

CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,
DISTRICT COURT '2' KANESHIE, FORMER STOOL LANDS BOUNDARIES
SETTLEMENT COMMISSION OFFICES NEAR WORKERS' COLLEGE, ACCRA ON
27TH OCTOBER, 2023.

SUIT NO. A8/103/2023

CHRISTINA BOFFIE

UNNUMBERED HOUSE AT SOWUTUOWM
BEHIND ADU GYAMFI SCHOOL

ACCRA

::

PETITIONER

VRS.

MAXWELL ANIM

UNNUMBERED HOUSE AT GBAWE CP

ACCRA

::

RESPONDENT

JUDGMENT

Introduction

The Petitioner commenced this action against the Respondent on 11th January, 2023. On 2nd March, 2023, Petitioner filed an Amended Petition for divorce against the Respondent and prayed for the dissolution of the ordinance marriage celebrated between the parties on the 21st November, 2020. It is the Petitioner's case that the parties to the marriage have had irreconcilable differences from the beginning of the marriage. According to her, the parties married under customary law on 20th November, 2020 and the marriage was subsequently converted into ordinance marriage on 21st November 2020. The parties after

the celebration of their marriage cohabited briefly in Dansoman and relocated to Gbawe CP. The parties have no child together.

It is the Petitioner's case that the marriage between her and the Respondent has broken down beyond reconciliation, with Petitioner levelling allegations of unreasonable behaviour against the Respondent and their inability to reconcile their differences as the facts being relied on for her prayer sought in this Court. According to Petitioner, prior to the marriage, the parties courted for about two years and during this period, the Respondent had several affairs with other ladies which she confronted the Respondent about and he apologized for same. Petitioner further added that during their courtship days, she was taking care of the Respondent's two children whenever she visited Respondent.

According to her, when the parties were going through counselling in preparation for their marriage, she found out that Respondent was still cheating with a particular lady and upon confronting Respondent, it led to a heated argument and Respondent's utterances enraged her, resulting in the breakup of their relationship. During the breakup, Petitioner averred that she was intimate with an old friend of hers on one occasion but shortly after this, the parties reconciled. It was after their reconciliation that Petitioner found out that she was pregnant and she honestly thought the Respondent was responsible for the pregnancy. Petitioner further added that the parties hurriedly married after she conceived.

Subsequently, Respondent's behaviour changed after the marriage. Petitioner stated that Respondent did not care about her and the pregnancy and only contributed Gh₵ 500.00 for the child's items. She averred that during the marriage, Respondent continued to have amorous relationship with girls whom he was old enough to father. The Petitioner averred that after the child was born, Respondent constantly made comments that the

child did not resemble him. This, Petitioner says reminded her of her affair with her friend during their breakup period and caused her to have a DNA test conducted. According to her, the test results showed that the friend was the actual father of the child and not the Respondent, the husband. She did not however disclose the information to the Respondent out of fear.

According to her, Respondent during the subsistence of the marriage subjected her to verbal abuse and insults at the least provocation. Not only did she suffer disrespect from the Respondent, but also from Respondent's children and the house helps. Petitioner stated that she left the matrimonial home with her daughter to her mother's house at Mankessim and stayed there for some time until she rented her own apartment. She averred that she informed the Respondent about her decision to seek for divorce and this infuriated Respondent which led to the raining of insults on her. Subsequently after she moved out, Respondent sought legal assistance from the Legal Aid office and it was during this period that Respondent was informed by the Petitioner that he is not the father of the child.

Dissatisfied with the information, Respondent requested for another DNA test to be conducted which test revealed again that he was not the father of the child. It is Petitioner's case that all attempts by their families to help settle their marital issues have proven futile thus, her relief sought.

In his response to the Petition by way of an Answer and Cross- Petition filed on 26th April 2023, the Respondent denied Petitioner's allegations of unreasonable behaviour levelled against him. According to him, it was the Petitioner who has behaved in such a manner that he cannot be reasonably expected to live with her. Respondent added that it was Petitioner who during the course of their courtship cheated on him with another man. He stated further that he provided money for Petitioner's upkeep and bought all the baby

items, in addition to giving Respondent a total of GH₵ 3,000.00 when she requested to buy other miscellaneous baby items.

According to him, even though he got angry when he found out that Petitioner was cheating on him months after delivery, he did not abuse her verbally as she wants this Honourable Court to believe. Respondent narrated one such occasion where he overheard the Petitioner in their guestroom having sexual conversation with an unknown man on the phone. He averred that his children loved Petitioner and the child so much but Petitioner suddenly started maltreating his children and would not even allow them to come anywhere near the newly born. He attempted having an affair with another woman but stated further that it happened two months after the Petitioner had left the matrimonial home. Respondent asserted that Petitioner failed to disclose to him that he was not the biological father of the child even when she found out through the DNA test. He therefore cross-petitioned for the dissolution of their marriage.

