

IN THE CIRCUIT COURT, MPRAESO, EASTERN REGION, BEFORE HER HONOUR
MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT JUDGE ON THURSDAY,
THE 14TH OF MARCH, 2024

C5/1/23

THERESA KWAKYEWAA
PETITIONER

-

V

PETER AKWASI ASIAMAH

-

RESPONDENT

.....
.....

TIME:10:50

PARTIES: PRESENT

FRANCIS OSEI NSIAH ESQ FOR THE PETITIONER ABSENT

LAMBERT A. ASOBAYIRE H/B BENJAMIN AGYAPONG ESQ FOR THE
RESPONDENT PRESENT

JUDGMENT

The petitioner herein filed the instant petition on the 10th of August, 2022 saying that she was customarily and lawfully married to the respondent then divorced under customary law in the year 2010. They co-habited at Nkawkaw in the Kwahu West Municipality in the Eastern Region and there is one issue of the marriage namely Florence Asiamah, nine years old. She says that she and the respondent are both successful traders and citizens of Ghana and there have not been any previous proceedings in this or any other court regard their marriage of the child in the marriage.

It is the case of the petitioner that the marriage between her and the respondent has broken down beyond reconciliation. She avers that on more than ten occasions the respondent has sacked her from their matrimonial home which prompted the intervention of third parties especially the family of the petitioner. That despite his status in the community, the respondent has refused to give the petitioner enough money to provide for herself and the daughter as he reluctantly gives the family GH¢40.00 daily for feeding.

According to the petitioner, the respondent is always accusing her of infidelity and on the least provocation, will insult her or call her all sorts of names which are uncomplimentary and has also denied the petitioner sex for the past 18 months. She says that attempts by families, elders and the “God father” of the respondent Nana Awenadehene for the parties to adjust their differences have not been successful.

The petitioner further says that the last incident that communicated to her that the respondent has lost interest in the marriage was when the petitioner went to the matrimonial home to pick some dresses and while leaving, the respondent took a broom and swept behind her footsteps an action the petitioner deemed to be demeaning, humiliating and an insult to the dignity of the petitioner per the akan custom. The

petitioner therefore concluded that the respondent has behaved in a manner that she cannot reasonably be expected to live with the respondent. That the respondent has caused her much anxiety, distress and emotional embarrassment. The petitioner on the basis of the above, seeks the following reliefs:

- i. That the said marriage between the parties be dissolved
- ii. That the petitioner be granted custody of the only child of the marriage:
Florence Asiamah
- iii. That the Respondent be ordered to maintain the petitioner pending suit of GH¢1,500.00 monthly and such periodical payments.
- iv. That the Respondent be ordered to pay in the alternative to the petitioner, a lump sum of One Hundred Thousand (GH60,000) [sic] as push off
- v. Equitable share of the following properties be settled in favour of the petitioner:
 - a. Hotel at Asaaseaban in Nkawkaw with an extension of 43 rooms and matrimonial home attached
 - b. Shell filling station with Restaurant and Guest House at Asona near Nkawkaw

Upon service of the petition on the respondent, he entered appearance and filed a response and cross petition on the 25th of September, 2022. The respondent denied the averments of the petitioner save for paragraphs 1,2,3,4 and 6.

In denying the averments in the petition, the respondent avers that it is rather the petitioner who has deserted her matrimonial home without any reason. According to the respondent, on 1st of January, 2017, he came to find the petitioner and her ex-fiancée by

name Richard Asare in a flirtatious way in their guest house which serves as their matrimonial home celebrating his birthday.

The respondent says that the petitioner and one Kwadwo Effah has been engaging in a way that makes the respondent believes they are in amorous relationship. The respondent says that he has been paying all house bills, medical bills, school bills and maintenance of their child and even pays for people to wash for him and the petitioner's dresses and continued to provide for the petitioner even after she had deserted and abandoned the matrimonial home. That the petitioner owes her GH¢11,600.00 which she has refused to pay till date.

According to the respondent, he has given out his shop he rented at Nkawkaw Central Market to the petitioner and has invested approximately GH¢126,000.00 to fill the shop with assorted drinks and has also given the shop in his guest house at Asaaseaban to the petitioner to sell drinks.

