

IN THE DISTRICT COURT ONE, TEMA ON 23RD DAY OF OCTOBER, 2023
BEFORE H/W NAOMI AKYIANO ESQ. (MS.), SITTING AS DISTRICT
MAGISTRATE.

A4/21/2022

SEBASTIAN APAU

PETITIONER

VRS.

PORSHIA APAU

RESPONDENT

COUNSELS: RUDOLPH TORGBOR OBODAI FOR THE PETITIONER

EFFIBA AMIHERE FOR THE RESPONDENT

JUDGMENT

This is a divorce petition between Sebastian Apau, the Petitioner/Respondent (hereinafter called the Petitioner) and Porshia Apau, the Respondent/Petitioner (hereinafter called the Respondent).

The parties are both Ghanaians and were married under the Ordinance on the 6th of June 2015 at the Lighthouse Chapel International Ghana in respect of which license No. LCI/NL/055/2015 was issued. There is only one issue of the marriage, a six year old child, Elianna Jesylyn Eyran Apau.

On 24th November 2021, the Petitioner filed a petition of divorce claiming;

- (a) That the marriage in fact celebrated between the parties be dissolved.
- (b) That custody of the issue to the marriage be granted to the Petitioner.

(c) Any other orders as the Court may deem fit.

In Answer to the Petition filed on 14th December 2021, the Respondent cross petitioned as follows:

- i. An order for the dissolution of the marriage under the Ordinance that was celebrated on 6th June, 2015 at Lighthouse Chapel International in respect of which licence No. LCI/NL/055/2015 was issued.
- ii. An order for custody of their four years old child, Elianna Jesylyn Eyram Apau, to be given to her with reasonable access to the Petitioner.
- iii. An order for the settlement of one of the vehicles they purchased during the marriage solely on her.
- iv. An order for a half share of the land that they purchased during the term of the marriage.
- v. An order for the Petitioner to provide permanent accommodation for the Respondent and their child for when her contract expires in 2024.
- vi. An order for monthly maintenance of Gh¢2,000.00 with periodic increment for the upkeep of their child as well as payment of school fees, medical bills and other necessities of life.
- vii. An order for the payment of Gh¢100,000.00 by Petitioner as financial settlement to Respondent.
- viii. An order directed at Petitioner to cease exposing their daughter on social media platforms forthwith.
- ix. An order for the Petitioner to pay for the costs of this divorce.

In reply, the Petitioner admitted paragraph 24(i) and 24(viii) of the cross petition being the dissolution of the marriage and the cessation of exposing their daughter to the social media platforms respectively; but denied the rest of the reliefs/averments.

The parties were referred to the Court Connected Alternative Dispute Resolution (CCADR) to attempt and reconciliation and filed a Terms of Settlement (TOS) on 28th July, 2022 which was disregarded by the Court as unsigned. Subsequently, another Terms of Settlement was filed on 14th of March, 2023 which both parties agreed that it forms part of the proceedings. Relevant portions of some of the terms will be referred to as and when it becomes necessary.

ISSUE

The main issue for determination in this petition is whether or not the marriage contracted between the parties has broken down beyond reconciliation.

ANALYSIS AND APPLICATION OF THE LAW

Section 1 (2) of the Matrimonial Causes Act, 1971 (Act-367) provides;

The sole ground for granting a petition for divorce is whether or not the marriage between the parties has broken down beyond reconciliation.

Section 2 subsection (1) (a) to (f) of Act 367 enumerates facts for which proof of the breakdown of marriage can be ascertained and for the purposes of determining this petition, the relevant sections are reproduced below;

2. Proof of breakdown of marriage

- (1) For the purpose of showing that the marriage has broken down beyond reconciliation, the Petitioner shall satisfy the court of one or more of the following facts;
 - (a) That the Respondent has committed adultery and that by reason of the adultery, the Petitioner finds it intolerable to live with the Respondent.

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

...

(d) That the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to the grant of a decree of divorce provided that the consent shall not be unreasonably withheld, and where the court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph despite the refusal.

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

The Respondent had alleged adultery on the part of the Petitioner. However, she failed to prove her allegation and therefore the Court would not focus on this fact.

Both parties accused each other of unreasonable behaviour. Both parties therefore have the burden of proving their claim on a balance of probabilities.

Unreasonable behaviour has been defined in English law as “conduct that gives rise to injury to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger” (See the English case of Gollins v Gollins [1964] A C 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 behaviour as normal wear and tear of married life will not amount to unreasonable behaviour.

Again, the test for the parties' inability to live with the other must be an objective test.

In this instant petition, a summary of the Petitioner's unreasonable behaviour by Respondent are the following:

- Respondent's behaviour changed after she landed a job with Qatar Airways as a flight attendant, she became argumentative, refused to pick up calls and did not respond to Petitioner's messages and insisted on getting a divorce.

On her part, the unreasonable behaviour catalogued by the Respondent attributed to the Petitioner are as follows:

- High handedness, over bearing, erratic, very temperamental which Petitioner exhibits towards her such as the handling of their joint accounts and waking her up in the middle of the night for discussion of their marital issues, being abusive and using hurtful words such as she being a bad mother to their child and also to the public by fighting over traffic issues and all these caused her sleepless nights and sometimes disorienting her while on duty and negatively impacting her work.

