

**CORAM: HER WORSHIP MRS ADWOA AKYAAMAA OFOSU, MAGISTRATE,  
DISTRICT COURT ACHIMOTA, ACCRA ON FRIDAY, 16<sup>TH</sup> DECEMBER, 2022**

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**SUIT NUMBER A4/9/2022**

**BENEDICTA NAA ATSWEE KONNEY - PETITIONER**

**V**

**PRINCE NANA KOFI ACKAH - RESPONDENT**

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**TIME: 9:31**

**PARTIES ABSENT**

**SIMON NARTEH BOTCHWAY ESQ FOR THE PETITIONER PRESENT**

**RESPONDENT SELF- REPRESENTED**

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## **JUDGMENT**

This instant petition was filed by the petitioner herein on the 3<sup>rd</sup> of November, 2021  
praying the court for the following reliefs:

- a. An order dissolving the marriage celebrated between the parties*

- b. An order directed at the Respondent to maintain the issue of the marriage including but not limited to the payment of the issue's school fees and medical bills as and when they fall due*
- c. Any other order the court may deem fit*

The petitioner among others averred in her petition that she and the respondent got married on the 23<sup>rd</sup> of December, 2017 under the **Marriages Act (Cap 127)** and they cohabited at Lapaz in the Greater Accra Region of the Republic of Ghana. That she is a cook and the respondent is a laboratory technician. There is one issue of the marriage named Jeremie Nana Akua Ackah aged three years.

According to the petitioner the marriage between her and the respondent has broken down beyond reconciliation based on the unreasonable behaviour of the respondent. She gave the particulars as follows:

- a. The petitioner says that the respondent has been very abusive against her such that the respondent beats and insults her at the least or without any provocation whatsoever*
- b. The petitioner says that the parties lived in the family house of the respondent and any time the parties had a misunderstanding, the respondent together with his family members would gang up to insult her.*
- c. The Petitioner says in July, 2018, the respondent restrained her from going out of the matrimonial home and also from socializing with people within their neighbourhood*
- d. The Petitioner says that anytime she wanted to visit her mother, she had to beg the respondent and even at that the respondent gives her the condition of informing his family members before petitioner could leave the house*

- e. *The Petitioner says that respondent has been very irresponsible such that he does not provide for her needs and that of the issue of the marriage*
- f. *That in August 2020, the petitioner says that the respondent asked their daughter to sleep in his sister's room without any prior notice to the petitioner and when the petitioner had gone for the child it turned into an argument in the house*
- g. *That due to the behaviour of the respondent and his parents, petitioner says that she decided to leave the house with their daughter to live with her mother for sometime*
- h. *Before the petitioner left, the respondent struggled with her over her phone insisting that the petitioner removes all recording on her phone.*
- i. *That under the supervision of the respondent, petitioner says she was compelled to go through her phone one after the other deleting all the recordings on her phone*
- j. *That 3 days after petitioner left petitioner says that she called the respondent to return to the matrimonial home but the respondent requested petitioner to come with her family.*
- k. *That a family meeting held on the 21<sup>st</sup> of September 2021, petitioner says that the respondent's father asked her to remove the container from the house*
- l. *That petitioner says that the parties have since lived separately for the past one year and they have since their separation not had sex or shared any form of intimacy with each other*
- m. *That petitioner says that respondent has still been coming to her mother's residence to insult and harass me without any justifiable cause*
- n. *The Petitioner says that the respondent has caused her so much pain, embarrassment and anxiety such that she cannot be reasonably expected to live with him as his wife*

The respondent filed an answer to the petition and denied the allegations of the petitioner and averred among others that it is the petitioner's unruly behaviour which is not making the marriage work. That he has never laid a finger on the petitioner

The respondent further averred that it is true that they were living in a family house but all his siblings are in good terms with the petitioner and there has never been a time that he and his siblings have ganged up to insult her. He denied that he does not provide for the issue of the marriage and averred that the Juvenile Court has made an order for same.

He averred further that it was the petitioner's behaviour which made his father tell her to remove the container from the house.

The respondent concluded that the petitioner is not entitled to reliefs b and c because, provisions have already been made for these by the Juvenile Court in Accra but he prays the court to go ahead and dissolve the marriage

From the pleadings, the only issue that the court has to determine is:

***Whether or not the marriage has broken down beyond reconciliation***

The **Matrimonial Causes Act, 1971 (Act 367)** is the relevant law that regulates the dissolution of marriages 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”.***

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.*

The petitioner in the instant case grounds her petition on unreasonable behaviour. **Section 14 of the Evidence Act 1975 (NRCD 323)** provides that the burden of persuasion as to the existence of a fact lies on a party to whose case the fact is essential. Thus in **IBM World Trade Corporation v. Hasnem Enterprises Limited [2001-2002] SC GLR 393 SC** at page 402 Adzoe JSC observed as follows:

*“It is a common rule of evidence that except in certain special circumstances, a party who relies on a fact must prove it. Section 14 of the Evidence Decree 1975 (NRCD 323) provides that the burden of persuasion as to the existence of a fact lies on the party to whose case the fact is essential”*

Furthermore in **Sarkodie v FKA Company Limited (2007) SCGLR** per Wood JSC

*“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 a fact was more probable than not”*

This is what is known as **“proof by preponderance of probabilities”** which is the standard of proof in civil cases (See; **section 11 of NRCD 323**)

Thus the petitioner herein assumed the legal burden to prove all the allegations made against the respondent which in her opinion constitutes unreasonable behaviour.