In further averment, the respondent says that when he met the petitioner, she was a fuel station attendant at the shell filling station being paid Gh¢150.00 a month and the respondent endeavoured to pay the said GH¢150.00 every month to the petitioner until 2015. The respondent says that the petitioner does not contribute anything towards the upkeep and welfare of the children even though the petitioner works all day around the clock. He allowed the petitioner to use the revenues and profit from the said business to acquire a land and built a 2 bedrooms with a hall and 2 separate single room self-contained which the petitioner has moved into for about six months now. Additionally, he bought a Kia Rio with registration number GT 8826 -10 in 2011 for the petitioner which she caused damage to and in 2012, he bought an almost brand new Hyundai Elantra vehicle with registration number GT4375-12 for the petitioner which she still uses. The respondent also says that the petitioner came into the marriage with a son called Kwawo

Asiamah who the respondent has taken care of and paid his educational fees, medical and maintenance bill for twelve years now. That he has taken care of the petitioner's son as his own son and currently he is at the Kwame Nkrumah University of Science and Technology.

Again the respondent says that it is rather the petitioner who is domineering to the extent of denying the respondent of sex and always threatening the respondent with divorce by always wanting the respondent to kotow to her whims and caprices. Sometime in 2021, when he approached the petitioner for sex she denied him stating that the respondent's hands was smelling of cow meat. That in spite of the petitioner's unreasonable behaviour, he has tried his best to treat the petitioner with respect as any loving husband would but the petitioner never seems to appreciate his efforts.

The respondent further avers that he is the one who reported the petitioner's unreasonable behaviour to the petitioner's family and the respondent's God father for peaceful resolution but same was not successful due to the petitioner's failure to cooperate and that it was the petitioner's unreasonable behaviour that caused constant misunderstandings and quarrels.

The respondent again states that the petitioner is not entitled to her reliefs because he substantially built the guest house with his ex-wife by name Efua Benewaa and that when he got married to the petitioner, he had completed building the said guest house. The respondent says that he acquired the land for the guest house in 1996 and completed it in 2006 before marrying the petitioner in 2010. He also says that he acquired the land for the filling station at Asona in 2002 and completed before marrying the petitioner in 2010. That he had twice been the Assemblyman for Kwahu west from 1994 to 2002 and thus was very well established before he married the petitioner.

Based on the above averments, the respondent cross petitioned and says that he has helped the petitioner to acquire during the pendency of the marriage, a house with address EJOOO329469 at Nkawkaw. Thus two bedrooms with hall and two separate single room self-contain where the petitioner is presently residing. The respondent avers that the petitioner has behaved unreasonably and provided the particulars of unreasonable behaviour as follows:

PARTICULARS OF UNREASONABLE BEHAVIOUR

- a. That the petitioner persistently abuses the respondent emotionally
- b. That whiles the respondent welcomes relatives of the petitioner to the matrimonial home, the petitioner never allows relatives of the respondent to visit the matrimonial home on numerous occasions.
- c. That this unreasonable behaviour of the petitioner has strained the hitherto cordial relationship the respondent had with his immediate family.
- d. That the petitioner has left the matrimonial home for six months now and has permanently moved to her house with address EJOO329469 at Nkawkaw
- e. The petitioner has become extremely domineering and always wants to have her way on matters pertaining to the marriage to the extent that the petitioner expects him to comply but not to contribute.
- f. That the petitioner has throughout the marriage been quick tempered, nagging and scolding
- g. That the petitioner on many occasions denied the respondent of sex and any other form of affection, which sometimes went on for about a month.

