

**CORAM: HER WORSHIP NANA ABENA ASOH OWUSU-OMENYO (MS.),  
MAGISTRATE, DISTRICT COURT '1', KANESHIE, SITTING AT THE FORMER  
STOOL LANDS BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR  
WORKERS' COLLEGE, ACCRA ON 6<sup>TH</sup> OCTOBER 2023**

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**SUIT NO: A8/121/23**

**CHARLOTTE REYNOLDS  
ACCRA  
VRS**

**} PETITIONER**

**EMMANUEL AGYEKUM  
ACCRA**

**} RESPONDENT**

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## **JUDGMENT**

### **INTRODUCTION**

The parties to the instant suit were married at the Charismatic Evangelistic Ministry, North Legon on the 23rd Day of June 2012. They share three issues.

The petitioner filed her petition on the 11th Day of November 2022 with the respondent filing his response on the 23rd Day of November 2022. The parties subsequently filed their witness statements on the 12 April 2023 and the 28th April 2023 respectively.

### **CASE OF THE PETITIONER**

The petitioner describes a marriage that is plagued with a myriad of challenges. She says that the respondent makes her feel worthless and he feels constantly offended when she confronts him with his offences. The respondent sometimes sleeps outside the matrimonial home and refuses to call or receive phone calls to know his whereabouts. Further, the respondent does not satisfy her sexually and only seeks out sex when he wants it. He refuses to involve her in decision concerning their children and, on an occasion, went ahead to engage the services of a male teacher for the children who are mostly female without her consent and when confronted he was not

apologetic. That he refuses to maintain the family. The worst being that he keeps getting drunk and embarrassing her, citing an instance when the respondent slept in a gutter over night because he was drunk. She states the respondent deserted the matrimonial home two years ago and has since not returned.

Finally, both families have tried variously to resolve their differences and failed.

### **CASE OF THE RESPONDENT**

The Respondent essentially denied all the allegations of the petitioner. The respondent in his response denied ever sleeping outside the matrimonial home. He informed the court that he has three children to prove that he never denied the petitioner sex and satisfies her. He says it is the petitioner who deserted the matrimonial home citing flooding of the area as a reason and never returned. They agree that several attempts have been made at resolving their differences but all these attempts have proved futile.

He says that this action is because he is currently a pensioner and the petitioner thinks he cannot cater for the family. That she does not appreciate him as a husband amongst a myriad of other issues. He also prayed for a dissolution of the marriage.

### **ISSUES**

1. Whether or not the marriage between the parties has broken down beyond reconciliation.
2. Which of the parties is better suited to be granted custody of the children.
3. Whether or not the petitioner is entitled to her prayer for alimony.

### **LEGAL ANALYSIS**

The only basis for the dissolution of marriage under the matrimonial laws of Ghana, is that, the marriage between the parties has broken down beyond reconciliation. This position of the law is found in section **1(2) of the Matrimonial Causes Act, 1975 Act**

367, which states “The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.”

The law does not stop here but creates conditions that the petitioner must show by her evidence to prove a breakdown of her marriage. It is only after she has been able to meet one or more of the conditions that this petition for a dissolution can succeed.

The conditions are stated in section 2(1)(a)-(f) of the Matrimonial Causes Act, 1975 Act 367.

A reading of the instant petition, shows clearly that the petitioner seeks to rely on unreasonable behaviour. The petitioner by her evidence must show that *the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him*. I am at this point obliged to juxtapose the behaviour described by the petitioner with the law on unreasonable behaviour. This is the only way to know if the behaviour described is indeed unreasonable.

Unreasonable behaviour was defined in the case of **Mensah v. Mensah (1972) 2 GLR 198** in the following manner; *“the conduct complained of must be sufficiently grave and weighty to justify a finding that the Petitioner cannot reasonably be expected to live with the Respondent; mere trivialities would not suffice, the parties must be expected to put up with what has been described as the unreasonable wear and tear of married life”*. See also *Alex Borkettey Aplerh-Doku V. Georgette Adubea Aplerh-Doku (2017) Jelr 107482 (Hc)*.

