

IN THE TDC DISTRICT COURT HELD AT TEMA ON THURSDAY, THE
15TH DAY OF DECEMBER 2022 BEFORE HER HONOUR AKOSUA
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS
AN ADDITIONAL MAGISTRATE

SUIT NO.
A4/11/2020

FELIX OPPONG ADAMS ----- PETITIONER
H/NO. C 23,
COMMUNITY 7, TEMA

VRS

REBECCA OBENEWA OBENG ----- RESPONDENT
H/NO. C 23,
COMMUNITY 7, TEMA

PARTIES: PRESENT

COUNSEL: NO LEGAL REPRESENTATION FOR THE PETITIONER
 EMMANUEL L. DUBIK MAHAMA, ESQ. FOR THE
RESPONDENT ABSENT

JUDGMENT

The Petitioner prays for dissolution of his marriage with the Respondent on the ground that their marriage has broken down beyond reconciliation; that the Respondent has behaved in such a way that he cannot reasonably be expected to live with her. The Petitioner further says that attempts at reconciliation have proved futile.

THE CASE OF THE PETITIONER

In his petition and evidence, it is the case of the Petitioner that, he married the Respondent under the customary in 2004. That after the marriage the parties cohabited for 14 years in his mother's house at community 7 and he is the sole breadwinner of the family. That there is one issue namely, Jesse Oduro Adams aged 16 years. According to the Petitioner prior to the marriage the Respondent began exhibiting an unreasonable behavior unexpected from married woman. That the Respondent started denying him sex and does not care for their laundries, cook and clean the house as a wife. He tendered exhibit 'A' series and 'B' to that effect. The Petitioner continued that the Respondent started disrespecting him and would insult him without provocation and has divided the kitchen into two and cooks her own food separately whiles he also cooks for himself and his child. He tendered exhibit 'C' being a picture of the kitchen. That the Respondent would travel without his knowledge and also go out and return late in the night or the following day. That the Respondent has subjected him to constant verbal abuse and levelled false allegation against him of defamation of his dignity and wrongly accused him of having committed adultery. That the Respondent is quarrelsome and always threatened him that she would kill him. That his father tried to resolve their differences but did not yield any good result. The Petitioner further stated that when he married the Respondent, she was not in any gainful employment so he established her in different businesses but all ended up in debt and he has to look for money to pay all the people she owed. That he established a pure water company and asked the Respondent to be the manageress but she refused to do so. According to the Petitioner, the Respondent nearly burnt his room after she lighted a mosquito coil on his computer on one occasion. He tendered exhibit 'F' to that effect. That he acquired the piece of land

at community 25 Annex in 1998 and built two bedrooms self-contained long before he married the Respondent in 2004 and it is not a joint property to share same with the Respondent. He tendered exhibit 'G' being a copy of the site plan. He further stated that the three cars alleged by the Respondent were FOAKAD company cars and one has been sold to settle a debt owed by the Respondent and the remaining two cars are used in running the company and cannot be shared with the Respondent. The Petitioner concluded that he took steps to reconcile with the Respondent several times with families, friends and the church family life committee members but the Respondent refused all efforts he made; that the Respondent has caused him much anxiety, distress and embarrassment and so the marriage should be dissolved and custody of the child Jesse Oduro Adams be given to him with reasonable access to the Respondent as the marriage has broken down beyond reconciliation. That the Respondent is not entitled to any of her claim and prays the Court to enter judgment in his favour.

The Petitioner called three witnesses as PW1, PW2 and PW3. PW1 and PW2 generally repeated the contents of the Witness Statement of the Petitioner whilst PW3's evidence denied the Respondent's allegation of infidelity against the Petitioner.

The Petitioner thereafter closed his case.

