

**CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,
DISTRICT COURT '2', KANESHIE, SITTING AT THE FORMER STOOL LANDS
BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS'
COLLEGE, ACCRA ON 16TH FEBRUARY, 2024.**

SUIT NO. A8/172/23

ANITA SAM

H/NO. 2 BLOCK 63

KANDA - ACCRA

::

PETITIONER

VRS.

ANDREWS MENSAH

37 BAND LINE

ACCRA

::

RESPONDENT

JUDGMENT

INTRODUCTION

The Petitioner instituted this suit against the Respondent on 14th April 2023. From her Petition for Divorce, the Petitioner avers that the parties married under Part III of the Marriages Act 1884-1985 on 29th December 2012 at the Presbyterian Church of Ghana, Mankessim. The parties have three children together. The Petitioner outlined her reasons for her prayer for the dissolution of the marriage in paragraphs 3 to 12 of the Petition.

According to her, the Respondent immediately after marriage started sleeping outside the matrimonial home and threatening to kill her. She averred that there was no

communication between the parties and that the Respondent usually communicated with her through the parents and siblings. She further averred that the Respondent often packed out her belongings from the bedroom and in October 2022, she had to be sleeping in the living room with the children where the Respondent forcibly had sex with her in the presence of the children. She averred that the Respondent had also been beating her up and threatened to divorce her if she reported. She stated that the Respondent had told her that he had remarried and was not ready to divorce her to take up any responsibilities for the divorce.

She stated that their third child had been diagnosed with epilepsy but the Respondent had failed to cater for her medical expenses. The Petitioner stated that all attempts at reconciliation by their respective families as well as officers at 37 quarters had been unsuccessful. The Petitioner therefore prayed for the following reliefs:

- a. The marriage celebrated between the parties on 29th December 2012 be dissolved.
- b. Alimony.
- c. Custody of the children, rent an apartment for the children, maintain the children at GH¢1,500.00 per month, pay school fees, transportation and medical bills.

The Respondent was duly served with the Petition and Hearing Notice and appeared in Court on the first date the suit was called. He was given the opportunity to file his Answer but he did not file any process and failed to appear in Court notwithstanding service on him of hearing notices as well as the Petitioner's witness statement and as such the Court permitted the Petitioner to testify pursuant to **Order 25 Rule 1(2) (a) of the District Court Rules, 2009 (C.I. 59)**.

ISSUES

It is clear from the foregoing that the issues this Court is called upon to determine are:

- a. Whether or not the marriage between the parties has broken down beyond reconciliation within the purview of the Matrimonial Causes Act, 1971 (Act 367).
- b. Whether or not custody of the children should be given to the Petitioner.
- c. Whether or not the Respondent ought to maintain the children and be responsible for all their expenses.
- d. Whether or not the Petitioner is entitled to receive alimony.

EVALUATION OF EVIDENCE/LEGAL ANALYSIS

Issue a.

It is trite law that the sole ground for granting a petition for divorce is that a marriage has broken down beyond reconciliation as stated in **Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367)**. **Section 9 of Act 367** restricts the presentation of a petition for divorce within two years of the marriage, subject to two exceptions though. From the Petitioner's petition as well as Exhibit 'A' which is the original copy of the parties' marriage certificate, the parties have been married since 29th December 2012 (contrary to what she stated in her witness statement that they married on 29th September 2012). This petition is therefore in order since it was instituted ten years after the celebration of the marriage.

The law under **Section 2(1) of Act 367** makes provision for six facts to prove the ground that a marriage has broken down beyond reconciliation. In proof of the fact that a marriage has broken down beyond reconciliation, the Petitioner has the burden to satisfy the Court on at least one 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 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; or

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

Proof of any one of these facts raises a presumption that the marriage has broken down beyond reconciliation and should any of the facts be made out, the Court must grant the dissolution unless it is satisfied that the marriage has not broken down irretrievably.