The petitioner describes a husband who not only refuses to maintain the household and especially the children of the household but is also a drunk. She states he constantly embarrasses her and goes ahead to make decisions without her. The respondent denied all these allegations but under cross examination, he was forced to admit that he indeed gotten drunk and slept in a gutter, that it was a police patrol team that found him and contacted the petitioner. He was admitted further under

cross examination that that the petitioner had moved out of the matrimonial home because he drinks alcohol. The respondent was very emphatic that he is not a drunk but occasionally takes in alcohol which gets out of hand.

The respondent denied all other assertions the petitioner made against him. The petitioner unfortunately did not call any witnesses neither did she seek to prove her assertion in a positive way. 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.* I am of the view that the petitioner should have shown some form of evidence, be it circumstantial or not, to prove her other allegations, especially those of infidelity, the gross disrespect and the refusal to maintain. Nevertheless, it is my considered opinion that the behaviour of the respondent, being constantly drunk to a stupor and being found in the gutter or at the drinking spot is wrong. The petitioner states the embarrassment from these situation causes her psychological stress.

The most important question is, can the petitioner reasonably be expected to live with a spouse who gets drunk and causes her such embarrassment. I believe not. I shudder to think about the children of the household and how they feel with their father in such a state. The mental and emotional burden it places on them.

I am convinced that the petitioner cannot reasonably be expected to live with the respondent as his behaviour is unreasonable. I also take cognizance of the fact that both the petitioner and the respondent, state that their families have been unable to resolve their difference after various and diligent efforts.

I find that the petitioner has on her evidence proved unreasonable behaviour on the part of the respondent, further showed that their differences cannot be resolved even after diligent efforts. In accordance with sections 2(1)(b) and (f) of ACT 367, I declare the marriage between the parties has broken down beyond reconciliation.

### **Custody And Maintenance**

*Section 22(1) of Act 367, states "in any proceedings under the ACT, whether for divorce or nullity it is the duty of the court to inquire if there are any children of the household and the court may on its own initiative or on the application by any of the parties to the proceedings make an order concerning the children of the household which it thinks reasonable for the benefit of the child. Such orders may include inter alia custody awards"*

In making custody order the Children's Act 1998, Act 560 enjoins the court to as a matter of importance consider the best interest of the child. Both the petitioner and the respondent have agreed that the petitioner who is the mother, should have primary custody of the children with access to the respondent. The only matter outstanding is that of maintenance. The petitioner prays the court to compel the respondent to pay an amount of two thousand Ghana cedis a month in maintenance. The petitioner's case is that she is currently bearing the educational and accommodation expenses of the children all alone with no support from the respondent.

I take into consideration the fact that the respondent is currently over sixty years and is on pension and has no stable source of income. The petitioner on the other hand is less than fifty and is a public servant and has a stable source of income. I will therefore share the responsibility of the children in the following manner.

The petitioner is to be responsible for the educational and other living expenses of the children as she currently is. The respondent is to maintain the children with an amount of One Thousand Five Hundred Ghana Cedis a month at a rate of five hundred Ghana Cedis per child. He is also to register them on the national health insurance scheme if

they are not already registered and ensure that he caters for all medical expenses that will not be covered by the health insurance scheme.

### **ALIMONY**

I will make no orders in this respect because the respondent as earlier noted has no stable source of income and I cannot therefore in good conscience order him to pay alimony.

### **FINAL ORDERS**

1. The marriage celebrated between the parties at the Charismatic Evangelistic Ministry, North Legon on the 23rd Day of June 2012, has broken down beyond reconciliation and is hereby declared dissolved.
2. Marriage certificate with number CEM 454/2012 is hereby cancelled.
3. Custody of the three issues of the marriage is hereby awarded to the petitioner with reasonable access to the respondent. The respondent is to have them on weekend every other week and during the long vacation, when they are not having vacation classes.
4. Respondent is to maintain the issues with an amount of one thousand five hundred Ghana (GH¢1,500) cedis every month.
5. Petitioner is to be responsible for all expenses consequential to the education of the children and also be responsible for accommodating them.
6. The respondent is to register the children on the national health insurance scheme and bear all expenses not covered by the scheme.
7. There is no order as to alimony.
8. Each party is to bear their own cost.

**NANA A. A. OWUSU-OMENYO (MS.),  
(MAGISTRATE)**