THE CASE OF THE RESPONDENT

The Respondent in her evidence stated that the Petitioner married her on 13th December 2004 at Nkawkaw in the Eastern Region. That she helped the Petitioner to set up FOAKAD construction and engineering firm and a pure water factory called Living Waters. That in the course of their marriage the

Petitioner was dating his secretary whom he bought a taxi for and also built a house at golf city for her. She continued that she and her daughter clean the home and cook for the Petitioner as well as wash his clothes for him as they have never had a house help or any friend of hers living with them. She denied all the allegations of the Petitioner against her; and further stated that it is the Petitioner who returns home mostly close to or after midnight. That the Petitioner did not allow a meeting of the two families to discuss the marriage and his father has never spoken on their marriage. That the Petitioner cannot care for their child because he leaves home early and returns late after his care-free lifestyle. According to Respondent throughout the marriage she has actively contributed to the purchase of one plot of land at community 25 with chamber and hall with kitchen built by the parties during the pendency of the marriage. She tendered exhibit 2 series to that effect. That they purchased three cars over the same period namely Dodge Dakota – GN 4486 – 11, Ssangyong Actyon Sports – GM 934 -13 and Ssangyong Rexton – GT 9594 -10. Exhibits '3-5' were tendered. She prayed per her reliefs in her answer to the petition as follows:

- a. An order that the customary marriage between the parties be dissolved.
- b. An order that custody of Jesse Oduro Adams be settled on Respondent with reasonable access to Petitioner.
- c. An order that Petitioner pays to Respondent maintenance for the only child of the marriage of GH¢1,000.00 a month, health insurance and school fees whereas the Respondent caters to the clothing and general well-being of their son.
- d. An order that Petitioner rents accommodation for the only child of the marriage and Respondent.

- e. An order for the one plot of land with chamber and hall with kitchen at community 25 be valued and shared equally between the parties.
- f. An order for the three cars of the marriage the Dodge Dakota – GN 4486 – 11 be settled on the Respondent whilst the Ssangyong Actyon Sports – GM 934 -13 and Ssangyong Rexton – GT 9594 -10 be settled on the Petitioner.
- g. An order for the Petitioner to pay alimony of GH¢15,000.00 to Respondent.
- h. An order for the Petitioner to pay Respondent's solicitor's fees.

The Respondent called one witness as RW1 who corroborated parts of the evidence of the Respondent to the effect that she mostly cared for the Petitioner's laundry and also cleaned the house among others.

The Respondent thereafter closed her case.

At the end of the hearing, the legal issues to be determined by this Court are:

- i. Whether or not there is unreasonable behavior on the part of the Respondent such that the Petitioner cannot reasonably be expected to live with her.*
- ii. Whether or not the marriage between the parties has broken down beyond reconciliation.*
- iii. Whether custody of the child of the marriage should be granted to the Petitioner or the Respondent.*
- iv. Whether or not the said property at Community 25 is a joint property, and if so whether or not the Respondent is entitled to an equal share of the said property.*

- v. *Whether or not the Respondent is entitled to have the Dodge Dakota – GN 4486 – 11 settled on her.*

In every civil case, the general rule is that the burden of proof rests upon the party, whether Petitioner or Respondent, who substantially asserts the affirmative of his case.

In the case of *Adwubeng v. Domfeh* [1996-97] SCGLR 660, the Supreme Court held that in all civil actions, the standard of proof is proof by preponderance of probabilities, and there is no exception to that rule.

Also, in the case of *Yorkwa v. Duah* [1992-93] GBR 281, the Court of Appeal decision per Brobbey J.A. (as he then was) stated that:

“The provisions of the Evidence Decree, NRCD 323, require that in a case like the instant one, the obligation to adduce evidence should first be placed on the plaintiff”.

Section 11(4) of the Evidence Act explains the burden of proof in civil cases as follows:

“In other circumstances, 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 the fact was more probable than its non-existence”.

Before I examine the evidence adduced at the hearing, it is essential to set out the relevant sections of the *Matrimonial Causes Act, 1971 (Act 367)* namely; **sections 1(2), 2(1) and (3)** which provide as follows:

"1(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

2(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 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.