A cursory look into these facts may not necessarily qualify as unreasonable behaviour. However, as held in the case of *Knudsen v Knudsen [1976] 1GIR 204-216.*

"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 behaviour of the Petitioner as well as the behaviour 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 action as both parties accused each other of unreasonable behaviour the above test is to be applied *mutatis mutandis*

Applying the principle of law to the facts of this petition, not picking calls or ignoring answering messages from a spouse may just be considered as a mere incident of married life but when it is persistent to the point where one spouse feels neglected or ignored then it could amount to unnecessary punishment and cruelty. The Respondent had explained her inability to pick Petitioner’s calls and reply to his messages as being as a result of the ethics and conditions of her job such as when on duty and the different time zones between where she would be stationed and Ghana.

However, in her answer and cross petition paragraph 18(0) she averred ‘the Respondent says that the persistent use of these abusive and hurtful words by the Petitioner *made her take a quality decision to reduce her communication with him to when it was highly required. She says that at that point she knew that she could no longer live with him as his wife as he made her feel much disrespected (emphasis mine).*

The above shows that the Respondent having become more assertive decided to ‘cut off’ communication or reduce communication and simply avoid the Petitioner. Marriage, we know, is a union between two persons and when one person decides to “ignore” the other completely, how then can there be a marriage. We also know that in these current economic situation, it is prudent for a spouse or woman to take up employment even such as that of the Respondent which will definitely take her away from the matrimonial home for long periods so that she can earn some income to support herself and augment the family income. As such it is only through communication, phone calls, Whatsapp and text messages that the relationship can be sustained. So, to decide to

keep it to the barest minimum such as in this instant case can only amount to being unreasonable. Here in this case, I find that the Respondent by taking a decision to as it were “ignore” the calls and messages of the Petitioner is unreasonable having regards to all the efforts by the Petitioner to reach out to the Respondent.

With regards to the unreasonable behaviour by the Petitioner, the Respondent’s reply shows that she has had to ‘tolerate’ and ‘contain’ the overbearing and highhanded attitude of the Petitioner even before and after the marriage. In paragraph 18(h) of her answer and cross Petition she averred:

“The Respondent also says that she had to fight hard to maintain her cool because apart from Petitioner’s erratic behaviour, he also threatened to take his life or cause extreme harm to himself if I decided to leave him. This was a major reason why she stayed with him even before their marriage because she did not want to be the reason why he lost his life.”

By this averment, one can say that the Respondent has been well aware of this irrational behaviour by the Petitioner but she went ahead to marry him because she knew she could ‘bottle’ her feelings and live with the Petitioner.

The fact that she was able to tolerate the unreasonable behaviour does not also justify the Petitioner’s conduct. Both parties have behaved unreasonably towards each other, the Respondent having found solace in her job and the fact that she is away has ‘abandoned’ the Petitioner and this amount to cruelty.

On this fact alone, a decree for dissolution would lie. However, the Petitioner in his witness statement paragraph 15 stated’:

“I will state that he and the Respondent have not lived as husband and wife for a continuous period of at least two years and there has been virtually no peaceful and

effective communication between us for almost two (2) years of marriage. That for a continuous period of two (2) years, we have not had sexual intercourse making it unreasonable for us to stay together as married couples.

Section 2(1) (d) of Act 367 as stated earlier shows that in such a situation, a decree for divorce can be granted provided the Respondent consents to this fact and it is proven that the parties have not lived together as husband and wife.

The Respondent's absence from the matrimonial home is understood. She also informed the Court about efforts she makes to spend time with her family and in paragraph 8 of her witness statement she mentioned how she worked out her schedules to visit the Petitioner at his stations outside the jurisdiction in Manila and Clark.

She, however, failed to mention the periods within which she made those visits whether it was within those two years the Petitioner claims preceded this petition. Be that as it may, she consented to the marriage being dissolved and for this fact alone a decree of divorce can be ordered on grounds that the parties have been separated for the past 2 years. The fact of separation and the deliberate denial of sexual intercourse can all be considered as unreasonable on the part of the Respondent.

Again, Section 2 (1) (f) of Act 367 states that the inability on the part of the parties to reconcile their differences may be relied upon to prove that the marriage has broken down beyond reconciliation.

Here, the parties were referred to Court Connected Alternative Dispute Resolution (CCADR) and while attempting to reconcile their differences, the parties arrived at some agreement and one of the Terms of Settlement was:

“that the marriage contracted between them at the Lighthouse Chapel International Teshie Apache on 6th June, 2015 in respect of which license No. LCI/NL/055/2015 was issued be dissolved.”

The Terms of Settlement (TOS) also dealt with the issue of custody and the Court finds that the agreement reached by the parties is in the best interest of the child as per Section 2 of the Children’s Act, 1998 (Act 560).

The Terms of Settlement (TOS) filed in relation to the other issues pertaining to rent, property settlement are to be maintained as agreed.

To conclude, the Court finds that the marriage contracted between the parties on the 6th of June, 2015 at Lighthouse Chapel International Teshie Aporche for which license No. LCI/NL/055/2015 was issued has broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent, the inability of the parties to live together as husband and wife for a continuous period of two years immediately preceding this petition and the parties’ inability to reconcile their differences. The marriage is hereby dissolved. Certificate of Marriage with License No. LCI/NL/055/2015 is hereby cancelled.

Each party to bear his/her own costs.

(SGD)

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**H/W NAOMI AKYIANO ESQ. (MS.)
DISTRICT COURT MAGISTRATE**