

**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 6TH OCTOBER 2023**

SUIT NO: A8/100/23

**WILLIAM FALCONE
ACCRA
VRS**

} PETITIONER

**VENESSA AGYEMANG
ACCRA**

} RESPONDENT

JUDGMENT

INTRODUCTION

The Petitioner prays this court for a dissolution of his marriage to the Respondent celebrated on the 30th June 2012, at the offices of the Accra Metropolitan Assembly. There are no issues of the marriage.

CASE OF THE PETITIONER

The Petitioner states that the parties have enjoyed no peace, love or affection associated with marriage since they came together as a couple. He says during the period the parties cohabited as husband and wife, the respondent denied him sex and would constantly sleep outside the matrimonial home; spending two or three days at a time outside the home. That when he complained the respondent informed him that she was no longer interested in the said marriage and that was the beginning of the end of their marriage. He says all attempts at a resolution have proved abortive and prays his marriage to the respondent be dissolved as she has already moved on with her life.

CASE OF THE RESPONDENT

The respondent in response, states emphatically that she agrees to the dissolution of the marriage and even goes ahead to cross-petition for same. She however informs the court that the petitioner during the course of their marriage refused to maintain her and made a habit of continuously harassing her verbally. Further, the behaviour persisted to the point where she lost all confidence in herself as a woman and a wife, she is therefore unable to continue being married the petitioner.

ISSUES:

1. Whether or not the marriage between the Petitioner and the Respondent has broken down beyond reconciliation.

LEGAL ANALYSIS

Section 1(2) of the Matrimonial Causes Act, 1975 Act 367, states that the sole ground for the dissolution of a marriage shall be that the marriage between the parties has broken down beyond reconciliation. The *Matrimonial Causes Act*, further in **section 2(1)** specifically states, factors, one or more of which must be established before a marriage is deemed to have broken down beyond reconciliation. The said section reads, *“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 such adultery the petitioner finds it intolerable to live with the respondent; or*
- b. that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or*

- c. *that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or*
- d. *that the parties to the marriage have not lived as man 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 such 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 notwithstanding the refusal; or*
- e. *that the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or*
- f. *that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.*

The petitioner therefore assumes the responsibility to prove that one or more of factors listed in section 2(1)(a) -(f) of Act 367, exist in the marriage. The Respondent in the present action also assumes this responsibility as she has also cross petitioned for a dissolution of her marriage to the respondent. Both parties therefore saddled with the burden prove a breakdown of their marriage on a preponderance of probabilities. In the case of **Judith Atawa Gator v. Wisdom Kportsu (2017) JELR 64661 (CA)**, *the court emphasized that the burden of proof in matrimonial matters is the same as that in other civil cases; proof by the preponderance of probabilities*”.

It is noteworthy that both parties declined cross-examination. In the case of *FOLI v. AYIREBI [1966] GLR 627 [2]*, *the court observed that the failure to cross-examine a*

witness on vital matters testified to in the witness box can be considered as an admission of those matters. I will therefore proceed on this premise and make a decision based on the evidence of the parties presented through their witness statements.

The burden now lies on both parties to show that their marriage is beyond salvage. The petitioner describes a wife who denies him sex and sleeps outside the matrimonial home for days. He describes a situation where the respondent has openly told him she is no longer interested in the marriage and lastly that even after their pastors and their family members have intervened, they have been unable to reconcile their differences.

The respondent also described a verbally abusive husband who refuses to maintain her; one who has made her lose confidence in herself not only as his wife but as a woman.

Are these descriptions enough to warrant a divorce and do they constitute unreasonable behaviour as claimed by the parties? In the case of **Opoku-Owusu v Opoku-Owusu** [1973] 2 GLR 349, the court had this to say about the position of the law on the mutual right to intercourse_“*The mutual right to intercourse after the marriage has been consummated continues during marriage but this right must be reasonably exercised. One spouse is not bound to submit to the demands of the other if they are unreasonable and inordinate or are likely to lead to a breakdown in health. On the other hand, a wilful refusal by one spouse to have sexual intercourse may entitle the party suffering to leave if in all the circumstances of the case it can properly be “regarded as grave and weighty and if it has adverse effect on the health of the other spouse.* See also the case of **Addo v Addo** (1973) 2 GLR. There is therefore no doubt that the respondent behaved unreasonably when she refused to have sexual intercourse with the petitioner.

The respondent also alleges that the actions of the petitioner have affected her self-esteem and confidence. I will refer to the case of **Addo v Addo** (1973) 2 GLR, where the court in quoting the case of *Sheldon v. Sheldon* [1966] 2 All E.R. 257, C.A., observed that *any conduct that affects the health of a spouse, be it physical or mental health can be construed as unreasonable behaviour and will entitle to party suffering to leave.* Issues

of confidence and self-worth are important to the well-being of every individual. In this present day where medical professionals admonish us to take our mental health seriously, it is unfortunate that a man would make his wife feel worthless. This is enough for her cross petition to succeed.

The parties in my opinion have established a breakdown of their marriage through unreasonable behaviour. The respondent through her refusal to cross examine had admitted she willfully refused the petitioner sex. A situation that is bound to cause frustration and anger from the petitioner.

The petitioner has also in the same vein admitted to being a verbally abusive husband. It would be unfair to expect the respondent to continue in a marriage where she continues to lose her self-esteem and value.

I also note that the marriage is doomed and has failed because family members and pastors have been unable to resolve the differences between the parties.

I have no doubt that the marriage between the parties has broken down as the evidence of the parties clearly shows this.

FINAL ORDERS:

On the totality of the evidence presented before me, I find that the marriage celebrated on the 30th June 2012, at the offices of the Accra Metropolitan Assembly has broken down beyond reconciliation and is hereby declared dissolved.

There is no order as to cost.

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