According to the petitioner during their wedding, the respondent told her that he was not working and had no money to purchase any item so she did that herself only for her to realize immediately after the wedding that he was actually working.

That she paid all her ante natal and post natal bills. She had C. Section and when she was about to be discharged from the hospital, the respondent was asked to pay the accumulated hospital expense of GHC1,500.00 but he refused claiming that he had no money and that the petitioner’s mother should pay. Her mother thus paid and the invoice was given to the respondent’s father to refund but he has not paid till date. This piece of evidence was not denied by the respondent and indeed he did not cross examine the petitioner on it.

Again the petitioner told the court that when she returned to the matrimonial home after birth the respondent was still not maintaining her and so she had to go back to her mum for food and money and for medical fees although the respondent was working. Again this piece of evidence was not challenged by the respondent

Furthermore, the petitioner told the court that she became pregnant again but lost the child. The respondent only bought a single medicine for her and refused to pay the other expenses claiming he did not have money and so her mother paid for it. When the respondent was told that she needs to undergo flushing of her womb and needed to pay the bills, the respondent left the hospital and never returned to the hospital till she was discharged. This was also not denied by the respondent.

The settled position of the law is that where a party has given evidence on a material fact and was not cross examined upon it, he needed not call further evidence of that fact. In the case of **Ayirebi v Fori (1966) GLR 627 SC** it was stated as follows:

*“When a party had made an averment and that averment was not denied, no issue was joined and no evidence need to be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross examined upon, he need not call further evidence of that fact”.*

*(See also Hammond v. Amuah [1991] 1 GLR 89, Kusi v. Bonsu [2010] SCGLR @60)*

From the evidence therefore, I find that the respondent did not show responsibility towards the petitioner. He did not care much about the petitioner and that for me is an unreasonable behaviour especially where there is evidence that the respondent was working.

The evidence also shows that there was no peace in the house and the respondent’s family was not on the side of the petitioner because according to the respondent the petitioner was disrespectful and insulted his family. The respondent’s evidence also confirms the petitioner’s evidence where she said,

*“I came back three days later but on my return my father in law called me to tell me that I should remove my built container from the house. I asked him whether he was driving*

*me away from my husband and he said to me he doesn't care what happens. I reported this to my husband and he said everybody in the house now hates me so I should leave so I went for my belongings and left"*

From the above therefore, it is clear that the respondent was indifferent about the hostility that existed between his family and the petitioner which in my view was as a result of the fact that the respondent was unable to provide a home outside of his family house for his own family. This also constituted unreasonable behaviour in my view.

On the other hand, even though the petitioner made allegations that the respondent has been very abusive against her such that the respondent beats and insults her at the least or without any provocation, she could not substantiate it.

However on the allegation that the respondent struggled with her over her phone insisting that the petitioner deletes all recordings on her phone before going to visit her mother, the respondent admits it and gave a very flimsy reason for doing that. The question is if everything has gone on well between the parties and the respondent has done nothing untoward, why would he insist that the petitioner deletes all recordings on her phone pertaining to their misunderstandings? This piece of evidence in my view speaks volumes about the behaviour of the respondent towards the petitioner and leaves me in no doubt that the respondent was abusive of the petitioner.

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 adduced, I conclude that the happenings in the married life of the parties herein cannot be considered as the reasonable wear and tear of life such that the petitioner should be able to cope with. It is my respectful view that the petitioner cannot reasonably be expected to live with the respondent.

Moreover, the evidence shows that the families of the parties met about four or five times in an attempts to resolve the differences between the parties but same proved futile after diligent efforts have not been able to reconcile the parties.

On the basis of the above it is my view that the evidence led has situated the petition within section 2(1) (b) and (f) of the Matrimonial Causes Act 1971, (Act 367) and for that reason I am satisfied that the marriage between the parties has broken down beyond reconciliation.

Consequently, I decree that the marriage between the parties celebrated under the Marriages Act Cap 127 be and same is hereby dissolved and cancelled accordingly.

In respect of the ancillary reliefs, the respondent tendered exhibit 1 which contains the orders made by the Family and Juvenile Court 'C' Accra dated 29<sup>th</sup> January, 2021 in respect of custody, maintenance and payment of school fees and medical bills of the issue of the marriage. Since this court is a court of coordinate jurisdiction, those orders cannot be varied. In the circumstance, the petitioner's relief 'b' is dismissed.

In the result, there shall be no consequential orders.

Parties to bear their respective costs.

**ADWOA AKYAAMAA OFOSU (MRS)**

**DISTRICT MAGISTRATE**