

IN THE DISTRICT COURT ONE, TEMA ON 24TH DAY OF OCTOBER, 2023.
BEFORE H/W NAOMI AKYIANO ESQ. (MS.), SITTING AS DISTRICT
MAGISTRATE.

A4/18/2022

SETH KOFI KUNDO

PETITIONER

VRS.

NANCY SERWA DONKOR

RESPONDENT

PETITIONER: ABSENT

RESPONDENT: PRESENT

LEGAL REPRESENTATION: PETITIONER UNREPRESENTED

SHEILA AMA JONES FOR SHEILA MINKA PREMOSO FOR THE RESPONDENT
ABSENT

JUDGMENT

This is a divorce petition between Seth Kofi Kundo (afterwards referred to as the Petitioner) and Nancy Ama Donkor (afterwards referred to as the Respondent).

The parties are both Ghanaians and were married under Part III of the Marriages Act, 1884-1985 (CAP 127) on 31st August, 2019 at the Tema Joint Church. There is no issue to the marriage.

On 18th November, 2021, the Petitioner filed a petition seeking the only relief stated below:

1. Dissolution of the marriage between the parties.

The Respondent filed an initial answer on 24th December, 2021 and upon engaging the services of Counsel, filed an amended answer on 30th December, 2021 where she cross petitioned for the following reliefs;

- i. Marriage to be dissolved due to the behaviour of the Petitioner.
- ii. Compensation of Respondent by Petitioner.

In the course of the trial, the Petitioner after he had filed a witness statement on 13th May, 2022 and after he had entered into some agreement for which Terms of Settlement (TOS) were filed left the jurisdiction of this Court for Finland. By a letter dated 14th November, 2022, the Petitioner consented to the virtual proceedings and provided his contact for service of processes and the virtual session.

A virtual session therefore was held during trial on 14th September, 2023 where he relied on his witness statement as his evidence in chief and confirmed his mark when the Terms of Settlement was shown to him.

ISSUE

The main issue for determination in this petition is whether or not the marriage contracted between the two 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 (1) (a) to (f) of Act 367 provides a list of facts for which the proof of breakdown of marriage can be ascertained.

Relevant portions as pertains to this instant petition 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;

...

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

...

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

The Petitioner's reasons for seeking a dissolution of the marriage are because the Respondent has been abusive publicly accusing him of not meeting her expectations sexually and also disrespecting his family and accusing them of having spiritually caused her to have miscarriages.

Unreasonable behaviour has been defined in English law as conduct that gives rise to injury to life, limbs or health or conduct that gives rise to a reasonable apprehension of such danger. See the English case of *Gollins V Gollins (1964) AC 644*.

In order for a party to succeed under this ground, the parties 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.

Also, the test to be applied in determining whether a particular conduct is unreasonable must be an objective one having regard to the Petitioner's situation, character, etc. The

case of *Knudsen v Knudsen (1976) 1 GLR 204-216* is instruct where it was held as follows:

“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 petition, the Petitioner is described as a “serious but quiet young man who will not change his mind once his mind is made up”. In Exhibit A II, therefore assuming without admitting that the Respondent had publicly abused him of not being a man enough to satisfy her, this one act could amount to unreasonable behaviour. However, the Respondent had denied this accusation stating in her witness statement that she never said so and that upon seeking medical attention, the Doctor had advised that they had sex more often if they wanted to have children. The Respondent also denied having an abusive conduct and that it was rather the Petitioner who abused her emotionally by not eating her food, talking and sleeping with her since the Petitioner’s sister came to visit. The Respondent was also described in Exhibit A II as a “naïve, simple but vulnerable young lady she who believed in the “fairy-tale” kind of marriage” For the Petitioner to persistently not eat the Respondent’s food or talk to her or have sex with her will amount to unreasonable behaviour and for a young woman such as the Respondent, the situation would be so intolerable that it is not surprising that she left the matrimonial home to her parent’s residence, in October 2021. The demands by the

Respondent to have sexual intercourse were not unreasonable and inordinate, and therefore the Petitioner's failure to meet the Respondent's demand will be considered unreasonable.

In the case of *Opoku Owusu v Opoku Owusu (1973) 2 GLR 349-354*, it was held among others.

"A wilful refusal by one spouse to have sexual intercourse might entitle the party suffering to leave if in all the circumstances of the case, it could properly be regarded as grave and weighty and if it had an adverse effect on the health of the other spouse. Such conduct might also amount to a just cause for leaving even though it lacked the element of intent to injure ..."

Applying the law to the facts of this case, I find that it is rather the conduct of the Petitioner which amounts to unreasonable behaviour and not that the Respondent had behaved unreasonably and the Respondent could not have been expected to live with the Petitioner and on this fact alone a decree for divorce could be made.

Also from the evidence led, the Respondent who was not happy with situation and not desirous of the dissolution gave evidence that her parents and counsellors tried to resolve the issue but the Petitioner was adamant. Efforts made at attempts to resolve the differences between the parties is seen from the Exhibit labelled as II titled *Post Marital Report* where the parties had submitted to counselling at the Miracle Counselling Ministry. Sections of the impressions formed by the Counsellor, one Rev. Mrs. Susie Lamptey reproduced below is as follows:

Though Seth appeared very serious during sessions, he admitted that he wanted to learn more about marriage in order to apply his new knowledge in his NEXT Marriage. "He said he was not interested in this marriage. Nancy's stand was indifference whatever Seth decision was fine with her. The two of them did not call each other or bother to visit each other during the two months of our attempt to reconcile them.

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Though there was no animosity between them, they obviously were two strangers who once shared a roof. I humbly recommend that the Court handles their case since they are determined to end it”.

Thus, the marriage between the parties was a mere shell and as stated in the case of *Kotei V Kotei (1974) 2GLR 172*, this empty legal shell should not be allowed to stand but should be destroyed.

Indeed to buttress this, the parties had gone ahead and filed a Terms of Settlement dated 5th July, 2022 exhibit 1 where as part of the settlements the parties agreed that the marriage celebrated between the parties on 31st August, 2019 be dissolved on ground that it had broken down beyond reconciliation.

During the virtual session, the Petitioner relied on the Terms of Settlement filed and also by a letter to this Court dated 14th November, 2022 he affirmed it and stated that he had already started with the payment of the compensation agreed between the parties.

Thus, whereas the Respondent would have wished for the parties to reconcile with their differences, the Petitioner was adamant in seeking for dissolution and therefore I find that the marriage contracted between the parties has broken down beyond reconciliation as a result of the irreconcilable differences between the parties.

To conclude, I find that the marriage contracted between the Petitioner and the Respondent has broken down beyond reconciliation due to the unreasonable behaviour of the Petitioner and for the fact that the parties are unable to reconcile their differences after diligent effort had been made, the marriage is hereby dissolved.

The certificate of marriage with No. 03/TJC/2019 is hereby cancelled.

The Court finds the Terms of Settlement filed on behalf of the parties as reasonable and adopted as consent judgment with regards to the issue of financial provision for the Respondent.

There will be no orders as to costs.

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