

**CORAM: HER WORSHIP MRS ADWOA AKYAAMAA OFOSU, MAGISTRATE,
DISTRICT COURT ACHIMOTA, ACCRA ON FRIDAY 18TH NOVEMBER, 2022**

SUIT NUMBER A4/20/22

ALICE OWUSU SEKYERE - PETITIONER

V

FRANCIS YAW ABBEY -QUAYE - RESPONDENT

.....
.....

TIME:10:00

PARTIES PRESENT

PARTIES SELF-REPRESENTED

JUDGMENT

The instant petition was filed by the petitioner on the 30th of December, 2021 praying the court for the dissolution of the marriage between her and the respondent and an order to have access to the children who are with the respondent.

The petitioner averred that she and the respondent got married on the 5th of June, 1999 under the Marriage Ordinance Cap 127 and are blessed with four issues. That the

petitioner is a trader and the respondent is an accounts clerk. That during their stay in the marriage, they were living in the respondent's family house where there were lots of issues and misunderstandings and he suggested to the respondent that they moved from the family house to rent a place elsewhere but the respondent refused. She further averred that the respondent has behaved in a manner that she cannot reasonably be expected to live with him. She gave the particulars of unreasonable behaviour as follows:

- I. *There is no proper communication between the parties for the past nine years*
- II. *That the respondent accused her of being infidel in the marriage after the parties had lived together and had four issues and brought in his family who compelled her to take a concoction*
- III. *Respondent suddenly changed in behaviour and attitude and atimes would bring some items suspected to be charms to the house. That on one occasion he was confronted by their pastor and he admitted it was charms*
- IV. *Respondent doesn't care about the well-being of the petitioner over a period of nine years now and the petitioner single handedly took care of herself and the child who was with her without any support from the respondent*
- V. *That she has no intention of living together with the respondent again because the marriage has broken down beyond reconciliation. Parties have been living their separate lives for the past nine years.*

The petitioner further averred that the parties have been separated for the past nine years and there has been no conjugal relationship between the parties. The petitioner single handedly takes care of herself and one of the children by name Keren Huppuch for the past nine years without any support from the respondent. That during the subsistence of

the marriage he discussed with the respondent her intention to further her education but that did not go well with the respondent but she insisted and proceeded.

In further averment the petitioner stated that during the period that she was schooling, the respondent accused her of infidelity and a misunderstanding ensued. Leading to the parties being separated for nine years.

In his response filed on the 11th of January, 2022, the respondent admitted that they were living in a family house but when a misunderstanding ensued, they moved out to a rented place. One Sunday when he returned home with the children, the petitioner had packed out of the room to her mother's place. He further averred that the petitioner took their daughter Keren Huppuch with her and prevented him from having access to her and that is how come he could not support the child. Meanwhile he was taking care of their three other children. Even then, after family interventions, he invited the petitioner to a restaurant and offered her house keeping money but she refused it.

The respondent further averred that, when the petitioner wanted to further her education they deliberated on it because he envisaged it was going to be difficult having to pay the children's school fees and hers. Eventually he went with her to Ada to look at the place and he paid the fees for her to start and he continued supporting her till she packed and left the marital home.

That he did not accuse the petitioner of being infidel but one day she went to school and failed to return. Her phone was off and her mother also tried reaching her but all to no avail. When she came she did not give any explanation and this brought a misunderstanding between them.

The respondent denied all the particulars of unreasonable behaviour stated by the petitioner and averred that he made several attempts at reconciliation but to no avail and

that he has no intention of dissolving their marriage and therefore disagrees with the reliefs being sought by the petitioner.

The parties filed their respective witness statements as ordered by the court. They both did not call any witnesses. The respondent tendered one exhibit being a pen drive containing an audio recording between him and the petitioner's mother

The sole issue to be determined is whether or not the marriage between the parties has broken down beyond reconciliation

The Matrimonial Causes Act, 1971 (Act 367) is the relevant law that regulates the dissolution of marriage in Ghana. It provides under section 1(2) that:

“the sole ground for the dissolution of marriage shall be that the marriage has broken down beyond reconciliation”.

