

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 8TH SEPTEMBER, 2023.

SUIT NO. A8/151/22

NICHOLINA ANAKWA A.K.A.

NICHOLINA ABENA MANU ANAKWA

18018 ROCKINGHAM PLACE GERMANTOWN

MD 20874

UNITED STATES OF AMERICA

::

PETITIONER

VRS.

ERIC COBBINA ACHEAMPONG

MARTINS CHEMIST

ACCRA

::

RESPONDENT

JUDGMENT

INTRODUCTION

The Petitioner herein instituted this action in this Honourable Court against the Respondent on 16th June 2022 praying for the following reliefs:

- i. That the marriage between the Petitioner and the Respondent be dissolved.
- ii. That financial settlement of an amount of GH¢ 200,000.00 from the Respondent to the Petitioner.

- iii. That the Respondent makes a monthly contribution of GH¢ 1,000.00 towards the maintenance of the autistic son.
- iv. Cost be borne by Respondent.

The Respondent in his Answer to Petition and Cross Petition filed on 19th August 2022 also prayed for the following:

- a. Dissolution of the marriage since the Petitioner by her conduct has shown that she does not like the marriage again.
- b. The Respondent says presently he is not in the sound financial position to pay GH¢ 20,000.00 to the Petitioner, the alimony she is demanding since he has no means to pay same.
- c. The Respondent says he cannot presently pay GH¢ 1,000.00 monthly towards the maintenance of the autistic son and prays that an order be made for the Petitioner to sell the Respondent's saloon car Lexis E 300 in the USA, for the Petitioner to use all the proceeds of the sale of the car to maintain the autistic son.
- d. The Respondent also prays for an order for the Petitioner to allow him to make calls to the children and to also allow the children to pay him visit in Ghana, during the holidays.
- e. That each party be ordered to bear his or her own costs.

The parties were able to settle the ancillary reliefs and had Terms of Settlement to that effect filed on 24th March 2023 wherein they agreed as follows:

- i. Both parties to this divorce petition have consented to the dissolution of the marriage celebrated between them.
- ii. An order directed at the Petitioner to allow Respondent make calls to the children and to also allow the children to pay him visit in Ghana during holidays.

- iii. An order directed at the Petitioner to allow the Respondent's relative to come to the matrimonial home of the parties to pick the Respondent's personal belongings and his furniture which are to be shipped to the Respondent at his own cost.
- iv. No order as to cost.

PETITIONER'S CASE

According to the Petitioner, the parties, a Nurse and a Herbal Pharmacist respectively, married on 27th August 1994 at the Calvary Deliverance and Teaching Ministry, Accra and cohabited thereafter at Dzorwulu and later in the United States of America. The parties have two children who at the time of presentation of the Petition were aged 26 years and 22 years.

It is the Petitioner's case that the marriage between her and the Respondent has broken down beyond reconciliation. She averred that upon her arrival in the United States of America to join the Respondent in the year 1995, she realized that the Respondent's promise of love and care towards her was only an illusion, as the Respondent locked her up in the room during her pregnancy, became irresponsible and cared less about her. She further averred that their second child who is autistic, had developed trust issues due to the fact that he does not receive any fatherly love and support.

The Petitioner stated that notwithstanding the fact that the Respondent was working, he took two-thirds of her salary but was still tight-fisted with the family. She added that upon getting a new job in 2001, she was able to take care of the family without any support from the Respondent. She averred that the Respondent lost his job in 2009 due to immigration challenges and returned to Ghana, but prior to returning to Ghana, he forged her signature to refinance her mortgaged property, debited her with his credit card debt

and withdrew monies to acquire properties for himself in Ghana without her consent and knowledge. She stated that the Respondent returned to America in 2011 to work on the immigration issue but he was unsuccessful and returned to Ghana in 2012 and since then, the parties have not lived together as husband and wife and she has been the only person maintaining the children and herself, although the Respondent is gainfully employed in Ghana.

The Petitioner averred that in 2019, she lost her job due to an accident and as such she is unable to adequately cater for the family since the workmen's compensation she gets is inadequate to cater for her expenses in the midst of her obligation to pay for the mortgaged property, which obligation she has defaulted and stands the risk of losing the property which is occupied by her and the children. She stated that reconciliation attempts of their differences had been unsuccessful and the Respondent had caused her much pain, apprehension and sexual starvation and she cannot be reasonably expected to live with him.