(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.”

Also, **sections 41 (2) and (3) of Act 367** provide as follows:

“(2) 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) consider the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;

(b) grant any form of relief recognised by the personal law of the parties to the proceedings, in addition to or in substitution for the matrimonial reliefs afforded by this Act.

(3) In the application of section 2 (1) to a marriage other than a monogamous marriage, the Court shall consider the 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: (a) wilful neglect to maintain a wife or child; (b) impotence; (c) barrenness or sterility; (d) intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship; and (e) persistent false allegations of infidelity by one spouse against another.”

In the circumstances the burden is therefore on the Petitioner to prove that the marriage has broken down completely; proof of one or more of the facts under section 2(1) of Act 367 is/are necessary.

From the evidence adduced by the parties at the hearing, I made the subsequent findings and conclusions:

The Petitioner told the Court the Respondent started denying him sex in the course of their marriage; that she did not care for their laundries, cook and clean the house as a wife. That the Respondent started disrespecting him and would insult him without provocation and has divided the kitchen into two and cooks her own food separately while he also cooks for himself and his child. He also told the Court that the Respondent subjected him to constant verbal abuse and levelled false allegation against him of defamation of his dignity and wrongly accused him of having committed adultery. That the Respondent is quarrelsome and always threatened him that she would kill him. That the Respondent would travel without his knowledge and also go out and return late in the night or the following day.

The Respondent denied all these allegations by the Petitioner against her therefore the Petitioner had a legal burden to adduce sufficient evidence to establish his allegations. Exhibits 'A series' indicate a dirty environment but the question is, was it solely the responsibility of the Respondent to clean the place when there were adults children of both the Petitioner and the Respondent staying in the house? And also why would the mother of the Petitioner being PW1 enter the matrimonial bedroom of the parties as she told the Court?

Exhibit 'C' together with the evidence of PW1 and PW2 confirm that the Petitioner's evidence that the parties had a divided kitchen with two gas cooking but as to who divided the kitchen there is no evidence before this Court to establish same. PW2 also corroborated largely the evidence of the Petitioner that she would travel without the consent, knowledge and authority of the Petitioner. PW3 also led evidence to the effect that his wife being the said Joyce Governor was never in a relationship with the Petitioner confirming the Petitioner's denial

of that assertion by Respondent; but the Respondent could not establish that. The said allegation by the Respondent is accordingly dismissed as unsubstantiated.

To the extent that the Respondent would cook her food separately and the Petitioner also cooks his food, it was unreasonable on the part of the Respondent to have done that because she should have at least continued cooking for the Petitioner being her husband irrespective of their differences.

From the entire evidence before this Court I find on the first issue that, the Petitioner could not establish most of his allegations of unreasonable behavior against the Respondent. However there was some degree of unreasonable behavior on the part of the Respondent to the extent that she will peddle false allegation of adultery on the part of the Petitioner when she does not have cogent evidence to support same but based on hearsay. Also to the extent that the Respondent would cook her food and the Petitioner being her husband also cooks his own, was unreasonable and unhealthy between a married couple.

From the evidence before this Court, the Petitioner and the Respondent have not lived as husband and wife for over two years before the presentation of the instant petition. Moreover, the Respondent consents to the grant of a decree of divorce. This is a clear indication that the marriage has broken down beyond reconciliation.

Having regard the evidence before this Court and the fact that the parties have not lived as husband and wife for over two years now, I find on the second issue that the marriage between the parties has broken down beyond reconciliation.

On the third issue, both parties prayed for custody of the only child of the marriage, Jesse Oduro Adams, 16 years old presently.

To assist the Court determine the issue of custody, an officer from the Department of Social Welfare was ordered to conduct Social Enquiry Report and the officer has furnished the Court with his report. The Report recommends that per section 2(1) of the Children's Act, 1998 (Act 560) which clearly states the best interest of the child shall be paramount in any matter concerning a child, this Court may consider granting custody of the child in dispute, to the Respondent with reasonable access to the Petitioner.

