

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 27TH OCTOBER, 2023.

SUIT NO. A8/124/23

MARY AMANKWAH FORDWOR

P. O. BOX AC 272

::

PETITIONER

ACCRA

VRS.

JOSEPH TSEMESE ODAME

P. O. BOX 6282

::

RESPONDENT

ACCRA

JUDGMENT

Introduction/Background

The present suit which was instituted by the Petitioner in this Honourable Court on 30th January, 2023 had the Petitioner seeking the following reliefs;

- a. That the said marriage celebrated between the Petitioner and the Respondent on the 13th of August, 2011 be dissolved;*
- b. That the Petitioner and the Respondent be granted shared custody of the children of the marriage;*
- c. That the Respondent be ordered to make to the Petitioner such maintenance pending suit and thereafter such periodic payments as may be just;*

- d. That the Respondent be ordered to pay to the Respondent a lump sum of GH¢ 50,000.00;*
- e. That the Respondent be ordered to pay for the cost in this action including Solicitor's fees; and*
- f. That half of the land acquired during the marriage be settled in favour of the Petitioner.*

The Respondent in responding to the Petition also prayed this Court for the following reliefs;

- a. An order for the dissolution of the parties' marriage;*
- b. An order for the parties to be granted shared custody of the parties' issues;*
- c. An order for Respondent to refrain from paying maintenance to the Petitioner as their marriage has been customarily dissolved;*
- d. Respondent is willing to give Petitioner all the land at Nsakina- Ga west, Accra, including the house on it instead of the lump sum; and*
- e. That the Respondent is in no financial position to bear Petitioner's solicitor's cost.*

The parties were able to resolve the ancillary matters in respect of the suit and executed terms of settlement in respect of same. The parties based on their terms of settlement executed on 19th May 2023 mutually agreed as follows:

- 1. That the marriage between the parties should be dissolved;*
- 2. That the Respondent will continue paying for the children's school fees;*
- 3. That the Respondent will pay One Thousand Cedis (GH¢ 1,000.00) for the upkeep of the children at the end of every month;*
- 4. That the land which bears the joint names of the parties should be changed into the name of the Petitioner as early as possible, and supported by an affidavit;*

5. *That the Respondent is to pay an amount of Ten Thousand Ghana cedis (GH¢ 10,000.00) as alimony to the Petitioner. Respondent has paid Five Thousand Ghana Cedis (GH¢ 5,000.00) and has agreed to pay the outstanding amount by instalment as follows:*

<i>1st June – 31st July 2023</i>	<i>GH¢ 500.00</i>
<i>1st August – 30th September 2023</i>	<i>GH¢ 500.00</i>
<i>1st October – 30th November 2023</i>	<i>GH¢ 500.00</i>
<i>1st December – 31st January 2024</i>	<i>GH¢ 500.00</i>
<i>1st February – 31st March 2024</i>	<i>GH¢ 500.00</i>
<i>1st April – 31st May 2024</i>	<i>GH¢ 500.00</i>
<i>1st June – 31st July 2024</i>	<i>GH¢ 500.00</i>
<i>1st August – 30th September 2024</i>	<i>GH¢ 500.00</i>
<i>1st October – 30th November 2024</i>	<i>GH¢ 500.00</i>
<i>1st December – 31st January 2025</i>	<i>GH¢ 500.00</i>

6. *That the parties will leave in peace without any dispute and look after their children.*
7. *That the Petitioner has collected all her belongings from the matrimonial home.*
8. *That parties pray the Honourable Court to adopt the terms as settled.*

Pleadings of Parties

The parties married at the Church of Pentecost, Mataheko District in Accra under the Marriage Ordinance (CAP 127) on 13th August, 2011 and cohabited at Mallam, Julikart Junction in Accra. According to the Petitioner, she is a midwife at the St. Anthony Hospital at Dzodze in the Volta Region and also a Baker whereas the Respondent is a General Manager at Global Poly; manufacturers of all kinds of plastic bags and pure water sachet rubbers. The parties have two issues; Caleb Kwasi Odame and Emmanuella Nana Adwoa Odame who were 10 years and 7 years respectively at the time the action was instituted.

The Petitioner averred that the marriage between the parties has broken down beyond reconciliation due to Respondent's unreasonable behaviour which has caused Petitioner anxiety, distress and emotional trauma, and she therefore cannot be reasonably expected to live with the Respondent. To support her claims, Petitioner averred that during the subsistence of their marriage, the Respondent did not show any signs of discomfort until the Petitioner was diagnosed of Laryngeal Throat Cancer in June 2021. She added that the Respondent withdrew from her and ceased communication with her which caused her great pain and anxiety.

