

**CORAM:HER WORSHIP MS. NANA ABENA ASOH OWUSU-OMENYO,
MAGISTRATE, DISTRICT COURT "1" KANESHIE SITTING AT THE FORMER
STOOL LANDS BOUNDARIES COMMISSION OFFICES NEAR WORKERS'
COLLEGE, ACCRA ON FRIDAY 6TH DAY OF OCTOBER 2023**

SUIT NO. A8/121/23

CHARLOTTE REYNOLDS

VRS.

EMMANUEL AGYEKUM-AMFO

J U D G M E N T

INTRODUCTION

The parties to the instant petition were married at the Church of Pentecost Adabraka on the 10th day February 2018. They share two children.

CASE OF THE PETITIONER

The Petitioner prays this court for a dissolution of her marriage to the Respondent based on unreasonable behaviour. She particularizes the said unreasonable behaviour as verbal abuse owing to the quick-tempered nature of the Respondent at the least provocation. Further the Respondent leaves the house without making his whereabouts known and banns her from enquiring about him. That the Respondent has refuse to allow her sleep on the matrimonial bed with him but instead she sleeps on the floor with the issues of the marriage. Further the Respondent has stopped her from working and has also refused to enroll the children in school to enable her engage in any economic activities. That the parties have tried through several avenues to resolve their marital challenges all to no avail. Respondent apologizes and goes straight back to the verbal and emotional abuse. The Petitioner says that the parties

for the past six months have not lived together as husband and wife neither have they had any sexual intercourse. She therefore prays the following reliefs:

- A dissolution of her marriage to the Respondent.
- Custody of the two issues of the marriage.
- An order for the Respondent to maintain the children with an amount of Two Thousand Ghana Ceids (GH¢2,000) a month
- An order for the Respondent to pay the educational and medical expenses of the children.
- Any further orders the court may deem fit.

The Respondent in response to the petition, denied all the averments of the Petitioner except to say that the marriage between the parties has broken down beyond reconciliation. His version of events is that it was the Petitioner who deserted the matrimonial home and has since refused to show him the location of the children of the marriage. He says further that he never refused to enroll the children in school. That it is the Petitioner who has refused to enroll the children in a special needs school although both children have hearing impairments. That enrolling them in a regular school will not inure to their benefit.

He cross petitioned for a dissolution of the marriage based on unreasonable behaviour and desertion. He states it is rather the Petitioner who at the slightest provocation insults him. That after misunderstanding she leaves the matrimonial home and also threaten to leave with the children. That it is the Petitioner who has refused to get a job saying it is the sole responsibility of the Respondent to provide for them.

He goes on to particularize the desertion as thus: the Petitioner left the matrimonial home with the children without his consent and has not returned since. He thus prays as follow:

- A dissolution of the marriage of the parties celebrated on the 10th February 2018.
- An order for reasonable access to the children of the marriage.
- An order to pay maintenance of one thousand five hundred Ghana cedis.
- An order directed at the petitioner to share equally the cost of maintenance.
- An order for the return of all household items that she took away
- An order directed at the petitioner to enroll the children in the school of choice of the respondent or be ready to share the cost of the children's education.

The parties after filing all relevant processes filed terms of settlement in relation to all issues in contention including the fact that they both consent the dissolution of their marriage.

The law that governs the dissolution of marriages in Ghana, does not give parties the power to decide to dissolve their marriage on their own. I will thus go ahead and adopt the terms in respect of all ancillary issues, but in respect of the dissolution I am enjoined to determine if indeed their marriage has broken down beyond reconciliation in accordance with **Section 1(2) *Matrimonial Causes Act, 197, (ACT 367)***.

To make this determination, both parties by their petition and cross-petition are to adduce evidence to prove that one or more of the factors stated in section 2(1) of ACT 367, existed in their marriage.

Both parties sought to rely on unreasonably behaviour, the petitioner was to show through her petition that the respondent has behaved in such a way that she cannot reasonably be expected to continue living with him. The respondent was also through his cross-petition is obligated to do same.

To prove their claims, the parties prayed their witnesses' statements be adopted as their evidence in chief which was done.

The intriguing issue was that, although the respondent had denied all assertions in the petitioners claim, she made no attempt to file an answer to the cross petition. Neither did she try to prove any averments that the respondent had denied. She simply sought to rely on her evidence without any positive proof. In the case of **KLAH v. PHOENIX INSURANCE CO. LTD [2012] 2 SCGLR 1139**, The supreme court held that

"Where a party makes an averment capable of proof in some positive way e.g., by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can satisfy itself that what he avers is true.

The Petitioner thus should have in the least adduced some form of evidence to prove her claim or in the least cross examined the Respondent to show the veracity of her assertions. Her petition must thus fail.

The Respondent in the same vein, relied on his evidence as presented in his witness statement to prove his claim, in light of the fact that the Petitioner did not file a cross petition neither did she deny any of the claims made against her, I am law to admit as true the evidence of the Respondent in support of his cross-petition. In **Fori v Ayerebi [1966] 2 GLR 627**, the court held that

when a party had made an averment and that averment was not denied, no issue was joined no evidence needs be led on that averment. The cross-petition of the respondent on the other must succeed based on the evidence he presented before the court.

The Petitioner has admitted leaving the matrimonial home as a result of the actions of the Respondent, without his permission. This clearly constitutes desertion; See **Frowd**

v. Frowd [1904] P.177 where Juene P, defines desertion as the the cessation of cohabitation brought about by the fault or act of one of the parties.

The Respondent in my opinion has been able to establish desertion on the part of the Petitioner. The parties also agree that as a result of the desertion they have not lived together as husband and wife for the last six months. The cross-petition of the Respondent must thus succeed.

One thing both parties mutually agreed to on their evidence is that their marriage has broken down beyond reconciliation.

On the totality of the evidence presented before me I find that the marriage celebrated between the parties has broken down beyond reconciliation.

The terms of settlement filed by the parties on the 14th April 2023 is hereby adopted as their consensual agreement in relation to all ancillary reliefs:

FINAL ORDERS

The marriage celebrated between the parties on the 10th Day of February 2018 at the Church of Pentecost Adabraka has broken down beyond reconciliation and is hereby declared dissolved, marriage certificate with number C.O.P/AD/RDA/2018 is accordingly cancelled.

The terms of settlement of the parties is hereby adopted as their consent judgment.

**H/W MS. NANA ABENA ASOH OWUSU-OMENYO,
M A G I S T R A T E**

i.w.