Upon a careful examination of the Social Enquiry Report and having particularly considered the views of the child in dispute in light of section 45(2)(c) of Act 560, the Court hereby adopts the said recommendation.

In relation to the fourth issue, from the evidence before this Court, the Petitioner had already bought his land and started the construction of the said property before the parties got married. Indeed the Respondent does not even know what kind of property is on the land because she stated in her evidence in chief that the property at Community 25 is one plot of land with chamber and hall with kitchen; and under cross examination stated that it is two bedrooms and a hall detached and further stated it is two bedrooms attached after the Petitioner had told him what it is, in his follow up question. The Petitioner also told the Court under cross examination that the construction of the house at community 25 is not completed. There is no evidence on record to suggest that the said property on the land at community 25 which is not completed was built during the pendency of the marriage between the parties; neither is there any evidence by the Respondent that there was a substantial contribution in any kind towards the home or work to assist the construction of the building that is on the land

assuming without admitting that the building on the land was constructed during subsistence of their marriage.

The Supreme Court in its recent decision on this issue held in the case of *Peter Adjei v. Margaret Adjei [2021] DLSC 10156* when His Lordship Appau JSC espoused:

“The combined effect of the decisions referred to supra is that; any property that is acquired during the subsistence of a marriage ... is presumed to have been jointly acquired by the couple and upon divorce, should be shared between them on the equality is equity principle. This presumption of joint acquisition is, however, rebuttable upon evidence to the contrary. What this means, in effect is that, it is not every property acquired single-handedly by any of the spouses during the subsistence of a marriage that can be termed as a ‘jointly-acquired’ property to be distributed at all cost on this equality is equity principle. Rather, it is property that has been shown from the evidence adduced during the trial to have been jointly acquired, irrespective of whether or not there was direct, pecuniary or substantial contribution from both spouses in the acquisition... so where a spouse is able to lead evidence in rebuttal or to the contrary, as was in the case of Fynn v. Fynn (supra), the presumption theory of joint acquisition collapses.”

From the evidence before this Court the Petitioner was able to lead sufficient evidence to rebut the presumption that the said property is a jointly-acquired property. This is because the evidence on record indicates that the property was acquired in the year 2000 before the parties got married in 2004. Also the evidence on record suggests that the Petitioner financed the acquisition of the

said property as there was no substantial contribution of any kind, from the Respondent.

The mere fact of being a spouse does not automatically earn the Respondent an equal share of the property acquired solely by the Petitioner even if it was during the subsistence of the marriage particularly when the evidence on record establishes that the Petitioner single-handedly acquired the said property without any contribution whatsoever from the Respondent.

In the case of *Quartson v. Quartson [2012] 2 SCGLR 1077* it was held that:

“The Supreme Court’s previous decision in Mensah v. Mensah [2012] 1 SCGLR 391 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 so entitled. Its application and effect will continue to be shaped and defined to cater for the specifics of each case. ”

From the evidence before this Court, the said property cannot be said to be a joint property of the parties but rather the personal property of the Petitioner. This is because the Petitioner acquired the property before the marriage between the parties. From the evidence of both parties, the Respondent only knows the area where the property is located but does not even know the description of same. The Respondent was inconsistent as to the kind of property on the land. The evidence on record does not support the assertion that the Respondent is a joint owner of the Petitioner’s property at community 25.

Having considered the evidence before this Court and relying on the above authorities, I find on the fourth issue that the said property located at Community 25 is a not a joint property of the parties but rather, the personal

property of the Petitioner. Accordingly, I hold that the Respondent is not entitled to an equal share of the said property.

