CORAM: HER WORSHIP MRS. ANNETTE SOPHIA ESSEL, SITTING AS DISTRICT MAGISTRATE, AMASAMAN DISTRICT COURT "B" ON THE 18th DAY OF DECEMBER, 2023

SUIT NUMBER: A4/64/22

SAMUEL ASAMOAH PANYIN **PETITIONER**

VRS

GEORGINA ABBEY OBREMPONG **RESPONDENT**

JUDGMENT

INTRODUCTION:

The petitioner filed a Divorce Petition in the Court for the dissolution of his marriage to the respondent on grounds that same had broken down beyond reconciliation. The petitioner stated that the reasons for his prayer to dissolve the marriage was that parties after diligent effort were unable to reconcile their differences. The petitioner is a driver and the respondent is a caterer by occupation. Parties were married under the ordinance (Cap 127) on 14th November, 2015. Following the celebration of their marriage, parties cohabited at Taifa in the Ga-East District of the Greater-Accra Region of the Republic of Ghana. There are no issues of this marriage.

FACTS OF THE CASE:

The petitioner stated that since contracting their marriage in 2016, each party held a divergent view regarding the issue of challenges they both faced over the conception of children in their union. The petitioner claimed that try as he had in seeking help in this direction from both medical and herbal service providers, by cooperating with all medical

procedures and directives' regarding medication, the respondent on the other hand was over-reacting negatively towards his recovery process by rushing the treatment process and when success was delayed would give him no peace. By her actions together with that of her relatives, this had rendered all his efforts at childbirth in the marriage futile. The petitioner also claimed that same efforts at supporting the parties in their quest for children by some family members had also proven futile due to the respondent's uncooperative attitude. The petitioner claimed that all diligent attempts at reconciliation by parties had proven and therefore prayed for the dissolution of the marriage.

The respondent in her response to the petition did not deny that parties had challenges with childbirth. She further added that at the commencement of their union she openly disclosed her health challenge of fibroids to the Respondent and consequently proceeded to undergo surgery to have this condition resolved so that same would not impede their attempts at childbirth. However, the respondent kept shrouded his virility state from her and rather exposed her to grave external interference from his relatives particularly his mother in their union and also their attempts at childbirth. She narrated that she was consequently subjected to several medical procedures both orthodox and unorthodox in her attempts at conception whilst the respondent adopted a laid-back approach to same and on some occasions was clearly uncooperative in treatment not to mention his occasional denial of sex to her for extended periods. She narrated that this herculean challenge in their union had taken a toll on her finances and drained her so much emotionally as she sought help from several medical facilities and also counselling from her church and loved ones and any other person she believed could be of assistance. In sum, she was not opposed to the dissolution of their marriage due to their inability to reconcile their differences on the issue of childbirth in their marriage.

PROCEDURE OF TRIAL:

Parties filed their respective pleadings at the commencement of this case. At the close of pleadings, parties were referred to Court-connected ADR to attempt settlement with respect to the ancillary reliefs in accordance with **Section 8(2) of the Matrimonial Causes Act, 1971 (Act 367)** which provides as follows:

"if at any stage of proceedings for divorce it appears to the court that there is reasonable possibility of reconciliation, the court may adjourn the proceedings for a reasonable time to enable attempts at to be made to effect a reconciliation, and may direct that the parties to the marriage, together with a representatives of their families or any conciliator appointed by the court and mutually agreeable to the parties, attempt to effect reconciliation".

Parties returned to court and filed partial terms of settlement for adoption by the Court as consent judgement hence the Court proceeded to hear the matter. For purposes of expediency of Hearing, parties filed their witness statements with exhibits attached.

In accordance with Section 2(2) and 2(3) of the Matrimonial Causes Act, 1971 (Act 367), on a petition for divorce, the court ought to inquire so far as is reasonable, into the facts alleged by Petitioner and Respondent to satisfy itself on all the evidence that the marriage between the parties has indeed broken down beyond reconciliation. **Section 2(2) and Section 2(3) of the Matrimonial Causes Act, 1971 (Act 367)** provides as follows:

(2) On a petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

(3) Although the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation."

In the case of **Mariam Partey v Williams Partey [2014] 71 GMJ 98 C.A at pages 119 – 120** the wise words of Kusi Appiah JA. were that:

"The only procedure prescribed by law for the dissolution of marriages by the court is provided by Section 2(2) and (3) of Act 367, that the court must inquire into and satisfied on all the evidence led before it that indeed the marriage has broken down beyond reconciliation."

Also, in the case of **Ansah v Ansah [1982 – 83] G.L.R 1127 – 1133** Owusu Addo J. held that:

"I must first of all emphasize that the standard of proof required by law in proof of breakdown of a marriage beyond reconciliation, is the same whether the marriage was solemnised in a church or not."

