

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 6TH OCTOBER, 2023.

SUIT NO. A8/127/2023

PAMELA NELSON

FLAMINGO RUSSIA

MATAHEKO

::

PETITIONER

VRS.

EMMANUEL SAMPAH

SOWUTUOM, OMANJOR

ACCRA

::

RESPONDENT

JUDGMENT

Introduction

The Petitioner commenced this action against the Respondent on 1st February 2023 praying for the dissolution of the marriage between her and the Respondent. The undisputed facts are that the parties who are both citizens of Ghana, married under Part Three of the Marriages Act, 1884-1985 (Cap 127) on 14th December, 2019 at the St. Francis of Assisi Anglican Church, Mamprobi Sempe and cohabited thereafter at Sowutuom Omanjor. The Petitioner is a Nursing Officer whereas the Respondent is an employee of Fan Milk Ghana Limited. The parties have no children together. They both averred that

the marriage between them has broken down beyond reconciliation but each attribute the cause to some alleged conducts of the other.

Pleadings

It is the Petitioner's case that the Respondent has been physically and verbally abusive towards her and is violent at the least provocation. She averred that the Respondent failed to provide upkeep money and she therefore had to mostly provide foodstuffs for the use of both of them. She stated that she had to vacate the matrimonial home to protect her life due to the abusive and violent nature of Respondent.

The Petitioner averred that the Respondent was engaged in extra marital affairs which had resulted in the birth of a child for another woman during the subsistence of their marriage. She stated that reconciliation attempts made by Counsellors and both parties' family members had been unsuccessful since the Respondent returned to his old conduct after the counselling sessions and has from his behaviour showed that he is not interested in the marriage.

The Respondent in his Response filed on 22nd February 2023 denied the allegations of unreasonable behaviour stated by the Petitioner and averred that the Petitioner had been dishonest by clandestinely taking contraceptives to avoid pregnancy. He averred that although he had entreated Petitioner to allow them have a child and start a family, the Petitioner emphatically told him that she was not ready to give birth and this has made him depressed and broken-hearted. He stated that he lodged a complaint with Petitioner's family about this conduct and although she was called to give her side of the story, she failed to turn up and refused to answer their phone calls too.

The Respondent averred that the Petitioner took up a job which she had discussed with him but when she started the work, she did not return home for almost three years, failed to check up on him and any time he called her to check up on her, it generated into a fight. He stated that the Petitioner voluntarily packed out of the matrimonial home without having been compelled to leave. He admitted that there had been meetings by their families towards settlement and added that the Petitioner in all those meetings told those present that she wanted a divorce, that she was not ready to conceive and also that the Respondent could go ahead to find another woman and marry. He also prayed for a dissolution 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.

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 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, the responsibility lies on a petitioner to satisfactorily prove to the Court the existence of at least one of the six facts enumerated 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.

From the parties' pleadings, it is clear that they wish to rely on the facts under Sections 2(1) (b) and (f) of Act 367 in proof of the breakdown of the marriage.

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**.

Both parties in their evidence traded accusations of unreasonable behaviour against each other. According to the Petitioner's evidence, she had suffered verbal, emotional and physical abuse at the hands of the Respondent to the extent that the Respondent on numerous occasions hit her with his arms or threw objects within reach at her. She further

testified that the Respondent failed to provide for the home and she therefore had to purchase food and other provisions for the household from her meagre salary.

According to the Petitioner, the Respondent often threw out her belongings when they had disagreements and he was only ready to accept her in if she did certain appalling things to please him. She stated that in August 2021, the Respondent packed her belongings and maintained that she leaves the house and she had to leave. The Petitioner testified that the Respondent brought in ladies to their matrimonial home when he drove her out and he has had a child with one of the ladies with whom he currently stays with in the matrimonial home.

The Petitioner stated that due to the abuses she suffered from Respondent, she vacated the matrimonial home to save her life. The Petitioner testified that the Respondent persistently demanded that she got pregnant immediately after marriage although they were financially unstable and they would be plunged into worse financial predicament should they have a child. She denied being deliberately on contraceptives. According to the Petitioner, she had to take up two jobs in the interest of the marriage which made her go home later in the week and she had discussed the arrangement with Respondent which he had agreed to. She added that it was surprising therefore for Respondent to accuse her of not staying home since he had agreed to the arrangement and she came home on her off days such that she had never been away from home in more than two or three days. She stated that the Respondent was fond of blaming her for anything that went wrong with him.

The evidence of the Respondent on the other hand, per his witness statement filed on 3rd March 2023 was that he lived peacefully with the Petitioner until she refused to start a family with him and made it clear to him that he was not ready to have any child and she always took a contraceptive whenever they had sexual intercourse. He testified that the

Petitioner's behaviour of insisting on not wanting to have a child with him had put him in a state of depression and made him broken hearted. He stated that when the Petitioner started work, she never returned for almost three years and did not call him during that period to check on him.

