

**IN THE CIRCUIT COURT HELD AT KIBI, EASTERN REGION ON FRIDAY THE
25TH DAY OF AUGUST 2023 BEFORE HIS HONOUR PETER OPPONG-BOAHEN
ESQ CIRCUIT COURT JUDGE**

SUIT NO C5/2/23

LINDA BENYA

KYEBI

PETITIONER

VERSUS

ERIC OWUSU APPIAH

KYEBI

RESPONDENT

JUDGMENT

• The parties herein are both Ghanaians and were married under Part Three of the Marriages Act 1884-1985(CAP 127) on the 12th day of December, 2012 at the Principal Registrar of Marriages Office, Accra. The parties co-habited briefly after the marriage in Accra. There are no issues in the marriage and there had not been any previous proceedings regarding the marriage.

Per a petition issued on the 21st of March, 2023, the Petitioner, on the grounds that the marriage has broken down beyond reconciliation, is seeking the dissolution of the marriage celebrated between them on 12th December, 2012.

The Respondent filed an answer on 12th July, 2023 and save that he admitted the breakdown of the marriage, he denied the material particulars. He rather blamed the breakdown of the marriage on desertion on the part of the Petitioner, having left the matrimonial home unprovoked and as a result of that Petitioner has returned the customary drink to the Respondent's family of which same has been accepted by the family.

The sole issue in resolving this matter is whether or not the Ordinance Marriage contracted on 12th December 2012 between the parties has broken down beyond reconciliation and based on that same should be dissolved.

By virtue of section 1(2) of the Matrimonial Causes Act, 1971(Act 367) the sole ground for the grant of a decree of divorce is that the marriage has broken down beyond reconciliation. Section 2(1) of Act 367 prescribes facts, one or more of which a Petitioner must establish for the purposes of showing that the marriage has broken down beyond reconciliation as follows:

(a) that the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent;

(b) that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

(d) that the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce, provided that the consent shall

not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph despite the refusal;

(e) that the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or

(f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

(2) On a petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the Petitioner and the Respondent.

(3) Notwithstanding that the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation. See *ADJETEY VRS ADJETEY [1973] 1 GLR 216*.

This case being a civil one, the Petitioner is required by law to establish her case on the preponderance of probabilities. See Section 12(1) of the Evidence Act, 1975(NRCD 323). In the case of *ACKAH V PERGAH TRANSPORT LIMITED & OTHERS [2010] SCGLR 728*, the Supreme Court stated the law succinctly as:

'.....It is trite law that, matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence. This is a requirement of the law on evidence under Sections 10(1) and (2) and 11(1) of the Evidence Act, 1975(NRCD 323).'

Before analyzing the issue, it must be on record that after the divorce petition was filed by the Petitioner on 21/3/23 and the Respondent has also filed his answer on 12/7/23 the

parties could not appear in court to testify. Both parties gave power of attorney to their respective attorneys to testify for and on their behalf: the Petitioner testified through her attorney one David Kwao whilst Respondent testified through one Umar Issah Farouk.

In this divorce petition, the issue to be determined by the court is whether the marriage contracted by the parties has broken down beyond reconciliation and based on that same should be dissolved.

It is trite that a court must come to the satisfaction that the marriage has broken down beyond reconciliation before decreeing a divorce. The duty of the court in coming to that determination is well settled.

The Petitioner is relying on unreasonable behaviour of the Respondent as proof of the breakdown of the marriage. The test for unreasonable behaviour as held in the case of **KNUSDEN V KNUSDEN [1976] 1 GLR 204, CA** was:

'The behaviour of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of act if it is of sufficient gravity or of a persistent course of conduct or series of acts of differing kinds more of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.'

Similarly, in the case of **MENSAH V MENSAH [1972] 2 GLR 198**, the Court, referring to unreasonable behaviour held that:

'The test however is an objective one, it is whether the Petitioner can reasonably be expected to live with the Respondent and not whether the Petitioner indeed finds it intolerable to do so. The answer must be related to both the circumstances of the Petitioner and the Respondent, and it is eminently a question of fact in each case....The conduct complained of must be sufficiently grave and weighty enough to justify a finding

that the Petitioner cannot reasonably be expected to live with the Respondent. Mere trivialities will not suffice. The parties must be expected to put up with what has been described as reasonable wear and tear of married life.'

Notwithstanding that the Respondent willingly agrees to the divorce, the court, as required by law, is to consider the totality of the evidence on record to come to the conclusion that the marriage has broken down beyond reconciliation.