The petitioner was self-represented and the respondent was represented by counsel. Parties went through full trial and relied on their witness statements and exhibits tendered without objection together with their viva-voce evidence during Hearing. Parties testified b themselves during trial. In support of their respective testimonies before the court, the petitioner called two witnesses and the defendant called three witnesses. Parties thereafter announced the closure of their respective cases. At the close of Hearing, the case was closed for judgement.

JURISDICTION:

The court ensured that it had jurisdiction to entertain this matter before allowing parties to lead evidence. **Section 31 and 32 of the Matrimonial Causes Act, 1971 (Act 367**) stipulates that:

31. *"The court shall have jurisdiction in any proceedings under this Act where either party to the marriage –*
    - *(a.) Is a citizen of Ghana; or*
    - *(b.) Is domiciled in Ghana; or*
    - *(c.) Has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings.*
32. *"For the sole purpose of determining jurisdiction under this Act, the domicile of a married woman shall be determined as if the woman was above the age of twenty-one and not married."*

In the case of **Happee v Happee and Another [1974] 2 GLR 186-192** Edusei J. held that:

"The court shall have jurisdiction in any proceedings under this Act whether either party to the marriage -

- *(a) is a citizen of Ghana; or*
- *(b) is domiciled in Ghana; or*
- *(c) has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings."*

EXHIBITS FILED:

In addition to their witness statements and viva voce evidence, the Plaintiff filed no exhibit to buttress her case. The Defendant tendered the following exhibits in support of his case:

Exhibit "1" Series: Photocopies of medical facility registration cards which were attended by the respondent for purposes of childbirth.

Exhibit "2": Copy of the respondent's medical health card at Jaggrey's Infertility & Natural Health Clinic on 24th November, 2017.

Exhibit "3": Copy of the petitioner's medical health card at Jaggrey's Infertility & Natural Health Clinic on 12th October, 2020.

Exhibit 4: Petitioner's medical results undertaken at Med+ Community Laboratory.

Exhibit 5: Copy of church programme flyer.

Exhibit 6: Copy of Ghana Police Service Extract dated 24th February, 2022.

ISSUE FOR DETERMINATION:

This Court mindful of the pleadings of the parties, their respective witness statements, the exhibits tendered in evidence and the cross-examination of the parties and also the nature of the reliefs sought, set down to be determined to bring finality to the suit the issue of whether or not the marriage celebrated between parties herein had broken down beyond reconciliation.

BURDEN OF PROOF:

Although this action is matrimonial it is still civil in nature and the burden of proof on facts alleged must be established by the one making the claim, thus he who avers must prove. The standard of proof in all civil cases is on the preponderance of probabilities. Section 12 of the Evidence Decree, N.R.C.D 323 provides that:

> *"(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities.*

(2) "Preponderance of probabilities" means the degree of certainty of belief 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 than its non-existence."

In the case of **Serwah V Kesse [1960] GLR 227 at 228** Van Lare JSC. stated that:

"The onus lies on the plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. The plaintiff in this case must rely on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant.

Section 11(1) and (4) of the Evidence Act, 1975 (NRCD 323) stipulates that:

Section 11—Burden of Producing Evidence Defined.

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(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 14 of the Evidence Act, 1975 (NRCD 323) provide that:

Allocation of Burden of Persuasion

"Except as otherwise provided by law, unless 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 that party is asserting."

Section 10 of the Evidence Act, 1975 (NRCD 323) states that:

Burden of Persuasion Defined

(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) *The burden of persuasion may require a party*

(a) *to raise a reasonable doubt concerning the existence or non-existence of a fact, or*

(b) *to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

Section 17 of the Evidence Act, 1975 (NRCD 323) states that:

17. *Allocation of burden of producing evidence*

(1) *Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof*

(2) *The burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.*

In the case of **Faiba v State Hotels Corporation (1968) G.L.R 471**, Ollenu JA. (as he then was), held that:

"Onus in law always lies upon the party who would lose if no evidence is led in the case; and where some evidence has been led, it lies upon the party who would lose if no further evidence was led."

Additionally, in the decided case of **Patrick Essoun v Boham, Civil Appeal No.54/1/2014 [2014] GHASC 156 dated 21st May 2014,** the Supreme Court, speaking through Anin Yeboah JSC. (as he then was), stated as follows:

"It is a cardinal rule of evidence that he who bears the burden of proof must prove his case by producing the required evidence of the facts in issue."

EVIDENCE ADDUCED BY PETITIONER:

The petitioner asserted that following the celebration of their marriage and cohabitation, the joy of their marriage was overtaken by the delay in childbirth of parties. He asserted that he was not oblivious to the medical condition of fibroid of the petitioner as at the commencement of their union however as it was disclosed to them that same would not

hinder their attempts at childbearing in any way he proceeded with the marriage. He narrated that in as much as his mother had kept their challenge under wraps and was doing all within her power to seek help for parties herein, on the under hand the respondent's relatives had seized upon this challenge of parties herein and were publishing same much to the chagrin of the petitioner. He further narrated that this external interference had reached unbearable levels to the extent that they encouraged the respondent to part ways with him. He concluded that he had done all within his power to be a loving and caring spouse and to assure the respondent to relax but same proved futile hence the commencement of this suit.

