

IN THE DISTRICT COURT 1, WHITE HOUSE TEMA HELD BEFORE HER WORSHIP
NAOMI AKYIANO ESQ. (MS.) SITTING AS DISTRICT COURT MAGISTRATE ON
THURSDAY THE 28TH DAY OF NOVEMBER, 2023.

LAWRENCIA MARKWEI

SUIT NO. A4/57/2023

PETITIONER

VS.

TIMOTHY ELIKEM MODEY

RESPONDENT

PETITIONER: PRESENT

RESPONDENT: ABSENT

JUDGMENT

This is an uncontested divorce petition between Lawrencia Markwei (the Petitioner) and Timothy Elikem Modey (the Respondent) are both Ghanaians and got married at Assemblies of God Ministry, Tema Newtown on 14th November, 2015. There are three issues namely: Selorm Kofi Nissi Modey, Elorm Kofi Nissa Modey and Aseye Modey. The Petitioner filed this Divorce Petition on 19th December, 2022 claiming the following relief:

- a. Dissolution of the marriage celebrated on 14th November 2015 at Assemblies of God. Ministry, Tema Newtown.
- b. An order for the Respondent to pay the children's fees, medicals, monthly maintenance of GH¢1,000.00 and other responsibilities when the need arises.

The Respondent was served personally on the 21st December 2022 however, failed to file an answer to the divorce petition. After several hearing notices had been issued to him, he still

failed to appear in court. The court ordered for Witness Statements and the Petitioner filed a Witness Statement on 24/03/2023 and a supplementary Witness Statement on 03/07/2023.

It is trite learning that where a party is given the opportunity to lead evidence in support of his or her stand or in defence of allegations against him but deliberately declines to avail himself of that opportunity, the court will be entitled to proceed with the trial to conclusion. See the case of **In Re West Coast Dyeing Industry Ltd; Adams Vs. Tandoh [1984-86] 2 GLR 561, CA.**

The only issue for determination is whether or not the marriage has broken down beyond reconciliation.

Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) states:

(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section (2) (1) of Act 367 provides facts for which the proof of breakdown of marriage can be ascertained.

Relevant section(s) with reference to this petition is reproduced below:

(b) that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent.

Unreasonable behavior has been defined in English law as “conduct that gives rise to injury to life, or health or conduct that gives rise to a reasonable apprehension of such danger. **Gollins Vs. Gollins** [1964] AC 644.

In order for a party to succeed under this ground the party first has to establish the unreasonable conduct and secondly the fact that as a result of the bad conduct, the Petitioner cannot reasonably be expected to live with the Respondent.

The Court will also require strong evidence of the unreasonable behavior as normal wear and tear of married life will not amount to unreasonable behavior.

Again the test for the parties' inability to live with the other must be an objective test. The Ghanaian case of **Knudsen Vs. Knudsen [1976] 1 GLR 2004-2016** states;

'The test to be applied in determining whether a particular petitioner could or could not reasonably be expected to live with the particular Respondent was an objective one and not a subjective assessment of the conduct and the reaction of the Petitioner. In assessing such conduct the court had to take into account the character, personality, disposition and behavior of the Respondent as alleged and established in the evidence. The conduct may consist of one act if of sufficient gravity or of a persistent course of conduct or series of acts of differing kinds none of which by itself might be sufficient but the cumulative effect of all taken together would be so ...'

In this instant petition, the conduct of the Respondent which the Petitioner finds unreasonable is that he is quick tempered and abusive. Also, he is a wife beater and he physically assaulted the Petitioner for which a report was made to the DEVTRACO DOVVSU Community 25, Tema. The Petitioner has attached a photograph of her eye which is swollen and red but no medical forms were attached. Be that as it may, the Respondent did not avail himself to discredit these allegations. Under the circumstances assault or beating one's spouse is a conduct that amounts to cruelty in the least and on this fact alone, the Court finds that the marriage has broken down beyond reconciliation. The marriage contracted between the two parties is therefore dissolved. Certificate of Marriage Number NLA 9/TM /06/2015 is hereby cancelled.

On the issue of maintenance, section 47 of the Children's Act 1998 Act (560) provides:

- (1) A parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessaries of health, life, education and reasonable shelter for the child.

The Respondent as the father of the children is to share in the raising of the children and I find the amount of Gh¢1,000.00 prayed for by the Petitioner as monthly maintenance for the three children reasonable and it is so ordered that the Respondent pays an amount of GH¢1,000.00 as monthly maintenance effective this 28th November 2023.

With respect to the rented premises, the Respondent is expected to contribute an equal amount for providing shelter for their three children. Or by sharing the current rent of the apartment rented out to the Petitioner or alternatively find a suitable accommodation by himself for the children or provide the physical cash for renting a new accommodation for the children.

He is also to bear the educational, medical bills as and when they fall due.

No orders as to costs, except for costs already awarded.

H/W MS. NAOMI AKYIANO ESQ.

MAGISTRATE

28/11/2023