The Petitioner's evidence per her witness statement filed on 30th June 2023 which this Court adopted was that not long after her marriage to the Respondent, the Respondent beat her up and sent her out naked whenever there was a quarrel between them and this made her report to his parents. She stated that the Respondent was summoned and he indicated that he wanted a divorce but she proposed that due to the tender ages of their children, they should live together and try to make their marriage work, which he agreed

to. She testified that the situation however worsened when they went back to stay together and as such when Respondent mercilessly beat her up again in November 2022, she reported to Respondent's boss who advised she moves out for some time so she took a loan and moved out.

She stated that prior to this November 2022 incident, the Respondent packed her things out and she was compelled to dress in the hall and sometimes in her car. She stated that the Respondent had threatened to kill her and kill himself and his mother had also threatened to fight her but whenever she reported this to Respondent, he beat her. She further testified that the Respondent informed his family of discussions they both had between themselves privately.

It was the Petitioner's evidence that the Respondent often insulted her and found nothing wrong with that and all attempts made by her family to resolve their differences had proven futile. She stated that the Respondent had also refused to attend to the special needs of their youngest child who is epileptic.

Section 2(1) (b) of Act 367 makes unreasonable behaviour one of the facts that point to a breakdown of a marriage beyond reconciliation. From the evidence adduced by the Petitioner, the Respondent has subjected the Petitioner to inhumane treatment such as abusing her physically and verbally and threatening her with death, which is very serious. He has been a terror to the woman he was to protect and cherish as a companion and life partner. He has also neglected to attend to the youngest child who needs extra care and attention, leaving all the burden on the Petitioner alone to shoulder. Respondent's conduct in the Court's opinion amounts to unreasonable behaviour, for which it would not be reasonably expected that the Petitioner would live with him.

The Petitioner's allegations in her Petition and evidence led before the Court all remained undisputed by the Respondent. No process was filed by the Respondent to rebut any of the allegations, neither did he appear in Court to subject the Petitioner to cross examination to impugn her evidence. The Respondent having failed to react to any of the averments in the Petition by way of an Answer to debunk any of the allegations, the presumption is that the matters contained therein are admitted by him.

Again, when a party leads evidence which is not challenged by his opponent in cross examination, nor does the opponent tender evidence to the contrary, those facts deposed to, are deemed to have been admitted by the opponent and must be accepted by the court. See the case of **Samuel Adrah v. ECG [2018] 119 GMJ 143 @ 184 C.A per Dzamefe, J.A.** I find that the Petitioner has led credible evidence to prove that the marriage between her and the Respondent has broken down beyond reconciliation due to the unreasonable behaviour of the Respondent.

Issues b. and c.

In issues concerning children, it is their best interest which is the paramount consideration as stipulated by **Section 2 of the Children's Act, 1998 (Act 560)**. **Section 22 of Act 367** provides that:

- (1) In all proceedings under this Act, it shall be the duty of the court to inquire whether there are any children of the household.*
- (2) The court may, either on its own initiative or on application by a party to any proceedings under this Act, make any order concerning any child of the household which it thinks reasonable and for the benefit of the child.*
- (3) Without prejudice to the generality of subsection (2), an order under that section may —*
 - (a) award custody of the child to any person;*

(b) regulate the right of access of any person to the child;

(c) provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage.

The parties have three children together who at the commencement of the action were 9 years, 8 years and 4 years respectively. There is nothing on record to show that the Petitioner is not fit to have custody of the children. The children are young and require care and attention, especially the youngest child who is epileptic and the Respondent has neglected to give her any attention. Custody of Freeman Ekow Mensah, Freda Dede Mensah and Daniella Ewura Adwoa Mensah is granted to the Petitioner with Respondent granted reasonable access to them.

Section 47 of Act 560 provides in part as follows:

(1) A parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, education and reasonable shelter for the child.

According to **Section 124 of Act 560**, a ‘parent’ means natural parent and includes a person acting in whatever way as parent. The parties herein are the natural parents of the three children. They are thus captured within the ‘parent’ used in Section 47(1) of Act 560. As parents, they are under an obligation, and consequently, legally liable to see to the welfare of their children such as in the area of their feeding, education, health, amongst others. The Petitioner is a Civil Servant and the Respondent is an Army Officer. The maintenance and general responsibilities of parents towards their children is not the sole responsibility of only one of the parents and as such, both parties are to contribute in taking care of them, and not only one party has to be burdened with such responsibilities.