The Petitioner responded to Respondent's Answer by way of a Reply filed on 2nd June 2023 wherein she denied the allegations of unreasonable behaviour levelled against her by the Respondent. She averred that Respondent only bought a baby cot worth GH₵ 800.00 and gave her an amount of GH₵ 500.00 in addition to buy the child's items. According to her, she has at no point maltreated Respondent's children neither did she deny them access to the newly born child. She further averred that it is the Respondent who was unfaithful during the pendency of the marriage.

Issue

The main issue for the Court to determine is whether or not the marriage between the parties has broken down beyond reconciliation within the purview of the Matrimonial Causes Act, 1971 (Act 367).

Evaluation of evidence/Legal Analysis

Section 1(1) of the Matrimonial Causes Act, 1971 (Act 367) allows either party to a marriage to present a petition to the court for divorce. **Section 1(2)** of the Act further emphasizes that, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

In order to prove that the marriage has broken down beyond reconciliation, a petitioner shall prove to the satisfaction of the court the existence of at least one of the six facts specified in **Section 2(1)(a) -(f) of Act 367**. 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. See the case of **Kotei v. Kotei [1974] 2 GLR 172; Ash v Ash (1972) 1 All ER 582; Pheasant v Pheasant (1972) 1 All ER 587**.

In proving that the marriage has broken down beyond reconciliation, the Petitioner has the burden to satisfy the court on at least any 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;

- 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. See the case of **Kotei v. Kotei [1974] 2 GLR 172; Ash v Ash (1972) 1 All ER 582; Pheasant v Pheasant (1972) 1 All ER 587**. From the pleadings and evidence adduced in court, both Parties seek to rely on Section 2(1)(b) of Act 367.

The Petitioner testified by relying on her witness statement filed on 7th June 2023 which same was adopted as her evidence in chief. Her evidence was that the parties converted their customary marriage into ordinance on the 21st of November, 2020 after customarily marrying on the 20th of November, 2020. She tendered in evidence a copy of their marriage certificate as Exhibit 'A'.

In testifying in respect of her reasons for saying that the marriage has broken down beyond reconciliation, the Petitioner basically repeated all her averments of unreasonable behaviour in her Petition. She narrated some of the things that happened during the parties' courtship period such as Respondent being in amorous relationships and his ex-wife bringing food to the house. She added that she got enraged during their counselling period towards marriage when she found out that Respondent was still being unfaithful to her and she ended the relationship for about two months.

Petitioner further testified that during the breakup period, she was intimate with an old friend of hers but shortly after this, the parties reconciled and she discovered that she was pregnant, with the belief that the child was Respondent's so they married hurriedly. It was Petitioner's case that the Respondent's behaviour changed immediately after the marriage and although he assisted financially with the pregnancy, he did not really care for her and the unborn child.

According to her, during the pendency of the marriage, the Respondent was in amorous relationships with girls who were young enough for Respondent to father. This she said caused her emotional torture during the marriage. To prove her case, she tendered in evidence copies of screenshots evidencing correspondence between the Respondent and his mistress as Exhibit 'B' series. She further averred that the Respondent disrespected and verbally abused her. Due to Respondent's disrespect, Petitioner testified that his children and even their house help disregarded and disrespected her.

When the child was born, Petitioner averred that the Respondent continuously commented that the child did not resemble him in any way. This reminded her of the intimacy she had with that friend of hers during the parties' breakup period and therefore caused a DNA test to be conducted to ascertain the paternity of the child. A copy of the DNA test was tendered as Exhibit 'C' which clearly reveals that the Respondent is not the father of the child and has never been. Out of fear of what might happen if she discloses the result of the test to the Respondent, Petitioner kept this crucial information to herself until she eventually moved out of the matrimonial home.

According to Petitioner, the Respondent through the Legal Aid office called for a meeting between the parties. It was during this meeting that the Petitioner disclosed the paternity of the child to the Respondent. She added that in disbelief, the Respondent requested for another test to be conducted which test result proved that he was not the father of the

child. She tendered in evidence the test result of the second test conducted as Exhibit 'D'. Since then, the parties have not lived together as husband and wife.

The Respondent testified by relying on his witness statement filed on 31st May, 2023 which same was adopted as his evidence in chief. His evidence was that when he met Petitioner, she was living with her brother. Respondent was the one who rented an apartment for her at Dzorwulu. Subsequently, Respondent testified that Petitioner's behaviour changed as she started speaking on phone at ungodly hours anytime she visited him to an unknown person.