RESPONDENT'S CASE

The Respondent denied taking a chunk of Respondent's salary and locking the Petitioner and stated that upon her arrival in the USA, he briefed her on the life there and encouraged her not to be pregnant since she did not yet have a medical insurance but she became pregnant and decided to relocate to a two-bedroom apartment which was a strain on his finances. He averred that the Respondent's pregnancy was characterized by complications which affected him emotionally and financially and that he stood with her throughout and he had to rush to the hospital from work to visit her and the baby since they had no help and he also had to drive them to the hospital daily or resort to the use of a taxi driver friend during emergencies.

According to the Respondent, the Petitioner had the mentality that it was the sole duty of the man to cater for the family and keep her income to herself. He averred that upon realizing that their son had some challenges, they sent him to a speech therapist and he was given a special school teacher. It was Respondent's case that he had been supporting the home and that even when the Petitioner arrived in the USA, he singlehandedly took care of her for two years and throughout her pregnancy and he took care of her until she acquired her Maryland Board of Nursing License and she started working in 2001.

The Respondent averred that they were unable to obtain favourable conditions for their loan and upon advice, they refinanced the loan and each time the loan was refinanced, they had to consolidate their debt to make their monthly mortgage reduce. He averred that the Petitioner convinced him to take off his name from the mortgage with the reason that it would make the mortgage cheaper.

He stated that he received a call from the Petitioner whilst in Ghana that she had gotten a lawyer to file an appeal in respect of the immigration issue and that she had sold his car to acquire a ticket for him to return to the USA to pursue the appeal, which appeal became unsuccessful. According to him, the Petitioner visited Ghana in 2013 and he stayed with her at Awoshie where they had sex together. He further stated that the Petitioner visited Ghana again in 2018 but stayed with her sister at Cantonments and when he wanted to have sexual intercourse with her, she declined. He therefore stated that it was rather the Petitioner who starved him of sex and had made him endure mental distress due to the treatment meted to him by her.

ISSUE

The ancillary issues having been resolved by the parties, the only outstanding issue is whether or not the marriage between the parties has broken down beyond reconciliation.

EVALUATION OF EVIDENCE AND LEGAL ANALYSIS

It is trite that in civil cases, the general rule is that the party who in his/her pleadings or writ raises issues essential to the success of his/her case assumes the onus of proof. The one who alleges, be (s)he a plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when (s)he has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be. See the following:

Sections 11(1) & (2), 12(2) and 14 of the Evidence Act, 1975 (NRCD 323)

Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 @ 900

GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458

Tagoe v. Accra Brewery [2016] 93 GMJ 103 S.C

In the case of **Agbosu v Kotey; In Re Ashalley Botwe Lands [2003 – 2004] SCGLR 420** His Lordship Brobbey JSC on the burden of proof held as follows:

“The effect of sections 11(1) and 14 and similar sections in the Evidence Decree 1975 may be described as follows: A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to court has to prove what he claims he is entitled to from the defendant... At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on the evaluation of facts and evidence the defendant must realize that the determination cannot be made on nothing. If the defendant desires a determination to be made in his favour, then he has a duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour...” See also **Tagoe v. Accra Brewery [2016] 93 GMJ 103 @ 123 S.C** per Benin, JSC.

In a case where a Cross Petition is filed by a Respondent, the Respondent assumes the position of a Petitioner as regards his or her Cross Petition and would therefore have to prove the cross petition. The Supreme Court speaking on the burden of proof on a Defendant who has a Counterclaim held in the case of **Nortey (No. 2) v African Institute of Journalism and Communication & Others (No. 2) [2013-2014] 1 SCGLR 703** as follows:

“Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he/she is to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRCD 323 the Evidence Act (1975).”

The Court of Appeal also noted as follows on the same topic in the case **Alex Etoh Kwaku v Bridgette Ofosu Asabea [2014] 72 GMJ 68**:

“It is trite learning that in civil suits when the defendant counterclaims, for the purposes of the relief, that party becomes the plaintiff and bears the same burden of establishing that relief. The yardstick being the same as the plaintiff, on the preponderance of probabilities.”

Both the Petitioner and the Respondent herein therefore had the duty in the course of the suit to produce sufficient evidence in respect of their respective claims on a balance of probabilities for a determination to be made in their favour. See also the case of **In Re Krah (Decd.); Yankyeraah v Osei-Tutu & Another [1989] DLSC 601**.

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. In order to prove that a marriage has broken down beyond reconciliation, a Petitioner has the duty of satisfying the Court of the existence of at least one of the following six facts specified in section 2(1)(a) - (f) of Act 367:

- 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.