A party pleading unreasonable behaviour must not only prove the conduct constituting the unreasonable behaviour but also that he cannot reasonably be expected to live with the respondent as a result of the bad behaviour.

It must therefore be stressed that the conducts which constitute unreasonable behaviour operate widely. But the conduct must be severe and higher than the normal wear and tear of the married life. It is not enough to merely refer to isolated cases which infuriate one spouse and point to it as grave or unreasonable.

The matters Petitioner relied upon are that the Respondent subjects her to beatings at the least disagreement; that the Respondent always insults her in public at the least provocation: that she had left the matrimonial home because of the beatings and threat on her life by the Respondent.

The Petitioner in her witness statement per her lawful attorney, David Kwao, alleged other unreasonable conducts of the Respondent. Since they got married, they enjoyed a blissful union until in or about 2019 when Respondent began his frost behaviour towards her. Even though they were staying apart in the USA due to different locations of their respective jobs, communication between them gradually declined as the Respondent refused to answer her phone calls and would not call either. It is the case of the Petitioner that for the past three(3) years, the Respondent has never visited her; neither has he allowed her to visit him. This has occasioned denial of sex for her in that period. It is further her case that Respondent has for the past three(3) years refused to

send money for her upkeep. Consequently, the Petitioner informed her family about the situation and several attempts of the family to settle their differences have proved futile. She finally alleged that the Respondent has essentially denied her love, protection, companionship and the many beautiful elements of marriage for which she married him for and this has caused her so much distress and embarrassment.

The Respondent, in an answer to the petition, denied all the allegation of facts made against him by the Petitioner. It is his case that he has never subjected the Petitioner to physical assault and that he is a respectable person and for that matter he would not insult the Petitioner as she alleged in her petition. It is his case that the Petitioner has rather behaved unreasonably leading to her exit from the matrimonial home unprovoked.

The Respondent, in his witness statement per his lawful attorney Umar Issah Farouk, also made some allegations of other unreasonable conducts of the Petitioner: that after about one year of marriage the Petitioner's attitude towards him completely changed without any justifiable cause. The Petitioner had no more respect and regard for him as her husband, that the Petitionere started picking unnecessary quarrels and fights with him and would verbally abuse him whenever she got the least chance, that the Petitioner stopped visiting him like she used to for no apparent reason and whenever he questioned her about her refusal to visit or allow him visit, she simply gave vogue excuses. He has thereby been denied sex in a long time. It is his case that several attempts to get the Petitioner to even justify her actions or state the reasons that have led to her change have all been unsuccessful as the Petitioner seems to have made up her mind. It is further his case that it got to a point that the Petitioner was going out with other men despite being a married woman. He contends that the Petitioner has clearly demonstrated her lack of interest in the marriage and he would not want to be a stumbling block. It is finally his case that he is amenable to legal dissolution of the marriage celebrated between the Petitioner and himself.

It needs be said that during cross examination on Respondent, counsel for the Petitioner only sought to find out from the Respondent if he was in agreement with the dissolution of the marriage and he answered in the affirmative.

As already stated, the law on divorce in Ghana is to the effect that if the court finds by evidence and existence of one or more of the facts specified in section 1 of the Matrimonial Causes Act, 1971(Act 367) the court can grant a petition for divorce.

The court is also mandated by section 2(2) of Matrimonial Causes Act, 1971(Act 367) to conduct a reasonable inquiry into the facts alleged by the parties to come to the conclusion that the marriage has broken down beyond reconciliation.

It is in evidence that both the Petitioner and the Respondent are at idem that the marriage be dissolved.

It is to be noted that when the lawful attorney of the Petitioner testified that the marriage celebrated between the parties should be dissolved, the Respondent did not cross examine the attorney on it underscoring the admission and acknowledgment of that piece of evidence. Similarly, the lawful attorney of the Respondent, under cross examination, confirmed the evidence adduced at the trial that the marriage between the Petitioner and the Respondent should be dissolved.

The totality of the evidence on record shows that the parties are unable to reconcile their differences and are therefore not at peace with each other.

Based on this, I find as a fact that the marriage between the parties has broken down beyond reconciliation. Accordingly, I decree, the marriage, celebrated between the parties under Part Three of the Marriages Act 1884-1985(CAP 127) at the Principal Registrar of Marriages Office, Accra on 12thDecember 2012 with Certificate number AMA 10076/2012 be dissolved forthwith. The said marriage certificate is hereby cancelled.

I make no order as to cost.

**H/H PETER OPPONG-
BOAHEN, ESQ**

CIRCUIT COURT JUDGE

25/8/23

REPRESENTATION

PHIDELIS OSEI-DUAH FOR THE PETITIONER