

IN THE DISTRICT COURT SITTING AT AMASAMAN ON THURSDAY THE 5<sup>TH</sup>  
DAY OF OCTOBER, 2023 BEFORE H/W STANISLAUS AMANOIPO –  
MAGISTRATE

SUIT NO. A4/04/21

**JULIET KUNAAZZA**

**VRS**

**JOSHUA OPOKU**

LINUS DZATASHIE FOR RESPONDENT

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## **J U D G M E N T**

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1. The Petitioner filed the instant petition for divorce on ground of unreasonable behavior on the part of the Respondent. The Petitioner accused Respondent of being abusive physically and threatened to drop the Petitioner into a manhole. Further that, the Respondent has committed adultery with other women one of such ladies has a child for the Respondent whilst he is currently living with another lady in the matrimonial home. That as a result, they have been separated for 3years prior to the filing of this petition. The Petitioner's prayer is for the following reliefs;
  - i) That the marriage celebrated between the parties somewhere in June, 2005 be dissolved.
  - ii) That the parties share equally the property acquired:
    - a) Two (2) bedroom self-contained apartments and two (2) single room self-contained apartment located at Obeyeyie near Amasaman.
    - i) Six (6) bedrooms house located at Akumadan in the Ashanti Region.
  - iii) That the Respondent maintain the children GH¢600.00 monthly and to pay medical bills and school fees.

iv) Alimony of GH¢6,000.00 to Petitioner.

2. On the 13<sup>th</sup> July, 2021, the Respondent filed an answer to the petition and denied the Petitioner's averments contained in the petition and that the marriage has not broken down beyond reconciliation. Further that, rather it was the Petitioner who started acting strangely after the birth of their first child, under the pretext that her twin sister was still unmarried. That he has never made attempt to beat or threatened to put the Petitioner in a manhole.

That though Petitioner's twin sister eventually got married and became pregnant, the Petitioner still continued to deny Respondent sex with the excuse that the twin sister who was abroad had promised to take her abroad and hence did not want to risk losing that opportunity by getting pregnant. And for 4years, the Petitioner denied him sex then told him to go ahead to have sex outside since she was not prepared to have sex with him and further that, she does not enjoy sex with him as compared to her former boyfriend who had a bigger penis. Therefore, that it was the Petitioner's attitude that compelled him to have an affair with a woman leading to a third child, Nana Opoku. However, that he still loves the Petitioner and wants her back in the matrimonial home. Therefore prays that the marriage is not dissolved.

3. The Court sums up issues emanating from the pleading s and the respective reliefs claimed by the parties herein against each other as follows;
  - i) Whether or not the marriage between the parties has broken down beyond reconciliation.
  - ii) Whether or not the Petitioner is entitled to a share in the matrimonial property.
  - iii) Whether or not the Petitioner is entitled to alimony.
  - iv) Whether or not Petitioner is entitled to custody, maintenance and school fees of the children.

4. 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."

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.”

The combined effect of proving each and every allegation that they are relying on by producing sufficient evidence which would lead this Court to conclude that the existence of the facts they allege are more probable than their non-existence. This position has been held by the Supreme Court in the case of **Fosua and Adu-Poku vrs Dufie and Adu-Poku Mensah (2009) SC GLR 310**.

**5. ISSUE ONE:** Whether or not the marriage between the parties has broken down beyond reconciliation.

The Respondent has not denied the separation in the marriage. The Petitioner stated that she has been separated for 3years prior to the petition before the Court. Despite this, the Respondent contend that the marriage has not broken down beyond reconciliation. They however, accused each other of different sets of facts forming the basis of their respective claims of unreasonable behavior against each other.

Whereas the Petitioner accused the Respondent of physical abuse and adultery as her basis of unreasonable behavior, the Respondent on the other hand accused the Petitioner of denial of sex as his basis that led him to commit adultery.

**6.** The law on evidence require each party to lead evidence on the facts they allege before this Court. In the Supreme Court case in *Acka vrs Pergah Transport Ltd. (2010) SC GLR 278 Atuguba JSC* held;

“It is trite that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence. This is a requirement of the law on evidence under Sections 10 and 11 of the Evidence Act.”

On the part of the Petitioner, there is no concrete evidence adduce on the allegation of physical abuse except to say so in the statement. PW1 also

indicated that he is aware that the Respondent is physically abusive without more in proof.