In that light, the Respondent is to maintain the three children monthly at GH¢ 1,500.00, pay their educational and health expenses as they fall due and provide them with clothing and footwear on special occasions such as their birthdays and during Christmas. The Petitioner is also to be responsible for the children's accommodation and day-to-day clothing needs.

Issue d.

The Petitioner prayed this Court for the award of alimony to her. Under **Section 20 of the Matrimonial Causes Act, 1971 (Act 367)** the Court may amongst others, order either party to the marriage to pay to the other party such sum of money as part of financial provision as the Court thinks just and equitable.

In considering financial settlement, some of the factors taken into consideration include the financial needs and resources of both parties, the standard of living enjoyed during the marriage and the parties' current circumstances, the duration of the marriage, and the contributions made by each party to the welfare of the family, the parties' conduct, station in life, age and means of the parties, any agreement, if any, made between the parties regarding alimony. It is necessary to state that there is no cut and dried rule but the peculiarities of each case inform the Court in making any decision in respect of financial provision or alimony, having regards to the specific facts and evidence adduced.

In the case of **Isaac Kwame Amoah Ahinful v Anne Marie Ahinful (2016) JELR 107733 (HC)**, the Court made reference to the 6th Edition of the Black's Law Dictionary in defining alimony as: "...sustenance or support of the wife by her divorced husband and stems from the common law right of the wife to support by her husband. Allowances which the husband or wife by court order pays to the other spouse for maintenance while they are separated or after they are divorced (permanent alimony) ..." and the Court was

unambiguous that the award of alimony or financial provision, does not automatically follow an order of dissolution of a marriage. Thus, it is dependent on the circumstances of each case and must be just and equitable.

In the case of **Aikins v. Aikins (1979) GLR 223**, the Court took into account factors such as the fact that the wife did not have any capital assets of her own, that for many years prior to the presentation of the Petition she had not worked, that she required some funds to rent a premises for herself and her children, and to set herself up in business, and accordingly awarded her lump sum payment. The Supreme Court also granted the Petitioner in the case of **Quartson v. Quartson [2012] 2 SCGLR 1077** a lump sum financial provision on the basis of need; the necessity for her to have some funds to survive on whiles she re-organized her life. In **Beatrice Oye Plokhaar v Sterian Plokhaar (2016) JELR 108100 (HC)**, the Court also emphasized that the Court in deciding whether to grant financial provision to a party or not was to examine the need of the parties.

In the present circumstances of this case, the Petitioner is a Civil Servant whereas the Respondent is an Army Officer as already stated. The parties' marriage has spanned over a decade and the Petitioner has been made to suffer a lot during the marriage. I am mindful of the fact that it is the Respondent's conduct which has occasioned the breakdown of the marriage. I do not think the Respondent is a man of straw, since he is gainfully employed. The Petitioner is entitled to be compensated for all her efforts and the years of pain she has been made to endure by the Respondent and to settle herself in life. In the circumstances, I see it fair to award her alimony of GH¢ 10,000.00.

CONCLUSION

Having found that the marriage has broken down beyond reconciliation, I grant the Petitioner's relief for a dissolution of the marriage and consequently decree that the

marriage celebrated between the parties on 29th December, 2012 at the Presbyterian Church of Ghana, Bethel Congregation, Mankessim is hereby dissolved.

The Court also makes the following orders:

- a. Custody of Freeman Ekow Mensah, Freda Dede Mensah and Daniella Ewura Adwoa Mensah is granted to the Petitioner with Respondent granted reasonable access to them.
- b. The Respondent is to maintain the three children monthly at GH¢ 1,500.00, pay their educational and health expenses as they fall due and provide them with clothing and footwear on special occasions such as their birthdays and during Christmas.
- c. The Petitioner is to be responsible for the children's accommodation and day-to-day clothing needs.
- d. The Respondent is to pay alimony of GH¢10,000.00 to the Petitioner.
- e. Cost of GH¢1,000.00 is awarded for the Petitioner against the Respondent.

AMA ADOMAKO-KWAKYE (MS.)
(MAGISTRATE)