

**IN THE DISTRICT COURT TDC TEMA HELD ON TUESDAY THE 24TH
DAY OF JANUARY 2023 BEFORE HER WORSHIP BENEDICTA
ANTWI (MRS) DISTRICT COURT MAGISTRATE**

SUIT NO: A4/06/2022

DEBORAH CORNERSTONE PETITIONER

VRS

MR ELVIS CORNERSTONE RESPONDENT

JUDGMENT

By an application filed by the petitioner/applicant on the 16th of December 2021, the applicant sought leave to commence divorce proceedings of the marriage contracted between the parties on the 31st March 2021. The court differently constituted granted the application on the 6th of April 2022 and the petitioner accordingly filed her petition on the 9th of May 2022.

Petitioner's case

Petitioner's case is that the respondent who is a lecturer and a pastor convinced her to leave her relationship and marry him as the Lord had revealed to him that the petitioner was his wife. Due to her Christian belief and the respect she had for the respondent, she embarked on a relationship with the respondent which led to the marriage celebrated on the 31st March 2021. After the celebration of the marriage, it was

discovered that the respondent could not successfully complete coitus. She states that respondent goes through a lot of pain to achieve an erection and he focused on accusing her of being spiritually responsible instead of seeking medical help. In her reply to respondent's answer, she said even though the respondent informed her prior to the marriage that he was a virgin, she had no way of ascertaining the veracity of that statement.

This frustration led her to unconsciously take her own life but for the intervention of onlookers at a beach who rescued her and put her in a taxi to be taken home to her parents. She prayed for the following reliefs;

1. That the marriage celebrated between the parties be dissolved.
2. Any other orders that this honorable court deems fit.

Respondent's case

In respondent's answer to the petition filed on the 15th June 2022, he states that even though he was a virgin prior to the marriage he had no problem achieving an erection. He could achieve an erection even after the marriage until some three weeks into the marriage he had a dream that someone was pulling on his manhood.

He says that when he woke from the dream, he asked the petitioner to pray with him as he had never experienced such pains before. He was initially under the assumption that it was a spiritual problem but after the petitioner suggested medical help, he grudgingly obliged and saw a specialist which results showed that there was a fluid in the scrotum which

could be treated with medication but the pain persisted and not even the medication given to him by the doctor could cure it. He denies having any fertility issues and stated that after a fertility examination was conducted on both parties, it was revealed that the petitioner rather had a problem with one of her ovaries and consequently both parties were put on medication but the petitioner refused to take the medicine and left the matrimonial home shortly.

He states that the petitioner confessed to him that she married him out of admiration and not love and begged to be released from the marriage. He also alleged that the petitioner had confessed to committing adultery with her ex-boyfriend but he forgave her as he believed she was genuinely sorry. The petitioner started behaving abnormally and on one occasion, he received a phone call from petitioner's boss confirming her unusual behavior and was informed later that the petitioner attempted committing suicide at the beach.

On the 10th of December when he was out of the house, he received a call from petitioner's sister informing him that petitioner had packed her belongings and left for her parents' home. He stated that this was not the first time the petitioner had packed her belongings out of the matrimonial home and concluded by stating that the petitioner had behaved unreasonably by inter alia, refusing to take her medication to correct the problems with her ovaries, and having sex with her ex-boyfriend. Respondent then cross-petitioned for the following reliefs:

1. That the marriage celebrated between the parties on the 31st March, 2021 be dissolved.
2. That each party bears his or her own cost
3. Ant other order this honorable court deems fit.

Burden of proof

In a petition for divorce, the sole ground for granting the petition shall be that the marriage has broken down beyond reconciliation. This provision can be found in section 1(2) and section 2(3) of the Matrimonial Causes Act, 1971 ACT 367.

In proving that the marriage has broken down beyond reconciliation, the petitioner must satisfy the court that one or more of the facts under section 2(1) of Act 367 has occasioned and as a result the marriage has broken down beyond reconciliation.

There is also the evidential burden to be borne by each party to the suit as provided in section 11 (4) of the Evidence Act, 1975 (Act 323) as:

(4) in other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its none-existence.

Failure by a party to lead sufficient evidence in support of her claim will thus lead to her claim being dismissed.

The court will therefore evaluate the totality of the evidence if any, in light of the above guiding provisions.

Summary of evidence

On the 13th of December 2022 when the parties first appeared before me, They informed the court that they intimated to the court on the last adjourned date that they have filed their terms of settlement on the 18th November 2022 and wants the court to adopt same. The said terms of settlement contained 2 terms. The first was that the marriage be dissolved as both parties as it has broken down beyond reconciliation, the second was that they be no order as to cost.

This court informed counsel that the determination of these two issues were solely the preserve of the court as such the court will take evidence from the parties before coming to a conclusion.

The terms of settlement filed by the parties on the 18th November 2022 was thus rejected by the court. The petitioner proceeded to open her case on the 13th December 2022.

Counsel for petitioner led her to rely on her witness statement filed on the 9th August 2022 as her evidence in chief. In it, she repeated the averments contained in her petition and added that respondent impressed on her that Jesus had revealed to him that she was to be his wife and that she succumbed to these divine revelations as she had deep admiration for the respondent as a man of God and broke off her existing relationship with her then fiancé to satisfy the respondent.