According to him, Petitioner during their dating period cheated on him with another man. He stated further that even after the child was born, Petitioner continued with her cheating habit by always having sexual conversations with another man on phone. Not only did Petitioner create problems for Respondent but she had problems with his children as well and did not want them near the newly born, Respondent testified. He averred that the Petitioner told him she wanted a divorce on a number of occasion and when there was no one in the house, she packed out without a word. It was after she left the matrimonial home that she called to inform Respondent about same.

It was Respondent's testimony that even though the Petitioner knew that the child was not his, she kept the inform from him about it until he found out after reporting the matter to the legal aid office. Even after he was told by the Petitioner's lawyer, he requested for another DNA test to be done to ascertain the paternity of the child which test also showed that he was not the father. He tendered in evidence a copy of the DNA test as Exhibit '1'.

A Petitioner may satisfy the court that a marriage has broken down beyond reconciliation by adducing evidence that are in tandem with **Section 2 (1) (b) of Act 367** which is to the effect that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him or her. The Cambridge Advanced Learner's

Dictionary (4th Edition) has defined behaviour generally as “the way that a person behaves in a particular situation or under particular conditions.” **Baker P in Katz v Katz [1972] 3 All ER 219** put it as follows: *“behaviour is something more than a mere state of affairs or state of mind, such as for example a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating the husband’s love, or not being as demonstrative as he thinks she should be. Behaviour in this context is action or conduct by one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct, and, in my view, it must have some reference to the marriage.”*

Unreasonable behaviour in marriage can take several forms such as threats, assault or violence, extra marital affairs, amongst others. In dealing with behaviour, the question, is whether the Petitioner can reasonably be expected to live with the Respondent. The Court ought to take cognizance of the personalities of the individuals before it and evaluate the impact of the respondent’s conduct on that particular petitioner, having due regard to the history of the marriage and their relationship. See the case of **Livingstone-Stallard v Livingstone-Stallard; Knudsen v Knudsen [1976] 1 GLR 204; Mensah v Mensah [1972] 2 GLR 198**.

From the evidence of Petitioner herein, Petitioner averred that the Respondent during the subsistence of the marriage disrespected her so much that his children and their house help saw this as an opportunity to disrespect her as well. Respondent denied these allegations levelled against him by the Petitioner.

He testified that it was Petitioner who rather behaved unreasonably by creating problems for him and finding problems with everything he did. He added that Petitioner did not even allow his children to have access to the child. Like the Respondent, Petitioner also denied the allegations of unreasonable behaviour levelled against her by the Respondent. Both parties therefore had to do more than barely repeating their averments on oath. The

onus was on each party to establish the allegations levelled against each other to the satisfaction of the Court.

It is trite law that bare assertions or merely repeating a party's pleadings in the witness box without more does not constitute proof. Thus, it was held in the case of **Majolagbe v Larbi & Anor [1959] GLR 190 @ 192** that "*where a party makes an averment capable of proof in some positive way, eg. by producing documents, description of things, reference to other facts, instances or circumstances and his 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 the court can be satisfied that what he avers is true.*" Both parties therefore did not prove to the satisfaction of the Court these unreasonable behaviours alleged against each other.

The Respondent also testified that the Petitioner left their matrimonial home without informing him and even after she became aware of the paternity of the child, she kept it to herself until he found out that the Legal Aid Office. This piece of evidence was however not disputed by the Petitioner. Petitioner admitted to same and stated that she failed to disclose the information to the Respondent out of fear of what might have happened or what Respondent might have done to her. Even though Respondent found out eventually, in the court's opinion, Petitioner should have immediately after she left the matrimonial home disclosed same to the Respondent if indeed, she feared for her life and that of the child. Her conduct of keeping the information to herself and allowing the Respondent to remain under the mistaken belief that the child was his, amounts to unreasonable behaviour. Unreasonable behaviour is an objective test and this Court is minded to conclude and find as a fact that the allegations of unreasonable behaviour levelled against the Petitioner were established.

From the Petitioner's evidence, the Respondent during the subsistence of the marriage had an affair with other ladies. She tendered in evidence copies of screenshots evidencing correspondence between the Respondent and one of his mistresses as Exhibit 'B' series. I must say that from the facts and evidence adduced, a lot ensued between the parties during their courtship period. I say this because of Respondent's promiscuous habit which was so glaring even before the parties tied the knot yet, Petitioner turned a blind eye to them all and proceeded to marry the Respondent. One would say perhaps the Petitioner loved Respondent so much that she overlooked his transgressions and his promiscuous nature. I honestly do not think so. It is clear from the evidence before me that even though the parties were in an amorous relationship, they expeditiously proceeded with their plans to marry because of Petitioner's pregnancy, as if they wanted to escape the shame that comes with birth out of wedlock in our society.