- h. That the petitioner is so unreasonable and uncompromising that even when respondent tries to resolve their misunderstanding she would not barge but would rather prefer not to talk with the respondent for several weeks
- i. That the petitioner has the penchant of picking quarrels with the respondent over little issues and verbally abuses the respondent consistently even in the presence of their child.
- j. That halfway into the marriage, the petitioner began exhibiting a cold and unreasonable attitude towards the respondent and would not excite or maintain any meaningful conversation with the respondent
- k. That further, the petitioner has the penchant of making disparaging remarks about the respondent telling him how the sight of him irritates her.
- l. The petitioner recently accused the respondent of engaging in Juju to collapse the petitioner's trading business.
- m. That the petitioner has no or little respect for the respondent and picks up a quarrel with respondent at any given opportunity.
- n. That the petitioner is very quarrelsome and picks quarrels over trivial issues and makes very caustic and provocative remarks to the respondent at will.
- o. That the petitioner's belligerence and persistent quarrelsome habit has caused the respondent grave embarrassment as a man of repute in the community.
- p. That the petitioner has caused the respondent much anxiety, distress embarrassment and anguish.
- q. That the petitioner has consistently showed that she was not interested in the marriage with the respondent but rather selfishly married the respondent to make gains and selfishly use the resources that the respondent has provided for her own interest.

On the basis of the forgoing, the respondent claims the following reliefs:

1. A declaration that the petitioner has deserted and wilfully abandoned the marriage in bad faith
2. The petitioner be made to pay an amount of GH¢100,000.00 for desertion and causing the respondent emotional and psychological trauma
3. In the event that the marriage is dissolved then the respondent should be given custody of the child of the marriage namely Florence Asiamah with unlimited access to the petitioner.

By an order of the court, both parties filed their witness statements. They both called a witness each and the respondent as well tendered five exhibits in evidence.

From the pleadings and the evidence led at the trial, the following issues were set down for determination by the court;

1. Whether or not the marriage between the parties has broken down beyond reconciliation
2. Whether or not the petitioner has deserted and wilfully abandoned the marriage in bad faith
3. Whether or not the petitioner or the respondent is entitled to custody of the child of the marriage
4. Whether or not the petitioner is entitled to a lump sum of GH¢100,000.00 as “push off”
5. Whether or not the respondent is entitled to an amount of GH¢100,000.00 from the petitioner for desertion and causing the respondent emotional and psychological pain

6. Whether or not the petitioner is entitled an equitable share in the hotel at Asaaseaban as well as the shell filling station with restaurant and Guest house at Asona

It is trite law that in civil cases the burden of proof is on the party who asserts the affirmative of his or her case and the standard of proof is proof by a preponderance of probabilities as provided for under **section 12(1) of the Evidence Act 1975, (NRCD 323)**. **Section 12(2) NRCD 323** explains ‘**preponderance of probabilities**’ as *“that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non- existence”* .

This standard is achieved when the party produces sufficient evidence thus in **Sarkodie v FKA Company Limited [2007] SCGLR**, Wood JSC as she then was stated that:

“the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of fact was more probable than its non- existence”

The petitioner therefore had the legal burden to prove all her assertions on the balance of probabilities and where as in the instant case the respondent cross petitioned , he also has the burden to prove the allegations contained in his cross petition on a balance of probabilities.

ISSUE 1

Whether or not the marriage between the parties has broken down beyond reconciliation

The parties herein are married under customary law. **Section 41 of the Matrimonial Causes Act, 1971 (Act 367)** which is the law that regulates dissolution of Marriages in Ghana provides that:

This Act shall apply to all monogamous marriage

On application by a party to a marriage other than a monogamous marriage, the court shall apply the provisions of this act to that marriage and in so doing, subject to the requirements of justice, equity and good conscience, the court may

- a. Have regard to the peculiar incidents of that marriage in determining appropriate relief, financial provision and custody arrangements*
- b. Grant any form of relief recognised by the personal law of the of the parties to the proceedings either in addition to or in substitution for the matrimonial reliefs afforded by this act*

3. In the application of section 2(1) of this Act to a marriage other than monogamous marriage, the court shall have regard to any facts recognised by the personal law of the parties as sufficient to justify a divorce including in the case of a customary law marriage (but without prejudice to the foregoing) the following:

- Wilful neglect to maintain a wife or a child*
- Impotence*
- Barrenness or sterility*
- Intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship*
- Persistent allegations of infidelity by one spouse against the other*

Provided that this subsection shall have effect subject to the requirements of justice, equity and good conscience.