Therefore, the issue to be determined is whether or not the marriage has broken down beyond reconciliation.

The court cannot make this determination unless the petitioner who has brought the petition leads evidence to the satisfaction of the court that one or more of the facts enumerated under section 2(1) of Act 367 *supra* have occurred in the marriage. The said section provides as follows:

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 such adultery, the petitioner finds it intolerable to live with the respondent; or*
- b. that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or*

- c. that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or*
- d. that the parties to the marriage have not lived as a man 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 such 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 notwithstanding the refusal; or*
- e. that the parties to the marriage have not lived as man and wife 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 effort, been unable to reconcile their differences.*

In the instant case the petitioner accused the respondent of unreasonable behaviour and apart from alleging that there is no communication between them she also alleged that the respondent has accused her of infidelity. She further alleged that the respondent does not care for her and for nine years she single handedly took care of herself and one of their children. The evidence shows that, the petitioner packed out of the matrimonial home without any reasonable basis and took one of their children with her. While she was taking care of herself and the said child, the respondent was also taking care of himself and three of their children. Taking care of children in a marriage is the joint responsibility of both parents and so if the petitioner was taking care of one of the children of the marriage and the respondent was taking care of three of the children, that cannot amount to unreasonable behaviour especially where the evidence shows that the

respondent did nothing to warrant the petitioner to move out of the matrimonial home with the child. Besides the petitioner was working and was capable of taking care of herself and the child. If she felt that she could not take care of the child nothing prevented her from sending her to the respondent who had not indicated that he would not take care of the child. I therefore do not consider this as an unreasonable behaviour on the part of the respondent

The petitioner also alleged that the respondent accused her of infidelity. It is worthy to note that the respondent did not cross petition and therefore did not make any allegation of adultery against the petitioner. Indeed in all his averments he never made any allegation of infidelity against the petitioner and in fact denied that he accused the petitioner of infidelity. He however tendered exhibit 1 a voice recording of a conversation between him and the mother of the petitioner to show that the petitioner's mother indicated that the petitioner had said that she had defiled the marriage bed that was why she was afraid to come back to the matrimonial home.

As for the other allegations of charms and concoctions they remained unsubstantiated

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

From the evidence it is my view that, the petitioner has not demonstrated to the satisfaction of the court that the respondent is guilty of unreasonable behaviour rather as between the petitioner and the respondent, it is the petitioner who has behaved in a manner that the respondent cannot reasonably be expected to live with her yet, the evidence shows that the respondent has consistently made attempts at having their differences resolved so that they can live together.

In spite of the above, the evidence is uncontroverted that the parties have not lived together for a period of nine years and all attempts at reconciliation have proved futile thus bringing the petition within section 2(1) (e) and (f) supra. In **Kotei v Kotei [1974] 2 GLR 172**, Sarkodee J, stated that;

Proof of five years continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage....."

Thus even though the respondent insists that he disagrees with the dissolution of the marriage, the position of the law is that once there is evidence that the parties have not lived together as husband and wife for a continuous period of five years, it is proof that the marriage has broken down beyond reconciliation. Furthermore, from all indications, the petitioner is not ready to resume cohabitation with the respondent and the evidence shows that there is no possibility of reconciliation. On the basis of this, I am satisfied that the marriage between the parties has broken down beyond reconciliation and same ought to be dissolved.

Consequently, I decree that the marriage between the parties Celebrated under the Marriage Ordinance Cap 127 on the 5th of June, 1999 be and same is hereby dissolved and cancelled accordingly.

The evidence did not clearly establish the ages of the children however the evidence is that the 3rd child completed SHS in the year 2021 which makes it likely that she is above 18 years and not a minor. It is my view that if there is any minor at all in the marriage, it should be the last child who has been in the custody of the respondent since the petitioner left the matrimonial home nine years ago and continues to remain with the respondent. On the basis of this, I grant custody of the last child and any other minor child of the parties to the respondent with reasonable access to the petitioner.

Parties to bear their costs.

ADWOA AKYAAMAA OFOSU (MRS)

DISTRICT MAGISTRATE