Petitioner further averred that the Respondent openly declared to her that due to the distance caused by their living arrangement, he had gotten a girlfriend by name Judith Baaba Kendrick whom Respondent has been dating for the past five years. Subsequently, the parties got into a heated fight which got the Petitioner and the Respondent to separate for a while until their families assisted them to reconcile their marital issues. Petitioner further added that even after this, Respondent continued his affair with his girlfriend and developed the habit of travelling outside Accra for days without any communication.

The Petitioner asserted that on several occasions, she called both the mother and sister of the Respondent to intervene and advise the Respondent to stay in touch with her but none of them yielded any positive feedback from the Respondent. According to the Petitioner, when her first surgery appointment was due, the Respondent proposed to the Petitioner to live with her family thereafter with the understanding that the Respondent will sleep over at the Petitioner's family house every weekend until the Petitioner recovers fully to return to their matrimonial home.

According to the Petitioner, the Respondent was inconsistent with his promise and eventually stopped spending the night at the Petitioner's family house as agreed by the parties. This, Petitioner averred, led to frequent arguments. Respondent ceased visiting

and communicating with her save for picking up the children, who lived in Petitioner's family house even before her diagnosis, to school every morning. She asserted that she went through eight weeks of chemotherapy and radiotherapy without the physical and emotional support from the Respondent. She added that the Respondent told her that he only comes to the family house because of his children and not because of her.

Petitioner averred that the Respondent ceased his occasional visits which included; driving the Petitioner to the hospital and buying her some drugs, food and fruits. She stated that on one occasion, she went to their matrimonial home to check on the Respondent and to her surprise, the Respondent had packed away all their photos and personal belongings of the Petitioner into a wardrobe. Petitioner added that upon Respondent's return to their matrimonial home and realizing Petitioner was there, he packed some of his belongings and walked away without a word to her. In an attempt to engage the Respondent in a conversation, the parties got into another heated and life-threatening argument to the hearing of the neighbours who eventually entered the house to separate them.

Subsequently, several meetings were held by their families and the Respondent maintained that he cannot live under the same roof with the Petitioner. Petitioner further asserted that the Respondent has willfully avoided being intimate with her since her cancer diagnosis in June 2021. According to Petitioner, Respondent together with his family went to the Petitioner's family to dissolve the marriage between the parties customarily on 14th December, 2022. She added that during the subsistence of the marriage, the parties acquired a parcel of land situate at Nsakina- Ga West, in the Greater Accra Region. According to her, all attempts to reconcile their marital differences has proved futile thus, her reliefs prayed.

In his Response to the Petition filed on the 11th April, 2023, the Respondent indicated that the marriage has broken down beyond reconciliation and he cannot be expected to live with the Petitioner. He denied having behaved unreasonably, stating that it was rather the Petitioner who had behaved unreasonably. According to the Respondent, Petitioner, contrary to his advice, failed to limit her work load after she was diagnosed of her illness as such, Petitioner could not make time for herself and the family.

According to Respondent, whenever he wanted to spend time with the Petitioner in her family house, the Petitioner subjected him to verbal assault which to him, reduced the degree of respect he had in the sight of Petitioner's family. Respondent further stated that the Petitioner decided that she would not sit in his car again because she was of the opinion that the Respondent uses his car to transport women for his affairs. He added that he packed out of the matrimonial home and did not utter a word to the Petitioner because he could tell from the Petitioner's mannerisms that she was in for a fight which he had no energy for.

It was Respondent's case that the Petitioner often threatened to stab himhe Respondent with a knife whenever the parties had a misunderstanding. He averred that their marriage has been customarily dissolved by the Petitioner's father upon Petitioner's disgraceful act of going naked in public to curse the Respondent.

Issue

It is evident from the foregoing that the only outstanding issue this Court is called upon 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:

Both parties are in agreement that the marriage be dissolved. Despite this agreement by both of them, the law is that the Court must be satisfied on all the evidence that the marriage has broken down beyond reconciliation before it can grant the Order for the dissolution of the marriage. The grant of dissolution of the marriage is not an automatic one which is solely based on parties consenting. It is trite that merely asserting that a marriage has broken down irretrievably would not suffice for the Court to grant a relief for dissolution of a marriage and that the evidence before the Court should be the guiding light of the Court. See: **Charles Akpene Ameko v Saphira Kyerema Agbenu [2015] 91 G.M.J. 202 @ 221; Michael Kyei Baffour v Gloria Carlis Anaman [2018] 123 GMJ 95; Donkor v Donkor [1982-83] GLR 1158; Adjetey v Adjetey [1973] 1 GLR 216).**