From the above provisions therefore, it is my understanding that **section 1(2)** of Act 367 (*supra*) which provides for the sole ground for the dissolution of marriage and **section 2(1)** of **Act 367** which provides for the facts that need to be proved in order to establish the ground for the dissolution of the marriage are applicable to customary law marriages in addition to those enumerated under **section 41**. That said, **section 1(2)** of **Act 367** which is the law that governs the dissolution of marriages in Ghana provides that:

The sole ground for the dissolution of marriage in Ghana shall be that the marriage has broken down beyond reconciliation.

To enable the court come to this conclusion, the law per section 2(1) further requires the petitioner who has brought the petition before the court to lead evidence to the satisfaction of the court that one or more of the facts enumerated therein have occurred in the marriage. The said section thus provides that:

“(1) 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:—

- a. That the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent;*
- b. That the Respondent has behaved in such 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 lived apart for continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to a decree being granted.*

e. That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

f. That the parties to the marriage have, after diligent efforts been unable to reconcile their differences."

Here the petitioner alleges unreasonable behaviour on the part of respondent. According to her, the respondent has on more than 10 occasions sacked her from the matrimonial home which prompted intervention from 3rd parties, the respondent always accused her of infidelity, refused to give her enough money to provide for herself and their daughter and would at the least provocation insult her and call her all sorts of names which are uncomplimentary and the last straw that broke the camel's back was when she went to the matrimonial home to pick some dresses and while leaving the respondent took a broom and swept behind her footsteps, an action which the petitioner deemed to be demeaning, humiliating and insulting to her dignity per akan custom.

In **Ackah v. Pergah Transport Ltd & Others [2010] SCGLR 728**, the Supreme Court on the issue of the burden of proof on a plaintiff held that:

"It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the parties and material witness, admissible hearsay, documentary and things (often described as real evidence) without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury"

Furthermore in **Majolagbe v. Larbi [1959] GLR 190** Ollenu J (as he then was) held as follows:

“Where a party makes an averment capable of proof in some positive way by producing documents, description of things, reference to other facts, instances or circumstances and this averment is denied he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which a court can be satisfied that what he avers is true”.

Apart from merely making these bare allegations, the petitioner did not lead any evidence to prove same not even did she repeat same on oath. The only thing she said under oath in paragraph 11 of her witness statement was that for about two years (as at the time of filing the witness statement) the respondent has started accusing her of unfaithfulness as a ploy to sack her from the marriage aside insults and humiliations.

The petitioner’s witness, PW1 only stated at paragraph 3 of his witness statement that the petitioner has been complaining about misunderstanding between the parties with regard to the marriage and the complains made by the petitioner gave him the opportunity to settle issues between them on more than 10 occasions. The question is what are the specific conducts of the respondent that gave rise to those misunderstandings?

In **Mensah v Mensah [1972] 2 GLR** the court in determining what constitutes unreasonable behaviour held that:

the test is however an objective one; It is whether the petitioner can reasonably be expected to live with the Respondent and not whether the petitioner finds it intolerable to do so. The answer must be related to the circumstances of both the petitioner and the respondent, and is eminently a question of fact in each case.....One point is clear and it is that the conduct complained of must be sufficiently grave and weighty 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 the reasonable wear and tear of life.

Before this court, the petitioner has not led any evidence to establish any untoward conduct of the respondent. The concentration of the petitioner was on properties that were acquired during the subsistence of the marriage and she did not do much to prove the allegations of unreasonable behaviour against the respondent. To that extent, I agree with counsel for the respondent's submission in his written address that the petitioner did not lead any evidence to prove that the marriage has broken down beyond reconciliation due to the unreasonable behaviour of the respondent.

Under these circumstances, it is my view that the court is bereft of any established conducts of the respondent from which the court can determine whether same constitute unreasonable behaviour within the meaning of the law. The petitioner therefore failed to prove that the respondent has behaved in a manner that she cannot reasonably be expected to live with him.