The respondent forced her to drink oils and concoctions he termed as "blessed water" and also claimed to see spirits walking by and accused the petitioner of having spiritual problems as he saw the petitioner's face

in his dreams every night attacking him. That she got intimate with her ex-boyfriend in a moment of weakness and confessed to the respondent afterwards and the respondent forgave her. She later confessed to the respondent in tears that she no longer loved him as she has become suicidal and prays for the respondent to set her free. In cross examining the petitioner, counsel for respondent asked only one question;

Q: Do you agree that the marriage has broken down beyond reconciliation

A: Yes

There was no re-examination and thus ended the petitioner's case.

The respondent opened his case by relying on his witness statement filed on the 31st August 2022 as his evidence in chief. He tendered three exhibits in support of his case.

Exhibit "1" is the physiotherapy report dated 10/02/2021

Exhibit "2" series includes the Laboratory report dated 23/10/2021

Exhibit "3" series includes a fertility report dated 10/02/2021.

All the exhibits were admitted without any objection from the petitioner and same were together with his witness statement adopted as his evidence in chief and marked accordingly. In it, he stated that the petitioner behaved unreasonably by accusing him falsely. He was a virgin prior to the marriage and started having dreams that someone was pulling his manhood.

This caused him severe pains and he sought medical help for it. He confirmed all that the petitioner said agreed that the marriage had broken down beyond reconciliation.

Counsel for petitioner also asked only one question during cross-examination:

Q: Mr Cornerstone I am suggesting to you that the marriage between you and the petitioner has broken down beyond reconciliation and have not lived as husband and wife for the past 6 months.

A: yes.

Hearing came to an end on the same day as both parties did not call any witnesses.

Issues for trial and Analysis

The sole issue that fell for determination was whether or not the marriage has broken down beyond reconciliation.

In Majolagbe v Larbi (1959) GLR 190 it was held that when a party makes an averment in his pleadings which is capable of proof in a positive way and the averment is denied that averment cannot be sufficiently proved by just mounting the witness box and reciting the averment on oath without adducing any corroborative evidence.

During the hearing of this suit, the petitioner did not provide any evidence, documentary or otherwise to support the averments contained in her petition. When the respondent tendered the above exhibits in support of

his evidence in chief, the petitioner neither objected nor cross examined the respondent on it.

Exhibit "1" is merely a physiotherapy report unrelated to the sexual performance of respondent complained about by the petitioner. Exhibit "2" is also a report from Diamed diagnostic center dated 23rd October 2021 showing the microscopic mobility of respondent's spermatozoa. Exhibit "3" is a medical report showing scans on petitioner's ovaries which the respondent relied on to show that the petitioner also has fertility issues and was given medication to help the couple conceive but the petitioner refused to comply with same.

After consideration of evidence adduced during the hearing of the suit, and considering that both parties in their haste to be rid of each other refused to put their respective evidence under cross -examination, the court arrived at the following conclusion.

I find that the respondent's claim that the petitioner has behaved unreasonably fails as he was not able to lead sufficient evidence to prove any of the five particulars stated under paragraph 28 of his answer. The petitioner confessing to the respondent that she had sex with the ex-boyfriend cannot be part of particulars of unreasonable behavior as that is considered as adultery and a separate ground for the dissolution of a marriage.

The respondent however failed to repeat same under his cross-petition for the divorce. Besides he stated in paragraph 17 of his answer that he forgave the petitioner after the confession of adultery was made to him

in July 2021 because of love. **Section 3 (b) of the Matrimonial causes Act (1971) ACT 367**

*"where with the view to reconciliation, the parties to the marriage have lived with each other as husband and wife for a period or periods after it became known to the petitioner that the respondent had, since the celebration of the marriage, committed adultery, then **if the length of that or of those periods together exceeded six months, the petitioner shall not be entitled to rely on that adultery for the purposes of section 2 (1) (a)**"* the respondent therefore is not entitled to set up adultery as a ground for the dissolution of the marriage as that ground no longer avails him.

However given that the respondent has admitted per his exhibits and answer before the court that he had difficulties engaging in sexual intercourse with the petitioner during the marriage and considering also that the petitioner has demonstrated that she cannot cope with sexual depravity in the marriage after respondent's problem was revealed to her, the court will grant the prayer of both parties for the dissolution of the marriage.

In the circumstances therefore, I find that the marriage has broken down beyond reconciliation

The relief prayed for by the petitioner in her petition dated 9th May 2022 and cross petition of respondent dated 15th May 2022 is granted. The marriage celebrated by the parties on 31st March 2021 is hereby dissolved.

There will be no order as to cost.

[SGD]
BENEDICTA ANTWI (MRS)
DISTRICT MAGISTRATE

COUNSEL:

ALFRED NII ADJIN
FOR PETITIONER

.....ABSENT

BENJAMIN KWOFIE HOLDING BRIEF
FOR EUDOCIA N. QUARTEY FOR RESP

....PRESENT

PARTIES:

PETITIONER ... PRESENT
RESPONDENT ... PRESENT

