

IN THE DISTRICT COURT SITTING AT AMASAMAN ON THURSDAY THE 17TH
DAY OF AUGUST, 2023 BEFORE H/W STANISLAUS AMANOIPO –
MAGISTRATE

SUIT NO. A4/143/22

GORDON OSEI AGYEMANG

VRS

BERNICE OSEI AGYEMANG

DORA BAWAH ASAMOAH FOR PETITIONER
VINCENT AIKINS FOR RESPONDENT

J U D G M E N T

1. The Petitioner got married to Respondent under ordinance marriage on the 13th day of November, 2024 at Registrar General's Department, Accra. They have three issues to the marriage.

On the 11th August, 2022, the Petitioner filed an amended petition for the dissolution of the marriage between the Petitioner and the Respondent celebrated on 13th day of November 2004 on the grounds that the marriage has broken down beyond reconciliation for reasons of unreasonable behavior on the part of the Respondent. Wherefore, the Petitioner seeks the following reliefs;

- a) An order for lawful dissolution of the ordinance marriage contracted between the parties herein on 13th day of November, 20224 which said marriage has broken down beyond reconciliation.
- b) That the Petitioner to continue to cater for the children's educational and recreational needs as well as lunch at school and provision of their clothing occasionally of the children.
- c) That the Respondent continues to cater for their health and recreational needs of the children as they fall due.

- d) An order for the custody of the children to be granted Respondent with reasonable access to the Petitioner every week and part of vacations and every other holiday.
- e) Parties to bear their own cost.

2. On the 8th February, 2023, the Respondent filed a response to the Petitioner's amended petition. She admits that the marriage contracted on 13th November, 2004. Thus filed the following cross-petition.

- i) That the marriage be dissolved.
- ii) An order for payment of lump sum of Two Hundred Thousand Ghana Cedis (GH¢200,000.00).
- iii) An order for custody of the children to the Respondent.
- iv) Monthly maintenance of Five Thousand Ghana Cedis (GH¢5,000.00) for the three children, payment of their school fees and hospital bills.
- v) Cost.

3. PETITIONER'S CASE

The Petitioner is no longer desirous of being yoked till eternity with the Respondent and convinced that his marriage to Respondent had broken down beyond reconciliation. On the 11th August, 2022, he filed a petition for dissolution of his marriage to Respondent celebrated on the 13th of November, 2004. On the 25th December, 2022, filed witness statement and attached as exhibits an indentures of property acquired, valuation report and mobile money transaction reports as evidence. Before they got married, he had a piece of land about half plot measuring 100 by 35 feet at Kwabenya which he had paid in instalments. After they got married, he added Respondent's name to the documents as a co-owner of the land.

Since they were both working, they pulled resources together to acquire a bigger land at Franco Estate measuring 100 by 40 feet. Meanwhile, they had completed three bedroom house on the land at Kwabenya. So they built a one-storey building with four rooms at the first floor and two rooms at the ground floor which was intended for a guest house but due to lack of funds, the project was stalled. That however, at the time Respondent who had employment at Bank informed him management was to grant her a loan of GH¢100,000.00 to buy a house. Petitioner says he then suggested and the ownership of the house at Kwabenya was changed into Respondent's name as sole owner which enabled Respondent to obtain the loan on mortgage.

However, that on evaluation of Kwabenya house, the value was assessed as GH¢160,000.00 which they agreed to 60:40 percentage ratio ^0% for Respondent and Respondent's contribution of GH¢100,000.00 in the form of mortgage used to complete the Franco Estate project as guest house. GH¢20,000.00 of the amount of the loan was used to acquire another land at Oyarifa. Petitioner says the hotel started operating in 2010 but mismanaged by the Respondent's brother. They however, sold one of their cars and purchased a piece of land, 50 by 100 feet behind the hotel.

At this point, according to Petitioner, he managed the Hotel personally and made so much profit. That he started another building project on their land at Oyarifa in 2014. Despite challenges on payment of a loan he contracted to continue the project, they managed to complete the project in 2020. He also started a car rental business which he made profit and bought another land behind the hotel which was used to build extra rooms, bar and a swimming pool for the hotel.

According to Petitioner, he worked so hard and completed the project and the rooms in the hotel increased to 23 rooms.