Both parties filed their respective witness statements on 1st September 2022. The Petitioner however did not appear in Court on the trial day to testify, neither did she donate a Power of Attorney for anyone to testify on her behalf. Counsel for Petitioner informed the Court that they did not intend testifying and that the Court should rely on the Respondent's Cross Petition. It is trite law that merely filing a witness statement does not constitute evidence until the party who filed same mounts the witness box and relies on same as his or her evidence in chief. Thus, in the case of **John Dramani Mahama v Electoral Commission & Another [2021] GHASC 12 (4th March 2021)** His Lordship Anin Yeboah CJ (as he then was) succinctly held that;

"... the above rule also points to the fact that a witness statement filed and served does not constitute evidence in law till the author of the statement mounts the witness box, takes the oath and prays that the witness statement be adopted as evidence in chief pursuant to Order 38 r 3E(2), which provides thus: "(2) Where a witness is called to give oral evidence under subrule (1), the witness statement of that witness shall stand as the evidence in chief of that witness unless the Court otherwise orders."

The Petitioner's witness statement which was not relied on by her for same to be adopted by the Court cannot therefore be considered by this Court in the determination of the suit, since it does not amount to evidence.

The Respondent's evidence per his adopted witness statement was that the marriage between him and the Petitioner had broken down beyond reconciliation since the Petitioner's conduct had proved that she no longer had interest in the marriage. He testified that the Petitioner's love for him had waned and that was why she made false allegations against him, to disgrace him. He stated that they had to relocate to a two-bedroom apartment when the Petitioner took seed, which affected his finances. He further stated that the Petitioner had pregnancy complications which compounded his financial and emotional stress but he stayed by her throughout and had to visit her and their

newborn straight from work since they had no one to assist. He added that he had to drive the Petitioner to the hospital daily and during emergencies, he had a taxi driver friend who could pick up the Petitioner. He denied that the Petitioner struggled to catch a bus with their then baby at her back whilst he picked female colleagues, stressing that he always picked up the baby from the babysitter's house to the house.

It was Respondent's testimony that he paid for Petitioner's Nursing class and Board Examination fee, was present when their second child was born, taught the children and Petitioner how to ride a bicycle, paid rent and in essence, sacrificed a lot for the family to the extent that his money in his account got finished and he had to rely on credit card. He denied Petitioner's assertion that he forged her signature to refinance her mortgaged property. He explained that he and the Petitioner agreed to buy a Town House which he had seen up for sale and since they could not secure a favourable loan, they were advised to refinance, which they did thrice between 2001 and 2007 to make their mortgage come down. He stated that in 2019, he was convinced by Petitioner to take off his name from the mortgage for the mortgage to be cheaper.

The Respondent testified that the Petitioner came to Ghana in 2013 and they stayed together at Awoshie and had sex. However, when she came in 2018, she stayed at her sister's house and refused him sex with the excuse that she was not in the mood. The Respondent denied that attempts were made by Petitioner, elders in the community and friends to reach him for settlement but all failed. He asserted that it was rather the Petitioner who had not treated him well and made him suffer mental distress and psychological disturbances. He prayed for a dissolution of the marriage.

I must emphasize that the Petitioner's failure to testify signified that she failed to adduce any evidence to support her claims and to prove the allegations she made against the Respondent. Quite apart, the Respondent was also not subjected to any form of cross examination to elicit information or evidence to advance the case of the Petitioner. The

Respondent's evidence essentially shed light on the assistance he offered to the Petitioner from her arrival in the United States of America, through her pregnancy, child birth, schooling, work, taking care of the children of the marriage and property acquisition, notwithstanding the emotional and financial stress he endured and the demands of work.

It is a fact on record that the Respondent finally returned to Ghana in the year 2012. The following year, the Petitioner came to Ghana and stayed with the Respondent at Awoshie, where they engaged in sexual intercourse. From the evidence, it is apparent that was the last time the parties lived together under the same roof as husband and wife and the last time they had any sexual intercourse. Although the Petitioner came to Ghana again in the year 2018, she did not cohabit with the Respondent but lived in her sister's house and also refused Respondent sex. The Court finds as a fact that the parties have not lived together as husband and wife for all this while and there is a clear manifestation of intention to bring consortium to an end. The Respondent as well has signified his consent to having the marriage dissolved through his prayer for the marriage to be dissolved too.

CONCLUSION

From the evidence on record adduced by the Respondent in the trial, this Court is satisfied that the marriage between the parties has broken down beyond reconciliation. I therefore hold as follows:

- a. That the marriage celebrated between the parties on 27th August 1994 at the Calvary Deliverance and Teaching Ministry, Accra is hereby dissolved.
- b. That the Court adopts the Terms of Settlement filed on 24th March 2023 as Consent Judgment and incorporates same in this Judgment.

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

Counsel

Robert Kwame Dapaah, Esq. holding brief of Abena Poma Bamfo, Esq. for the
Petitioner

Kwame Ntow-Fiako, Esq. for the Respondent.