On the accusation of adultery, the Respondent does not deny same except to say that the Petitioner denied him sex pushing him to have an affair which resulted in pregnancy with the said woman.

In the case of **Adjetey and Another vrs Adjetey (1973) 2 GLR 216, per Sarkodie J.** (as he then was);

“Adultery must be proved to the satisfaction of the Court even though the evidence need not reach certainty as required in criminal proceedings, it must carry a high degree of probability .....

Direct evidence of adultery is rare. In nearly every case, the fact of adultery is inferred from the circumstances which by fair and necessary inference lead to that conclusion there must be proof of disposition and opportunity for committing adultery but the conjunction of strong inclination with evidence of opportunity does not lead to an irrebuttable presumption that adultery has been committed and likewise the Court is not bound to infer adultery from evidence of opportunity alone”.

7. In this instance, the Respondent has admitted to committing adultery. However, that the Petitioner pushed him when she denied him sex which behaviour the Respondent said was unreasonable on the part of the Petitioner as well.

In **Arthur vrs Arthur (1984) 106 SOL JO 317 CA**, the Court held that, willful refusal of sexual intercourse or persistent demands for in ordinate sexual acts or oral practices may amount to unreasonable behaviour.

The evidence is also that the parties have since been separated for over three (3) years. The Petitioner says the Respondent's adulterous relationship with different women became distasteful and intolerable. She was therefore unable to continue to live with him as a husband. Because she became a laughing stock which caused her a lot of anxiety and discomfort. The result being that she had to leave with the children to live elsewhere. According to PW1, a brother to the Petitioner, when he went with Petitioner to take her personal belongings, they met a woman in the matrimonial home.

8. The Court finds the bold admission of having a child with another woman as clear evidence that adultery has been committed on the part of the Respondent. However, the evidence has been led by the Respondent that Petitioner denied him sex which caused to commit adultery. After the first child which period respondent alleged the Petitioner denied him sex, they later had the second child aged 5years. The evidence also is that the child born of the other woman is aged about 3years. This would mean that the issues in relation to the marriage started as a result of Respondent's extra marital affairs. In the circumstance, I find the Petitioner's evidence probable and the marriage has broken down beyond reconciliation on grounds of adultery, not living together as man and wife for 5years and inability to reconcile their differences under Sections 2 (1) (a) (d) (f) of the Matrimonial Causes Act, 1971, Act 367.

9. The next issue is whether or not Petitioner is entitled to a share of the property said to have been acquired.

The Petitioner's case is that they got married in the year 2005. According to her, they acquired two properties, one at Obeyeyie near Amasaman and another at Akumadan, Ashanti Region. The Petitioner filed Exhibit 'B' attached to her supplementary witness statement. No evidence is filed in respect of the said property at Akumadan.

The Respondent admitted to the property at Obeyeyie but that he built the house from his own resources with no contribution from the Petitioner. Therefore he never acquired any land at Obeyeyie or Akumadan nor acquired any property together with Petitioner.

In the case of **Mensah vrs Mensah (2012) 2 GLR 391**, the Court stated that the sharing of spousal property should no longer be Defendant on the substantial contribution principles and that property acquired during marriage is a joint-property even if the other spouse did not make any contribution. On the issue of sharing, the Court stated that joint property should be on a 50/50 basis unless the equalities of a particular case will make the application of the equality is equity principle unfair.

In the case **Boafo vrs Boafo (2005-2006) SC GLR 705**, the Supreme Court explained the principle of equality is equity as that equal sharing should amount

to a just and equitable sharing and that what is equitable is essence is what is just, reasonable and accords with common sense and fair play.

**10.**In evidence, the parties got married in 2005. Exhibit 'B' the indenture of the land acquired at Abehenease near Accra is dated 16<sup>th</sup> February, 2007. The Petitioner signed same as Mrs. Juliet Opoku as a witness to the indenture.

Thus, though the Respondent has denied acquiring any land or property jointly with the Petitioner, the evidence in contrary that the land to the property has been acquired when the parties were married and therefore matrimonial property. There is however, no evidence relative to the alleged property at Akumadan.

Finally, the Court award the Petitioner 50% of the value of the property at Abehenease near Amasaman.