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. To prove that a marriage has broken down beyond reconciliation, the law requires a petitioner to plead and prove to the satisfaction of the court, one or more of the six facts set out under **Section 2(1) of the Matrimonial Causes Act (Act 367)**. Those facts in a loose list are; adultery, unreasonable behaviour, desertion, not living as man and wife for two years continuously with consent to divorce, not living as man and wife for five years continuously with no consent needed and irreconcilable differences. See **Danquah vs Danquah (1979) GLR 371.**

The burden of proof and persuasion is on the part of the person making the averments to adduce sufficient, cogent and reliable evidence to support the allegations contained in the petition or cross-petition for the court to arrive at the decision that the acts alleged exist. Although it is the duty of the court to inquire, so far as it reasonably can, into the facts alleged by both parties, in practical terms the burden on the petitioner is solely to

establish one of the facts and it is for the respondent in a defended suit to show, if he wishes, that the marriage has not broken down irretrievably. See **Ash v Ash (1972) 1 All ER 582; Pheasant v Pheasant (1972) 1 All ER 587.**

From the pleadings and evidence adduced in court, the parties seek to rely on **Sections 2(1) (b) and (f) of the Matrimonial Causes Act, 1971 (Act 367)** which is to the effect that;

“(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:

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or

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

Petitioner filed her witness statement on 21st June, 2023 and same was adopted by this Court as her evidence-in-chief. Petitioner testified by repeating her averments in her Petition. She added that after the parties married, she maintained her midwifery profession in the Volta Region and she visited their matrimonial home over the weekends. According to her, Respondent did not complain about this because she was helping him financially to take care of the home and the children of the marriage. She stated that the parties lived harmoniously until her diagnosis in June 2021.

Respondent also filed his witness statement on 12th June, 2023 and same was adopted by the Court as his evidence-in-chief. He testified that the Petitioner has behaved unreasonably as such, he cannot be reasonably expected to live with her. According to Respondent, Petitioner after their marriage invited a man she had strange ties with to their honeymoon in Kumasi. He added that Petitioner to this day has failed to disclose

the nature of her relationship with the said stranger and she goes about displaying on her WhatsApp status the said stranger while captioning it “My best friend”.

He testified that from the beginning of their marriage, the Petitioner has worked as a midwife in the Volta Region and for ten years, she has lived in the Volta Region despite Respondent’s plea on her to apply for a transfer to Accra. Respondent further testified that the Petitioner stopped lactating exactly after six months with the excuse that she had to start work. He added that even those times Petitioner spent in Accra were not for her to spend time with the family but for her bakery business.

It was the testimony of the Respondent that the Petitioner constantly denied him sex usually on grounds that she was tired. According to him, Petitioner during the subsistence of the marriage subjected him to verbal abuse anytime he tried to reason with her about a marital hurdle. Even during the times he visited her in her family house to spend time with her, Respondent testified that the Petitioner subjected him to verbal assault which lowered his respect in the sight of the Petitioner’s family. He further added that the Petitioner often threatened to stab him whenever they had some misunderstanding. This, Respondent says, has left him in great fear for his life and has caused all the love and affection he has for Petitioner to grow cold.

Respondent further testified that the Petitioner brought a national service personnel to stay in their matrimonial home and falsely accused him of having an affair with the said service personnel. According to Respondent, Petitioner subsequent to these unfounded accusations verbally abused him and called him “a foolish man”. He further stated that the Petitioner decided not to sit in his car because to Petitioner, Respondent uses his car to transport the women he has affairs with. It was his testimony that the Petitioner has no sense of respect for his family as she often blocks Respondent’s mother on phone whenever there is a misunderstanding between the parties. Respondent added that the

Petitioner informed him and his mother that Respondent had nothing when she married him and that she could get herself a better man than Respondent when she so desires. He further testified that the marriage between the parties has been customarily dissolved as a result of Petitioner's disgraceful act of going naked in public to rain curses on him.

Unreasonable Behaviour:

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, insults, non-maintenance, infidelity, 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 the Petitioner herein, it is Petitioner's case that the Respondent has behaved in such a manner that she can no longer be reasonably expected to live with him. Aside Respondent's alleged infidelity, Petitioner testified that the Respondent did not

show her the love and support she needed when she was diagnosed of Laryngeal Throat Cancer in June 2021. Even though the parties had agreed that the Respondent would spend nights at the Petitioner's family house, Respondent failed to fulfil his promise. She testified that she went through eight weeks of chemotherapy and radiotherapy without any physical and emotional support from the Respondent, her husband.

It was Petitioner's testimony that she subsequently went to their matrimonial home to check on the Respondent and she realized that the Respondent had packed away all their photos and her personal belongings in a wardrobe. Upon his return and realizing Petitioner was there, he packed some of his belongings and walked away without a word to her. Petitioner further testified that in an attempt to engage the Respondent in a conversation, the parties got into a heated and life-threatening argument to the hearing of the neighbours who eventually entered the house to separate them.