On the last issue, the evidence before the Court indicates that the said three vehicles were purchased during the subsistence of the marriage and the Respondent stated under cross examination that they bought the Rexton at Community 11 Shell filling station opposite and she actually went with the Petitioner to make payment for it. The Petitioner did not deny same when the Respondent stated that but rather stated the company has sold one of the cars to defray the cost it has run into.

Meanwhile the Petitioner stated in his evidence in chief that one of the three cars has been sold to settle a debt owed by the Respondent. The Petitioner contradicted himself as to why the said car was allegedly sold because in his evidence in chief, it was to settle Respondent's debt and in questioning the Respondent under cross examination, it was sold to defray the cost of the debt the company has run into. Such inconsistency makes the Petitioner's piece of evidence on the alleged sale of the vehicle not worthy of belief. Exhibit 'L' and 'K' cannot have any probative value because it does not give further details as to the purchase of which Pick-Up. There is no sufficient evidence before this Court that the said vehicle the Respondent is claiming is not the property of the parties but rather assets of the company because being the owner of the company which the Respondent supported in setting up same, from the evidence before this Court, the Petitioner can use his personal properties at the workplace and that does not make it an asset of the company.

In any case the Respondent was also to be made a shareholder in the FOAKAD Company considering the assistance she gave to the Respondent in setting up the

company as gleaned from the evidence before the Court but she is not since there is no evidence to support that. Under cross examination the Respondent stated: "We established both. We initially established the enterprise and later I advised him to establish the FOAKAD." She further stated that: "I am part of the shareholders but I do not know whether you have taken my name out of it. I am saying this because anytime you go for a loan I use my company to guarantee for you." She also stated that the Petitioner made her fill the form he asked the secretary to go for but she does not know what happened later.

From the above pieces of evidence it cannot be said that the Respondent did not have anything to do with the FOAKAD Company. She might not have been made a shareholder but supported the company one way or the other. Therefore if the Petitioner decided to use the vehicles bought during the subsistence of the marriage to support the company which was set up during the subsistence of the marriage, the Petitioner will be entitled to one of the vehicles or the value of same be paid to her. I therefore find on the last issue that the Respondent is entitled to have the Dodge Dakota – GN 4486 – 11 settled on her.

Section 20 (1) of Act 367 provides that:

"The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable."

Having carefully considered the entire evidence adduced by the parties herein as well as their standard of living; and relying on *section 20(1) of Act 367* in light of

justice and equity, I find that the Respondent is entitled to some financial provision upon the dissolution of the marriage.

From the foregoing, I conclude that the marriage between the parties has broken down beyond reconciliation and I hereby grant the Petitioner's prayer for dissolution of the marriage. The customary marriage celebrated between the parties in 2004 is hereby dissolved with the following orders:

1. Custody of the child of the marriage namely; Jesse Oduro Adams, sixteen (16) years old, is hereby granted to the Respondent with reasonable access to the Petitioner. Reasonable access means the Respondent shall release the said child to the Petitioner every other weekend thus two weekends in a month, every other holiday and half of his vacations.
2. The Petitioner shall pay a monthly maintenance of GH¢500.00 towards the upkeep of the said child.
3. The Petitioner shall pay school fees, educational bills and medical bills of the said child as and when the need arises.
4. The Petitioner is ordered to provide a decent accommodation for the child of the marriage.
5. Clothing for the said child shall be provided by both parties.
6. The Petitioner is ordered to pay an amount of GH¢12,000.00 as financial provision to the Respondent.
7. The Dodge Dakota – GN 4486 – 11 is hereby settled in favour of the Respondent. In the alternative the Petitioner shall pay the value of same to the Respondent.
8. The Petitioner is ordered to provide a decent accommodation (a chamber and a hall self-contained apartment) for the Respondent for the first two years after the dissolution of their marriage.

9. There will be no order as to costs having considered the entire case.

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H/H AKOSUA A. ADJEPONG
(MRS)
CIRCUIT COURT JUDGE
15TH DECEMBER 2022