To buttress his testimony, he called Kwabena Asamoah (PW 1) who testified on oath that as a father of the petitioner he played a major role in the celebration of the marriage of parties herein. He was not oblivious to the challenge of delayed childbirth of parties herein and regularly assured the respondent to relax and give herself some time which same proved futile. He claimed that he worked closely with the respondent's family to encourage the marriage to flourish till the respondent registered her desire to have the marriage dissolved to him. He claimed that the respondent also informed him at that stage that the petitioner additionally exhibited unreasonable conduct towards her such as threats of harm which same she had lodged a complaint with the police. He asserted that in this regard he directed the petitioner to rent a place of abode for the respondent to which he heeded and rented and paid for a single room residential facility for a two-year period commencing April, 2022 to April, 2024 for her.

The second witness of the petitioner; Samuel Asamoah Kakra (PW 2) who is a brother of the petitioner testified that he lived with parties in their matrimonial home for over six years. He corroborated the testimony of Pw 1 and the petitioner. He narrated that for this reason of their childless union, the respondent on more than one occasion exhibited unreasonable conduct such as hurling insults at the petitioner and on another occasion without any provocation from the petitioner she poured water on him whilst in his sleep to which PW 2 advised petitioner to exercise restraint.

EVIDENCE ADDUCED BY RESPONDENT:

Petitioner in her testimony under oath before the court stated that prior to their marriage, she had fibroids which same she disclosed to the petitioner and further sought treatment for same. She claimed that very early in the marriage the petitioner would deny her sex for extended periods which she complained to him about and which rather aroused his anger whenever she did.

She continued that three month into their marriage, her mother-in-law confronted her on the childless state of their marriage. She consequently encouraged and supported the respondent to seek herbal treatment in this regard in Koforidua for a year. She stated that she was later advice by her church elders to seek orthodox treatment instead which same advice she heeded and visited several facilities for treatment towards childbirth. In support of her averment, she tendered without objection Exhibits 1 and 2.

She narrated that the respondent had cold feet in seeking assistance towards childbirth only for her to realize that the petitioner had been diagnosed with having a low sperm count on 12th October, 2020. In support of her averment, she tendered Exhibits 3and 4 without objection. She narrated that their relationship remained cordial as the petitioner assured her that he would seek treatment for same only for him to be uncooperative at a developed stage of his treatment.

She asserted that all during this period external pressure from their relatives and the petitioner was so intense that she supported the petitioner financially and also underwent surgery for this purpose, to which PW 2 donated blood in support of her recovery.

She stated that at a stage in the marriage, she was indeed peeved with the respondent noting the extent of support she had lent to the respondent not to mention the surgery she had to undergo for this purpose.

After a while the petitioner rather was fed up with her and on one occasion assaulted her till, she bled from the surgery she had recently undergone. She claimed that after a while the petitioner empathically told her that he had nieces and nephews to care for and was thus not much bothered with his childless state. He later effused to eat food she prepared for

him. Attempts at reconciliation by her church elders also proved futile. Much later the petitioner directed her to stop attending her parent church and rater join him to attend his church; Assemblies of God as he had aspirations of taking a church position as a pastor for which he must project himself in a certain manner to sit that office. The respondent stated that she refused to comply to this direction which served as the last straw that broke the back of their marriage. Respondent then reported threats to harm her till she voluntarily vacated the matrimonial home to live elsewhere following a report of his conduct to the police. In support of her averment, she tendered Exhibit 6 without objection.

The pith of the petitioner's plaint is that it is the petitioner who commenced this action and not her. She concluded that without any provocation, he together with his father approached her relatives and stated their intentions to which pleas from her pastor and loved ones all fell on deaf ears and was thus not opposed to same.

In support of her averment, she called RW1: Emmanuel Abbey who testified that as a father of the respondent, he gave his daughter in marriage to the petitioner. In order to allow them an opportunity to develop their marriage he elected not to interfere in the happenings in the marriage and thus only visited the respondent once during the pendency of their marriage; when she returned home from surgery at the hospital although the respondent visited him often. He claimed that the petitioner's father visited him on an occasion to discuss with him the issue of the childless state of parties and in this direction encouraged them bot to seek counselling which same petitioner did not pursue but rather commenced this suit.