Respondent however denied these allegations of unreasonable behaviour levelled against him by the Petitioner. After his testimony, it became evident that the Petitioner's story, told to this Court was not the entirety of the truth of the situation. It was Respondent's testimony that it is rather the Petitioner who has behaved unreasonably. According to Respondent, Petitioner after their marriage invited a man she had strange ties with to their honeymoon in Kumasi.

He further testified that despite pleas on Petitioner to seek for transfer to be stationed in Accra, Petitioner adamantly continued working in the Volta region. He added that during the subsistence of the marriage, the Petitioner seldomly spent time with the family as all her life and activities were centered on her work with no room for him and the children. It was the testimony of the Respondent that the Petitioner constantly denied him sex usually on grounds that she was tired.

According to him, Petitioner during the subsistence of the marriage subjected him to verbal abuse even in the presence of Petitioner's family. He further stated that the Petitioner often threatened to stab him whenever they had some misunderstanding and this caused him to fear for his life. It was his testimony that the Petitioner falsely accused him of infidelity. It is worthy of notice that these matters were not denied and the Respondent was not subjected to any cross examination in respect of the allegations of unreasonable behaviour against Petitioner he had adduced in his evidence. These allegations are so grave that this Court cannot gloss over them.

From the evidence adduced before this Court, I am of the reasonable opinion that both parties have behaved unreasonably and have contributed to the current state of their marriage. None of them was willing to compromise to make things work in the marriage. It is clear that the Petitioner cared so much about her work and the money she was earning than her health, her husband and children. As such, she was unwilling to pay heed to Respondent when the latter suggested to her the idea of a transfer. Respondent on the other hand pampered his ego rather than being present to show love and care for the Petitioner, her wife who needed her. This does not however mean that this Court condones Petitioner's insecurities and unreasonable behaviour of insulting the Respondent whenever he made an attempt to spend time with her and assist her. Far from that. I am mindful that the Petitioner's unreasonable conduct made it difficult for the Respondent to continue his duties as a husband and as human as he is, he could bear it no longer.

Unreasonable behaviour is an objective test and this court believes that both the Petitioner and the Respondent have behaved unreasonably. This Court is therefore minded to conclude that both parties have behaved unreasonably towards each other and have made it intolerable for them to live with each other as husband and wife, a fact this Court

has found. Based on these findings, the Court is satisfied that unreasonable behaviour under section 2(1)(b) of Act 367 has been properly established.

Irreconcilable Differences:

Section 2(1) (f) of the Matrimonial Causes Act, 1971 (Act 367) is to the effect that, one of the facts for establishing that a marriage has broken down beyond reconciliation is to establish that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

The Petitioner contended that their marriage has broken down beyond reconciliation as a result of their irreconcilable differences. As such, she cannot reasonably be expected to live with Respondent. In fact, she testified that Respondent together with his family went to the Petitioner's family to dissolve the marriage between the parties customarily on 14th December, 2022. According to her, all attempts to reconcile their marital differences has proved futile.

Respondent also shared the same belief and testified that the marriage between the parties has been customarily dissolved as a result of Petitioner's disgraceful act of going naked in public to rain curses of Respondent. Despite attempts by their families to settle their differences, their efforts have yielded no results because their marriage has broken down beyond reconciliation and whatever love they shared has become sour. I must point out that the parties have had their marital differences reconciled by their families for about two times before the marriage was customarily dissolved. Yet all these attempts by their families to assist them produced nothing but fueled and aggravated their quarrels. I have no doubt that their families themselves have grown tired of this union and its hullabaloo.

If for nothing at all, the terms entered into by the parties before this Court is sufficient enough to prove that the parties to the marriage are no longer interested in resuming consortium. All these surmises an intention not to live together again as a married couple due to irreconcilable differences. Based on these findings, the court is satisfied that irreconcilable differences under section 2(1) (f) of Act 367 has been properly established.

Conclusion

From the totality of the evidence adduced in the trial by the parties, it is this Court's opinion that the differences between the parties are irreconcilable owing to the failure of the attempts made by their friends and family to join the parties. These incompatible differences are so material that, it will be erroneous for this Court to rule that the marriage should still subsist.

In the light of the foregoing, I hold that:

- 1. The marriage celebrated between the parties on 13th August, 2011 at the Church of Pentecost, Mataheko District, Accra is hereby dissolved;**
- 2. The Court enters Consent Judgment on the basis of the terms of settlement duly executed by the parties on 19th May 2023 and incorporates same as part of this judgment which parties are to adhere to same.**

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

Counsel

Beatrice Dadson, Esq. holding brief of Samuel Kwame Ofosu, Esq. for Petitioner.

No legal representation for Respondent.