The respondent on his part also made several allegations against the petitioner as outlined in the particulars of unreasonable behaviour reproduced above. Like the petitioner, most of the allegations made by the respondent remained unsubstantiated. Unlike the petitioner however, the respondent was able to establish that on one occasion, she permitted her friend to organise a birthday party at the parties' matrimonial home which had in attendance, the petitioner's ex-boyfriend. The petitioner explained that she was not the one who invited him there however, there is no indication that the petitioner disapproved of her ex-boyfriend being there. The respondent was obviously unhappy about this occurrence and did not take kindly to it. He therefore made a complaint to PW1, the petitioner's uncle. Cross-examination of PW1 further revealed that when the complaint was made to him, the petitioner's friend and her mother found the need to apologise to the respondent but there is no evidence that the petitioner did same in the

presence of her uncle. It is my opinion that, that singular act of the petitioner, speaks volumes about her general conduct and how she behaves towards the respondent and she did not even care how the respondent felt about her actions or inactions. It is therefore my view that for the petitioner to have allowed her friend to organise a party at her matrimonial home at which party her ex-boyfriend was present without the consent of the respondent and without any objection from the petitioner, same can be construed as unreasonable behaviour.

In **Knudson v Knudson [1976] 1 GLR 204-2016**, the court of Appeal stated as follows:

The test to be applied in determining whether a particular petitioner could or could not reasonably be expected to live with the particular respondent was an objective one and not a subjective assessment of the conduct and the reaction of the petitioner. In assessing such conduct the court has to take into account the character, personality, disposition and behaviour of the respondent as alleged and established in the evidence. The conduct may consist of one act if of sufficient gravity or of a persistent course of conduct or series of acts of different kinds, none of which by itself might be sufficient but the cumulative effect of all taken together would be so

In the instant case as has already been indicated, this singular act of the petitioner went beyond the normal wear and tear of married life and considering all the circumstances of the case I find same to be of sufficient gravity to warrant a conclusion that the petitioner has rather behaved in a manner that the respondent cannot reasonably be expected to live her.

Interestingly however, in spite of all the allegations made against the petitioner and his cross petition, the respondent did not seek an order for the dissolution of the marriage between him and the respondent. From the evidence however, it is evident that the parties have irreconcilable differences. The evidence shows that on more than 10 occasions PW1 had received complaint from both the petitioner and the respondent and

tried to resolve same. Apart from PW1, there is also evidence that the petitioner's family and other person's like the respondent's God father had intervened to help the parties settle their differences but all to no avail. It is thus clear to me from the evidence that the parties have irreconcilable differences and the marriage between them ought to be dissolved.

ISSUE 2

Whether or not the petitioner has deserted and wilfully abandoned the marriage in bad faith

It is the case of the respondent that for six months now the petitioner has left the matrimonial home and permanently moved to her house with address EJ00329469 at Nkawkaw. He therefore seeks a declaration that the petitioner has deserted and wilfully abandoned the marriage in bad faith.

Under section 2(1)(c) of Act 367 (supra), it will constitute desertion within the meaning of the law where it is established that *the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition.*

Here, the instant petition was filed on the 19th of August, 2022 and the response was filed on the 9th of September, 2022. At the time the respondent filed his response, he claimed that the petitioner had left the matrimonial home six months prior. Six months at the time the respondent filed his response and cross petition in September meant that the petitioner had left the matrimonial home in March of that year. For the purposes of the cross petition and in discussing the instant issue, the petitioner becomes the respondent and the respondent, the petitioner. Therefore in terms of the law which requires that the

defaulting party should have left the matrimonial home for at least two years before the presentation of the petition, the, petitioner herein, cannot be said to have deserted the matrimonial home because she had not left the matrimonial home for two years before the cross petition was lodged.

Even if desertion is taken out of the ambit of Act 367 and given the plain English meaning, the respondent has not led sufficient evidence to show that the petitioner left the matrimonial home in bad faith.

I therefore hold that the respondent was not able to establish that the petitioner left the matrimonial home in bad faith and also deserted the marriage.

Issue 3

Whether or not the petitioner or the respondent is entitled to custody of the child of the marriage

Under section 22(2) of Act 367 supra, a court in any proceedings under the Act on its own motion or an application by a party may make an order concerning the award of custody of a child to a person, regulate the right of access of any person to the child, *provide for the education and maintenance of the child out of the property or income of either or both parties to the marriage*

Here both petitioner and the respondent pray for custody of the only child of the marriage.

