the respondent and this had led to a quarrel between them which resulted in the respondent falling off the bed.

For a young couple who did not have any child, their issues appear quite puzzling. From their evidence, it appeared that the respondent understood being the man of the house to equate to being a dictator for the house as well whilst the respondent understood being a wife to mean being catered for entirely. Although she is gainfully employed, she had sought to make an issue of the fact that the respondent provided for the home in the course of the marriage but did not specifically provide for her needs.

Although the respondent has a family, she did not report their issues to his family but rather to their pastors. Their issues are such that a little bit of patience, forbearance and counselling as well as letting go of their egos could have seen their marriage travel the length of “till death do us part”.

As it stands now, it appears too much water has passed under the bridge of their marriage and they no longer live together as husband and wife. According to the respondent, they have not had any sexual intercourse since 2021. It appears that the chords of their love towards each other has not only weakened but been replaced by regrets and anger.

In the circumstances and particularly so as there are no issues of the marriage and no marital properties, I find that it is best to break the legal yoke of their marriage and set them free of each other and their marital vows.

To borrow the words of Amisshah J.A in the case of *Knudsen v. Knudsen* [1976] 1 GLR 204, “if a man comes to court saying that his marriage has reached a stage that he “cannot reasonably be expected to live” with his wife any more, should a court say to him oh yes you can?”. In the circumstances of this case, it is the woman who is praying for dissolution and according to the respondent, has rebuffed all attempts at reconciliation.

That is why *section 2 (1) (f) of the Matrimonial Causes Act, 1971 (Act 367) provides that;*

“For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts; that the

parties to the marriage have, after diligent effort, been unable to reconcile their differences”.

After my enquiry, I hereby find that the marriage between the parties has broken down beyond reconciliation as all diligent efforts made to resolve their differences to enable them continue on their marital journey has failed. I hereby issue a decree of dissolution in respect of the marriage celebrated between the parties on the 27th of June, 2020 at the Rhema Calvary Centre, Kwabenya –ACP Accra.

Their marriage certificate is accordingly cancelled. The Registrar is to notify the administrator of the church to enable them amend their records accordingly.

2. Whether or not the petitioner is entitled to financial settlement of thirty thousand Ghana cedis (Ghs 30,000)

On issue two, the petitioner prays for financial provision or in the sum of Ghs 30,000. In the case of *Oparebea v. Mensah [1993-94] 1 GLR 61*, the court held that in order to determine a claim made under *Section 20 (1) of the Matrimonial Causes Act*, the court must examine the needs of the party making the claim and not the contributions of the parties during the marriage.

The case of *Riberiro v. Ribeiro [1989-1990] 2 GLR 109* provides a good guidance to a court when making decisions on financial provision. My consideration should not only be based on the need of the respondent but also on the financial strength of the petitioner as well as the standard of living to which the other spouse was accustomed to during the marriage.

Factors to be considered in arriving at an equitable decision include the earning capacity or income of the parties, property or other financial properties which each of the parties has or is likely to have in the foreseeable future, the financial needs, obligations and responsibilities of each of the parties and the standard of living enjoyed by the family before the breakdown of the marriage.

Both parties work. The petitioner is an administrator and the respondent is an electrical technician. No property was acquired in the course of their rather short term of marriage and no evidence has been led that either party obtained any benefit or advantage in the course of the marriage that would enhance their financial earnings in the foreseeable future.

The respondent however insisted that he provided for the petitioner as a husband should in the course of their marriage and this was not limited to only maintaining the home. Per his own evidence, the petitioner aside her salary also relied on him for some of her personal needs and even throughout this divorce proceedings, he insists that save for one occasion, he has been providing for her.

Now that they are divorced, she can no longer rely on him for those needs. It would lead to an immediate shift in the standards of living that she has been exposed to. In order to cushion her from such a fall, the respondent is ordered to pay her the sum of twelve thousand Ghana cedis (Ghs 12,000) as financial settlement within forty five (45) days from the date of judgment.

Ordinarily, I would not award legal costs. However, from the evidence, both parties appeared tired of each other and their marriage and the respondent urged the petitioner to file for divorce. It would thus not be fair for her to pay the full legal costs involved in

engaging a lawyer for that purpose. The respondent is hereby ordered to pay three thousand Ghana cedis (Ghs 3,000) as legal costs to the petitioner.

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

PATRICE TEYE DORYUMU FOR THE PETITIONER