Then in 2019, Respondent expressed her interest in the hotel business. According to Petitioner, he sold the hotel and area of the swimming pool which proceeds he gave to Respondent who wanted to enter business in China. However, that on her return, no productive outcome was realized and there arose lots of misunderstandings between them. With lots of incidents and mishaps, they agreed to sell the hotel. It is the case of the Petitioner that Respondent had collaborated with her boyfriend to buy the hotel. On their misunderstandings, the family met in an attempt to settle which did not yield results when according to Petitioner, the traditional drinks were returned by Respondent's family ending the marriage.

That he accepted and gave the matrimonial home and the hotel as compensation to Respondent for peace and also for the children to be housed and catered for adequately with the proceeds from the hotel.

He is now into farming and picking up pieces of his life as the Respondent has taken everything they both worked to acquire as couple. He is still however,

catering for the educational and recreation needs of the children as well as school lunch. He buys them clothing as and when need be. Concluding, the Petitioner says he has suffered series of emotional trauma from Respondent's actions for which reason the marriage between Respondent and him has broken down beyond reconciliation.

4. RESPONDENT'S CASE

The Respondent admits that their marriage has indeed broken down beyond reconciliation. However, that the land at Kwabenya was bought after the parties got married in 2004 which documents would show the land was in fact acquired in 2006 and not 2003.

Further that, the house on the land was built with her support with loan of GH¢10,000.00 because they were evicted from the Petitioner's uncle's house. On the hotel land, she sold her car for GH¢14,000.00 for the land. On the construction, she obtained two credit facilities being a personal loan and a welfare loan which proceeds was used to commence the construction works. She had to use all her monthly, allowance quarterly, and yearly allowances in the construction works. Since she was neck deep in debt in terms of loans, they took a decision to convert the property as a guest house such that proceeds would help ease the burden on her.

According to Respondent, through the marriage, loan was used to complete the Kwabenya house, the plot of land acquired at Oyarifa was resold and the proceeds reinvested in the guest house business.

Respondent denies his brother mismanaging the hotel business who he said only worked on part-time since he was a student at the University. Further, the land behind the hotel was rather purchased with a loan she obtained in 2013/2014 from her employers. She denied the Petitioner sold a car which proceeds was used as alleged.

The Respondent says the Petitioner failed to account for his stewardship of the hotel rather running down the business and incurring debts. That the loan that was taken by Petitioner was mismanaged with the business running with debts owing the bank in excess of GH¢100,000.00 which she partly paid with proceeds of her Honda CRV, 2014 model sold with the hotel generator.

Respondent says no time did the Petitioner's father as alleged assisted to amortize the debts accrued by his son in his mismanagement of the business.

On the completion of the first and second floors by the hotel project, Respondent contends that was from proceeds of her liquidated provident fund of GH¢100,000.00. That this amount has never been given back to her from the business which parties agreed was a loan to the business that though Petitioner claimed to be running a viable business, the company account was always empty signaling the business was in fact being mismanaged. Thus, it became obvious that she needed to find alternative streams of income and to divest herself of any involvement in the hotel business because since 2000's when she made investments, nothing had come out of it. That when she made request for GH¢100,000.00 from the business though Petitioner sold the plot of land for GH¢40,000.00, Petitioner only gave her GH¢20,000.00. On the sale of the hotel, Respondent says Petitioner single handedly decided same and caused the valuation at USD600,000. She however, saw that the hotel was in a bad shape and so she negotiated with Petitioner to sell it at USD300,000. Further that, she sought help from friends to sell the hotel looking at the efforts she put in the building the property.

On the issues in the marriage, the Respondent says it was her late father's brother who called Petitioner for the meeting. That Respondent's family returned the drink on the request by the Petitioner. Concluding, Respondent says she lived in a rent home at Ashongman Estate at the time of their separation and the hotel was also sold out which the Petitioner took all his shares and has invested into a hotel he is currently operating. On the children, Respondent says she is single handedly catering for them till date.

5. From the pleadings and witness statements filed, the issues emanating include;

- i) Whether or not the marriage between the parties has broken down beyond reconciliation.
- ii) Whether or not the children custody to be granted the Respondent and the maintenance of the children.
- iii) Whether or not the Respondent is entitled to be compensated with lump sum.