**11.**On the claim for alimony, the Matrimonial Causes Act, 1971 (Act 367) Section 20 (1) provides that;

"The Court may order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable or immovable property as settlement of property rights or in lieu thereof as part of a financial provision as the Court thinks just and equitable".

In **Ribeiro vs Ribeiro (1989-90) GLR 19**, the Court Stipulate factors to consider in the award of lump sum payment as financial provision to include;

- ✓ Their standard of living
- ✓ Their financial needs, their age and duration of marriage.
- ✓ Their physical and mental condition.
- ✓ Their contribution to the welfare of the marriage any contribution made by each by looking after the home or caring for the family.
- ✓ Their position in life and existence or non-existence of children and who is to have the case and custody of them.

The Petitioner is praying for alimony of GH₵6,000.00. The evidence is that the Petitioner currently lives the children elsewhere. She is gainfully employed. However, that Respondent's business as a driver is not as before. The Petitioner however provided evidence that Respondent still runs his business as a driver and therefore capable. The Court has considered the evidence generally in

terms of the financial position of the parties. The Court would award alimony of GH¢4,000.00 for Petitioner.

**12.** The last but not the least is for the custody and maintenance of the children. Section 22 of the Children's Act, Act 560, the Court has power with in its own initiative or an application of either party to make an order in respect of any child and order which it thinks reasonable and for the benefit of the child.

Section 45 (1) of act 560 provides that;

"When the Court is deciding custody of a child, it must take into consideration what is in the best interest of the children and especially for a young child to be with his or her mother."

Section 45 (1), a Family Tribunal shall consider the best interest of the child and the importance of a young child with his mother when making an order of custody or access.

In the case of **Opoku-Owusu vrs Opoku-Owusu (1973) 2 GLR 349**, the Court held as follows;

"In such an application, the paramount consideration is the welfare of the child. The Court's duty is to protect the children irrespective of the issues of the parents. In the normal course, the mother should have care and central of every young children. Particularly, girls or those who for some special reason need a mother's care; and older boys to have the influence of their father. It is desirable to keep brother and sisters together and not to split them up. A separation will disturb their progress and may affect them emotionally."

Similarly, Section 16 of the Matrimonial Causes Act, Act 367 also states that either party to a marriage may petition the Court for an order for maintenance on the ground that the other party to the marriage has willfully neglected to provide or to make property contributions towards reasonable maintenance for Petitioner or a child of the household.

**13.** The Respondent from the evidence has not opposed the custody of the children who have lived with Petitioner for over 3years since the separation. In the circumstance, custody is granted Petitioner with access to Respondent during vacations.

In terms of maintenance, the Petitioner is seeking GH¢600.00 monthly and stated that the Respondent has neglected their maintenance since the separation and filed as evidence receipts of school fees paid by her for 2018, 2019 and 2021.

The Respondent's case is that when business was good, he took care of Petitioner and the children which he still does anytime he had some money. That though he is no longer driving as he used to do, he gave the little he has to Petitioner to support. However, that he is currently jobless. The Court has considered the circumstances financially of both parties and would award maintenance as follows;

- i. That Respondent provides GH¢500.00 monthly for feeding.
- ii. The school fees payable to be shared 50/50 by the parties.
- iii. The Respondent to renew yearly the health insurance cards of the children.
- iv. All other cost in terms of upkeep of the children to be shared 50/50.

**14.** In conclusion, the Court upon consideration of the reliefs filed by the parties, the Court made the following awards;

- a) That the marriage celebrated by 2005 is broken down beyond reconciliation on grounds of adultery, failure to live as man and wife for 2 years and their inability to reconcile their differences under Section 2 (1) (a) (d) and (f) of the Matrimonial Causes Act, Act 367.
- b) The Court finds that the property at Abehenease near Amasaman is jointly acquired. The Petitioner therefore awarded 50% of the value of the property.
- c) Petitioner further awarded alimony of GH¢4,000.00 based on the circumstances of the parties.
- d) On custody and maintenance, the Petitioner is awarded custody with access to Respondent during vacation. On maintenance, the Court made the following;
  - I. Monthly maintenance of GH¢500.00.
  - II. School fees payable to be shared 50/50.
  - III. The Respondent to renew the health insurance cards of the children yearly.
  - IV. All other cost to be shared equally by the parties.



**(SGD)**  
**H/W STANISLAUS AMANOIPO**  
**(MAGISTRATE)**