On the issue of custody of children, the guiding principle is the welfare principle which is provided under **section 2 of the Children's Act, 1998, (Act 560)** which provides that:

(1) The best interest of the child shall be paramount in any matter concerning the child

(2) The best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child

Thus in **Braun v Mallet [1975] 1GLR at page 82**, the court held that:

“in the question of custody, it was well settled that the welfare and happiness of the infant was of paramount consideration of the court in the exercise of its powers in relation to children”

Again in the case of **Opoku Owusu v. Opoku Owusu [1973] 2 GLR 349-354**, the court stated as follows:

In such an application the paramount consideration is the welfare of the children. The Court’s duty is to protect the children irrespective of the wishes of the parents. In the normal course of things, the mother should have the care and control of very young children especially the girls or those who for some special reason need a mother’s case...”

See also. **Gray v Gray [1971] 1 GLR 422-428**

Beckley v Beckley [1974] 1 GLR 228-246

In the instant case, both parties did not lead any evidence in support of their respective claims for custody. Counsel for the petitioner did not file his address as ordered by the court however in counsel for the respondent’s address, he urged on the court to grant custody to the respondent on the basis that both the petitioner and the respondent have lived together with the child until the instant proceedings and the petitioner is relatively young and is likely to remarry and that being a woman who has a history of raising her first son in a different marriage with the respondent, it is not a good practice to allow his daughter to be raised possibly in another marriage, while the respondent is still alive and a business man who will need the services of her daughter to learn and assist him in his business after school. Counsel for the respondent further submitted that if the respondent

is granted custody, the child can cook and do some laundry for the respondent which services the petitioner can do for herself and it will also afford the petitioner the opportunity to freely date another man without any hindrances.

I am must say that I am not persuaded by the submission of counsel for the respondent particularly for the reason that the child who is about eleven years old is expected by the respondent to assist him in his business after school and also cook and do laundry for him. Obviously the respondent is not concerned with the best interest of the child but what he stands to benefit from the child when granted custody. Besides, I do not see how the grant of custody to the petitioner will be a hindrance to the petitioner if she decides to date another person. At any rate, the petitioner had a young child before the respondent met her and got married to her and it has not been shown that, the petitioner being with her child at that time was a hindrance to the relationship between the petitioner and the respondent.

Section 45 of Act 560 *supra* provides that:

(1) A Family Tribunal shall consider the best interest of the child and the importance of the young child being with his mother when making an order for custody or access

(2) Subject to subsection (1) a family tribunal shall also consider

(a) the age of the child

(b) That it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents

(c) The views of the child if the views have been independently given

(d) That it is desirable to keep siblings together

(e) The need for continuity in the care and control of the child; and

(f) Any other matter that the Family Tribunal may consider relevant

The evidence shows that the child in question is about eleven years old and also a female. She has lived with the petitioner all her life and as a growing female child needs to be trained in all aspects of her life by her mother to enable her fit very well in the society. Besides, the evidence is that the petitioner has another child from a previous relationship and as stated above there is the need for siblings to grow up together. Moreover, from the evidence, the respondent appears to be a very busy person judging from the number of businesses he owns and it is my view that he is not likely to devote much time to bringing up the child who is yet to enter into adolescence with all the physiological changes that come with it and which require her mother to prepare her to go through these changes without challenges. On the basis of the foregoing, it is my view that the best interest of the child will be best served if custody is granted the petitioner rather than the respondent.

Issue 4

Whether or not the petitioner is entitled to a lump sum of GHC100,000.00

The petitioner claims for an order for the respondent to be compelled to pay her an amount of GHC100,000.00 as push off

Section 20(1) of Act 367 (supra) provides that:

“The court may order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision as the court thinks just and equitable”

The above provision in my view calls for a judge's discretion upon consideration of all the evidence and decide which of the parties is entitled to financial provision. Thus it is not as of right that a woman is entitled to alimony in any instance of divorce. In the case of **Barake v Barake [1993-1994] 1 GLR, 635 at page 666**, Brobbey J 9as he then was) stated:

"On such an application, the court examines the needs of the parties and makes reasonable provision for their satisfaction out of the money, goods or immovable property of his or her spouse"