6. BURDEN OF PROOF:

The general principle as to which party bears the burden of proof in respect of civil matters is on the Plaintiff, in this case the Petitioner, thus the Petitioner ought to produce sufficient evidence before this Court to prove to the satisfaction of the Court that it is entitled to the reliefs it seeks on the preponderance of probabilities.

Section 11 (1) provides that;

“For provision of this act, the burden of producing evidence means the obligation a party to introduce sufficient evidence to avoid a ruling against him on the issue”.

Section 11 (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 non-existence.

Section 12 (1) states;

“Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities.”

Section 12 (2) says;

“Preponderance of probabilities means that the degree of certainty of believe in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable then its non-existence.

Section 14 also says;

“Except as otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

7. Thus generally, the principle of law is that it is the duty of the Plaintiff, in this case the Petitioner to prove his case that he must prove what he alleges. In other words, it is the party who raises in his pleadings an essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scale in his favour

when on a particular issue, the Plaintiff leads some evidence to prove his claim if not he loses in that particular issue. See the case of **Ababio vrs Akwesi III (1974-1975) GBA 774 further cited in the care of citizen Kofi Entertainment Concept Ltd vrs Guinness Ghana Breweries Ltd. (2012) GMJ 167 by Aikin JSC.**

The combined effect of the above provisions as well as the judicial authorities makes it clear that Petitioner is under legal obligation as well as Respondent as a counter-petitioner to demonstrate that the reliefs they seek from the Court is borne by evidence and thus if they fail to introduce sufficient evidence to prove their respective case on the preponderance of probabilities, same ought to fail.

8. In Ghana, when a couple decide to marry under the ordinance, then they can only obtain divorce through the Court. The ground upon which a divorce can be obtained from the Court is clearly stated under the Matrimonial Causes Act, 1971 (Act 367).

Section 1 (2) of the Matrimonial Cause Act, 1971 (Act 367) provides that;

“The sole ground for granting a petition for divorce will be that the marriage has broken down beyond reconciliation. And in proving that the marriage has broken down beyond reconciliation, a Petitioner must establish one of six (6) causes that is;

- ✓ Unreasonable behavior;
- ✓ Desertion for a period of two years;
- ✓ Consent of both parties where they have not lived together as husband and wife for a period of two years;
- ✓ Not having lived together as husband and wife for a period of five years;
- ✓ Finally, inability to reconcile differences after diligent effort.

9. Divorce is by means of enquiry and a Court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. Thus, although the Respondent in her answer and witness statement, admitted that the parties have agreed to the dissolution of the marriage, in fact they have filed terms of settlement on all ancillary issues, the Court took evidence to satisfy itself that the marriage has broken down beyond reconciliation.

10.The parties having filed settlement terms on the ancillary issues, the only issue to be resolved by the Court is to determine whether or not the marriage celebrated by the parties on the 13th November, 2014 has broken down beyond reconciliation.

11.The parties herein admitted in their pleading and in evidence that their marriage has broken down beyond reconciliation and that attempts by both family members to reconcile them has not been successful.

The misunderstanding centered mainly on the business set up is the cause of the marriage leading to the breakdown. Respondent accused Petitioner of mismanagement of the business leading to indebtedness on the part of the Respondent who is said to have taken loans from her employers for the project. This misunderstanding led to the sale of the business and in fact, a separation of the couple who now live apart. Thus, both parties accused each other of mismanagement of funds as the cause leading to misunderstanding and eventual dissolution of the customary marriage when Petitioner's customary drink was returned. In cross-examination, both parties did not deny the assertion made.

From the evidence therefore, the Court finds that the parties have dissolved the customary marriage and have been separated for more than 2 years. It is further in evidence that the parties on diligent effort, have not been able to reconcile their differences.

In the circumstance, this Court finds that the marriage between the couple has broken down beyond reconciliation. To borrow the words of Amissah J. A. in the case *Knudsen vrs Knudsen* (1976) 1 GLR 204;

“.... Although it is desirous to keep the family unity together, when both parties are no longer willing to maintain that unity and all interested parties including their parents have failed to reconcile them, they must be allowed to go their separate ways.”

This marriage is dissolved under Section 2 (1) (d) and 2 (1) (f) for failure to live together as husband and wife for 2 years and for failure to reconcile their differences. The Court adopts the settlement terms on the ancillary issues. No cost awarded either side.

(SGD)

H/W STANISLAUS AMANOIPO

(MAGISTRATE)