Respondent also called PW 3; Rev. Grace Sekyi who testified that she was a friend and guardian of respondent. She testified that she assisted Respondent both financially and physically before, during when she had to undergo surgery at the Pentecost Hospital, Madina and after. She stated that the respondent invited the petitioner for a meeting which he never honored. She claimed that the respondent was given a series of tests to run which he dragged his feet in undergoing till she advised the respondent to financially sponsor same. She concluded that she had never administered any concoction on the respondent for purposes of childbirth.

ANALYSIS:

In determining this issue, the court shall ascertain if the parties in the cause of their marriage have been unable after diligent effort to reconcile their differences and also that the marriage has broken down beyond reconciliation. Section 1 of the Matrimonial Causes Act, Act 367 provides the grounds which a petitioner can prove to the court that their marriage has broken down beyond reconciliation. Section 1(f) provides that; the petitioner shall satisfy the court of one or more of the following facts; (only the relevant section is quoted):

> *(f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences.*

In the petitioner's Evidence-in-Chief, she asserted that the respondent had a divergent opinion on the issue of childbirth in their marriage. She enumerated the respondent's divergent opinion which she exhibited through the unnecessary pressure and burden he put on him to seek medical assistance to aid in childbirth not to mention the unreasonable conduct she exhibited as a reaction to his "easy-going approach". On the part of the petitioner in his testimony before the court, he strongly exhibited his contrary or irreconcilable view on the issue of childlessness in their marriage. The petitioner denied having any medical challenge thus rendering him incapable of bearing children and averred that it was the petitioner who was quick-tempered and had an adamant attitude coupled with an unrepentant conduct. He narrated that this had led to unnecessary external interference in their marriage from loved ones and other persons such as their landlady, medical service providers and their church leaders. During trial, the petitioner admitted that the core ground for his prayer for divorce was that of their divergent views resulting in their childless union.

On the part of the respondent, in her testimony under oath, she strongly exhibited her contrary/irreconcilable view on this same issue of childlessness in their marriage. The petitioner stated that she had left no stone unturned in her attempts at childbirth and had supported the petitioner in every way she could so that parties could bear a child yet the petitioner was not open to same by his lack of cooperation in childbirth medication and

treatments and also his act of abandoning her company when she needed him most such as when she had to undergo fibroid surgery.

In determining whether the parties have irreconcilable differences, I considered the wise words of Hayfron Benjamin J. in the case of **Mensah V Mensah (1972) 2 GLR 198** where he stated in holding four (4) that:

> *"In seeking to prove failure to reconcile differences, differences must be distinguished from disputes. The differences must be between spouses. They must be such as to make it impossible for the marriage to subsist. Where neither spouse desires a child, failure to have one is not a difference; neither can the courts introduce barrenness or sterility as essential facts under section 2(1) in relation to monogamous marriage. But where neither barrenness nor sterility is admitted and a hopeless disagreement arises as to how to have a child, and a desire for a child is strongly manifested by either spouse, a difference exists under section 2(1)(f)".*

I have therefore considered the happenings within this marriage in an objective manner by considering allegations of the petitioner as against that of the respondent and also considered the evidence each party adduced to establish that after diligent effort; they have been unable to reconcile their differences.

The petitioner mentioned having made attempts to resolve their issues and also by bringing in family members to assist in this regard. This evidence is sufficient and convinces the Court that attempts were made to resolve the issues between parties in accordance with Section 2 (1) (f) of the Matrimonial Causes Act, Act367 which states that:

> *"for the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the Court that the parties to the marriage have, after diligent effort, been unable to reconcile their differences."*

Sarkodee J in the case of **Kotei V Kotei [1974 VOL 2] @ 172** emphasized that:

> *"Notwithstanding proof of one of the facts showing that the marriage had broken down the court had a discretion to refuse to grant the decree of dissolution on the ground that the marriage had not in fact broken down beyond reconciliation. The discretion given to the court*

was not discretion to grant but discretion to refuse a decree of dissolution. The burden was not on the petitioner to show that special facts or grounds existed justifying the exercise of the court's discretion; once he or she came within any one of the provisions specified in section 2 (1) (e) and (f) of Act 367 the presumption was in his or her favor."

For the foregoing observations, having inquired deeply into all the matters and with all the evidence examined, I am wholly satisfied that the marriage celebrated between the parties herein has broken down beyond reconciliation. The court will proceed to dissolve same. The marriage celebrated between parties herein on …….. at ……. is hereby dissolved. Divorce Decree granted.

In respect of the relief for the payment of an amount of Fifty Thousand Cedis (GHC 50,000.00) only by the petitioner to the respondent, I can safely conclude that the respondent abandoned same as no evidence was led by her in proof of same as she bore the burden as stated supra. In light of the above the claim of the respondent against the petitioner as endorsed on her Answer supra, fails in its entirety and same is accordingly dismissed.

I make no award as to cost as both parties have suffered some loss at each other's hands.

H/W ANNETTE SOPHIA ESSEL (MRS.)

MAGISTRATE