The award of a lump sum financial provision to either spouse therefore is need based and it is not intended to enrich one spouse at the expense of the other or punish the defaulting party for the breakdown of the marriage. In **Obeng v. Obeng [2013] 63 GMJ 158**, the Court of Appeal held that:

"what is "just and equitable" may be determined by considering the following factors: the income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the break down of the marriage, the age of each party to the marriage and the duration of the marriage"

In her petition, the petitioner claims for an amount of GHC100,000.00 in words and GHC60,000.00 in figures. It is trite that where an amount written in words is different from the amount written in figures, the amount stated in words shall be the amount to apply. This is the basis upon which the court set the above issue of whether or not the petitioner is entitled to the sum of GHC100,000.00 rather than GHC60,000.00 as "push off".

As I have already indicated, the petitioner did not lead any evidence to establish the allegations she made against the respondent. The court was therefore not able to establish any wrong doing on the part of the respondent that led to the breakdown of the marriage. Rather the evidence established that the petitioner is the one who is guilty of

unreasonable behaviour. That aside, the marriage at the time the petition was filed in 2022 was about twelve years old. There is evidence that the respondent took care of the petitioner's son who she brought into the marriage from a previous relationship and who at the time of filing the petition was at the Kwame Nkrumah University of Science and Technology.

In paragraph 6 of her petition, the petitioner states that she and the respondent are successful traders and indeed the evidence shows that the petitioner has built a two bedroom house on a plot of land which she acquired during the subsistence of the marriage. According to her, the respondent initially agreed to support her to build the house with 3,000 blocks but when the misunderstanding between them arose, he came for all the 3,000 blocks. The evidence however shows that the respondent supported her to build the said house though not substantially and there is evidence that the petitioner intended to own the said house exclusively. It is worthy to note that the respondent met the petitioner when she was a fuel station attendant earning GH¢150.00 every month and the respondent decided to pay her GH¢300.00 every month and subsequently in 2015 gave his shop in Nkawkaw Central market to the petitioner.

The evidence again is that the respondent bought the petitioner a vehicle in 2012 which the petitioner is still using.

From the foregoing it is my view that in the circumstances of this case, the petitioner has gained so much in the marriage and it will be unjust to order the respondent to pay her any amount as "push off". The petitioner is therefore not entitled to the said amount.

Issue 5

Whether or not the respondent is entitled to an amount of GHC100,000.00 from the petitioner for desertion and causing the respondent emotional and psychological pain

The respondent's claim for GHC100,000.00 from the petitioner is hinged on his claim that the petitioner deserted the marriage in bad faith and by that caused him emotional and Psychological trauma.

As already established, the respondent was unable to prove desertion within the meaning of Act 367 and he was also not able to lead any evidence to show that by the petitioner's act of leaving the matrimonial home, he experienced any emotional or psychological trauma. The position of the law is that a person does not prove an assertion or allegation by merely entering the witness box and repeating his averments on oath.

See: **Majolagbe v. Larbi [1959] GLR 190**

Klah v. Phoenix Insurance [2012] SCGLR 1139

In the result, I hold that the respondent is not entitled to the claim of GHC100,000.00 from the petitioner.

Issue 6

Whether or not the petitioner is entitled an equitable share in the hotel at Asaaseaban as well as the shell filling station with restaurant and Guest house at Asona

Article 22 (2) and (3) of the 1992 Constitution provides:

Parliament shall, as soon as practicable after the coming into force of the Constitution, enact legislation regulating the property rights of spouses

(3) With the view to achieve the full realization of the rights referred to in clause (2) of this article

(a) spouses shall have equal access to property jointly acquired during marriage

(b) assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of marriage

In giving effect to this provision of the constitution, the Supreme Court has through its various decisions elaborated on how spousal property should be distributed upon the dissolution of marriage. Principally, the position is that property acquired during the subsistence of a marriage are presumed to be jointly acquired and same must be shared based on the equality is equity principle. However, the presumption is rebuttable upon evidence to the contrary.