From the evidence before the Court, the Court finds that the main issue which has underpinned all the marital woes of the parties is the entrenched position of the Petitioner herein not to conceive, which has led her to taking contraceptives to avoid pregnancy. This was confirmed by the Petitioner when she was being cross examined by the Respondent:

Q: Was it not as a result of you taking contraceptives after we got married which I discovered and family planning before we married?

A: I did family planning before we married. I remember I told you I was not ready in fact we were both not financially ready to start a family. I remember I told you we should take our time and gather enough money before we start a family. You said we could get support from other people but I said it was not advisable to depend on others. You still did not care about that. You only wanted me to give birth as if I am not important. You were not taking care of me. I was doing everything by myself. You told me that you married me and that is all and why should you be giving me money when I have not had any child for you.

In the part of the world we find ourselves in, and specifically in Ghana, it is commonplace that more often than not, after marriage, the next major thing most couples would want is to have a child to start a family. The importance which is attached to having a child therefore makes it very necessary that a partner communicates well to the other even before marriage if he or she is not desirous of having a child. I find the Petitioner's conduct of taking a unilateral decision not to conceive and surreptitiously taking

contraceptives after sexual intercourse very unreasonable. It would have been different if both parties had agreed beforehand not to have children for the first year or first few years of their marriage, and the Respondent had sought to backtrack on their agreement. I take cognisance of the fact that the parties had been married for four years before the presentation of this Petition and I cannot tell how many years the Petitioner needs for the parties to 'gather enough money' before they start a family.

The Respondent had alleged that the Petitioner left the house for work for almost three years without returning and she never called him throughout the period. The Petitioner on her part debunked this, testifying that with the agreement of the Respondent, she was engaged in two jobs which took her away from home some days of the week but came home on her off-duty days which meant she was averagely home at least once or twice each week. The Respondent was unable to impugn this evidence of the Petitioner. I do not believe the Respondent's version that for the entire three-year duration he refers to, the Petitioner never stepped foot in the matrimonial home.

From the evidence, there are conflicting accounts from the Petitioner concerning her leaving the matrimonial home. At one point, she says the Respondent packed her things out and she had no choice than to leave. In another breath, she stated that she moved out due to abuse she was enduring at the hands of the Respondent. This Court is unable to determine which of the two stories the Petitioner would like the Court to accept.

The Petitioner also made allegations of infidelity against the Respondent and asserted that he had had a child with someone during the marriage and that he was living with the said woman in the matrimonial home. The Respondent had denied this and the onus was therefore on the Petitioner to substantiate her claims. This she failed to do. Under cross examination of the Respondent by her Counsel, the following ensued:

Q: Do you have a child?

A: No please.

Q: Are you living alone?

A: Yes.

Q: You do not live with any other person in the house?

A: No. I accommodated a cousin of mine who was heavily pregnant but she delivered and she left.

I do not think the Petitioner was able to satisfy this Court that the Respondent is living with another woman in the matrimonial home with whom he has had a child during the subsistence of the parties' marriage.

On the part of the Respondent too, he has been unreasonable in his conduct of hitting the Petitioner on some occasions and throwing objects at her, as well as failing to provide for the needs of the home to the extent that the Petitioner had use her meagre salary to purchase food and other provisions for the household which he partook of. Such behaviour is not such as would make the home a conducive place to stay and thrive. Both parties have been unreasonable towards each other and it would not be reasonably expected that they stay with each other.

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 efforts, been unable to reconcile their differences.

It was the Petitioner's evidence that there existed irreconcilable differences between the parties which diligent efforts made by Counsellors and their relatives to assist reconcile had been futile. According to the Respondent as well, he reported Petitioner's conduct to

her family and they called her to ascertain what was going on but she did not honour their invitation and phone calls to her also yielded no result. He stated that attempts by him as well to resolve their marital differences had proved futile. He further stated that there had been three family meetings and the Petitioner during all those meetings which had in attendance Petitioner's grandmother and aunts and Respondent's parents, was emphatic that she wanted a divorce, that she was not ready to give birth and that he could find another woman to give birth with.

The Court finds as a fact that the attempts at settlement of the parties' differences have not been successful despite steps taken by their family members in that respect. It is important to also note that the parties have been living apart from each other for some time now. It will therefore not be in the interest of the parties to order them to resume staying together to continue their lives as a married couple having regard to their irreconcilable differences.

Conclusion

The Court being satisfied that the parties have behaved unreasonably and they have also after diligent efforts been unable to reconcile their differences, concludes that the parties' marriage has broken down beyond reconciliation thus entitling them to their relief for the marriage to be dissolved. Consequently, I hold that:

- 1. The marriage celebrated between the parties on 14th December, 2019 at the St. Francis of Assisi Anglican Church, Mamprobi Sempe is hereby dissolved.**
- 2. Parties are to bear their own costs.**

[SGD]

**AMA ADOMAKO-KWAKYE (MS.)
(MAGISTRATE)**