It is important to point out that it is what Petitioner tolerated during their courtship days that continued and took root even after the parties lawfully married. Respondent's promiscuous nature did not cease after they married. Perhaps it had already taken root and uprooting it was a herculean task. I must clearly state that whatever affair the Petitioner or Respondent had before the parties married will not sustain an action under adultery. To allow same will defeat the very meaning of the term. Petitioner in proving that Respondent was intimate during the pendency of the marriage tendered in evidence Exhibit 'B' series.

The content of Exhibit 'B' series is very revealing showing the romantic conversation between the Respondent and his mistress and how they both reminisce their sexual escapades together. For the avoidance of doubt, I will reproduce some excerpt of Exhibit 'B' series:

Mistress: "Girls like it rough and you too you make it rough"

Respondent: "You are good in bed"

Mistress: "Really am I that good? What makes you say so"

Respondent: "Yes"

Mistress: "You are also very sweet"

Respondent: "You roll it all the time"

Mistress: "You always make me cum like 100 times in each round"

In another conversation between the two, this is what happened:

Respondent: "What style do you enjoy most"

Mistress: "I love the doggy even though it hurts from the start but I enjoy as time goes on.

All the styles you give me I enjoy very well"

Respondent: "You know doggy is my favourite style so don't let it hurt you"

Mistress: "I enjoy it paa. It just hurts from the beginning like 2 seconds"

Respondent: "I love it"

Mistress: "I know how you like it"

It is noteworthy that Respondent did not deny his affair with this particular lady. In fact, he admitted his affair with his mistress when he stated that *"Respondent only got intimate with the lady whose chat has been attached to the Petition two months after the Petitioner had moved out of their matrimonial home..."*. It is important that I state at this stage that the mere fact that the Petitioner had moved out of the matrimonial home will not in itself operate to justify Respondent's sexual affair with another lady other than the Petitioner. Their marriage did not come to an end by reason that the Petitioner had moved out. Respondent was therefore during that period not a free man as he wants this court to

believe. He is still not a free man until this Court decrees divorce. As such, Respondent's conduct of having sexual intercourse with another lady other than the Petitioner his wife, amounts to adultery within the meaning of Act 367.

Respondent also averred that Petitioner has been unfaithful to her marital vows. In his evidence, he testified that the Petitioner constantly had sexual conversations on phone with an unknown person at ungodly hours. Per the meaning of adultery provided by the Act, merely having sexual conversations with another man on phone at ungodly hours does not in itself amount to adultery, even though such a conduct by a married person constitutes unreasonable behaviour. Some conduct has to be done which act reveals that the Petitioner during the subsistence of the marriage had an affair with another man other than the Respondent, her husband. In any event, Petitioner denied these allegations levelled against her by the Respondent. The burden was therefore on the Respondent to adduce sufficient evidence to sustain his claims.

Section 43 of the MCA defines adultery as "*the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse*", a party alleging adultery must prove that indeed there was a voluntary sexual intercourse between the accused and another person of the opposite sex other than his or her spouse. Both parties therefore bore the burden of satisfying the Court as to the allegation of adultery they made against each other. This Court is convinced by the evidence adduced by the Petitioner in respect of her allegations of adultery levelled against the Respondent and hold that adultery per **section 43 of the MCA** has been duly established and same is supported by the evidence on record. On this basis, the court is therefore satisfied that adultery under section 2(1) (a) of Act 367 has been properly established by the Petitioner and this is the finding of fact by this Court.

Conclusion

From the totality of the evidence adduced in the trial by the parties, it is this Court's decision that the differences between the parties are irreconcilable owing to the adultery committed by the Respondent during the subsistence of the marriage and the unreasonable behaviour of the parties. I find that these incompatible differences are so material that it would be erroneous for this Court to rule that the marriage should still subsist. I cannot imagine the tension that would be brought to bear in the matrimonial home, should this Court decide against the grant of the dissolution of the marriage.

In the light of the foregoing, I hold that:

- 1. The marriage celebrated between the parties on 21st November, 2020 at the Paradise Way Chapel (Crystal Fire Sanctuary), Santa Maria is hereby dissolved;**
- 2. Parties are to bear their own costs.**

**[SGD]
AMA ADOMAKO-KWAKYE (MS.)
(MAGISTRATE)**

Counsel

Naa Oyoo Quartey, Esq. for the Petitioner.

Peter Safo Antwi, Esq. for the Respondent.