Thus in **Quartson v. Quartson [2012] 2 SCGLR 1077**, the Supreme Court held that:

The Supreme Court's previous decision in Mensah v. Mensah is not to be taken as a blanket ruling that affords spouses unwarranted access to property when it is clear on the evidence that they are not entitled. Its application and effect will continue to be shaped and defined to cater for the specifics of each case. The decision as we see it should be applied on a case by case basis with the view to achieving equity in the sharing of marital property. Consequently, the facts of each case would determine if the decision in Mensah v. Mensah applies.

Subsequently in **Fynn v. Fynn & Osei [2013-2014] 1 SCGLR 543**, the supreme court held that there are situations where within the union, parties may acquire property in their in their individual capacities and that position is envisaged by article 18 of the 1992 Constitution of Ghana.

Here, the uncontroverted evidence is that at the time the parties got married in 2010, the respondent had already completed the guest/house, part of which serves as the parties' matrimonial home. The evidence also shows there is an annex or extension to the said hotel/guest house made up of about 43 rooms which was put up during the subsistence

of the marriage between the parties. The evidence shows that the respondent had already acquired the land for the filling station before he married the petitioner however, the evidence shows that the operations of the fuel station commenced during the subsistence of the marriage. It is the case of the petitioner that she assisted the respondent in putting up the hotel annex by supervising the workers who worked on the project and sometimes even paid for their labour when the respondent was not around and she also purchased cement. She also said the construction of the annex was funded with proceeds from the hotel which she managed without being paid by the respondent. The following ensued during cross examination of the petitioner:

Q: I put it to you that the respondent paid GH¢1,500.00 to you as monthly salary from the time of the marriage up to 2015 in addition to the SSNIT contributions

A: It is not correct, he only paid the SSNIT contribution but he did not pay the GH¢1,500.00 monthly salary

Q: So are you suggesting to the court that the respondent did not pay the monthly salary to you but paid the SSNIT contributions?

A: Yes

Q: Apart from the conjugal or sexual relations between you and the respondent what other services do you render as a wife in the marriage?

A: I cooked meal in the morning and in the evening, I managed the hotel, I also went to take care of the spare parts shop of the respondent. With time, we acquired a filling station so I used to also go to the filling station to work there. With time and as I was attending to so many jobs, I spoke to the respondent and we assigned the home laundry to another person.

Even though the respondent denied that he did not pay the respondent, he failed to provide proof that she was paying her. The only exhibit provided by the respondent was the SSNIT contribution made in favour of the petitioner, without any record or pay slip or other evidence to show that he was paying the petitioner a monthly salary for the services she rendered. The petitioner could not provide also provide any evidence of her financial contribution towards the construction of the annex however, the evidence shows that she had a busy schedule to the extent that the respondent had to hire the services of another person to do their laundry. From the totality of the evidence, it is my view that if the petitioner was only a house wife and was not rendering services at the hotel and the filling station and indeed the other businesses of the respondent he would not have hired the services of another person to do the home laundry.

In consideration of the services rendered by the petitioner in managing the hotel, the filling station and the role she played in the construction of the annex, it is my view that it will be equitable to compensate the petitioner with a reasonable amount which I assess at GHC60,000.00.

CONCLUSION

In conclusion, I hold that the 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. It is hereby decreed that the customary marriage celebrated between the parties in January 2010, be and same is hereby dissolved and cancelled accordingly.

2. Custody of the only child of the marriage Florence Asiamah is granted the petitioner with reasonable access to the respondent.
3. The respondent shall maintain the child with an amount of GH¢1,000.00 every month with a reasonable adjustment upwards every year to commensurate with the prevailing economic conditions.
4. The respondent shall be responsible for the school fees and medical bills of the child as and when they fall due.
5. The petitioner shall be responsible for the child's clothing needs and other necessities of life.
6. The claim for GH¢100,000.00 as financial provision by the petitioner is dismissed.
7. The claim for GH¢100,000.00 by the respondent against the petitioner for causing him emotional and psychological trauma is dismissed.
8. In respect of the petitioner's claim for an equitable share in the hotel with an extension of 43 rooms and matrimonial home attached as well as the Shell Filling station with restaurant, the respondent is ordered to pay an amount of GH¢60,000.00 to the petitioner. The said amount shall be paid by the respondent within six months from the date of judgment.
9. There will be no order as to costs

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGE