

**IN THE DISTRICT COURT HOLDING AT DODOWA, SHAI- OSUDOKU ON
MONDAY THE 31ST DAY OF JULY, 2023 BEFORE HER WORSHIP BRIDGET AKPE
AKATTAH**

SUIT NO: A4/100/2023

JOSEPH EKOW GYAN

PETITIONER

VRS

NANA ADJOA ANDERSON

RESPONDENT

JUDGMENT

Per a Petition filed on the 28th day of March, 2023, the Petitioner sought the following reliefs:

- a) That the said marriage as celebrated by both parties on 7th October, 2007 under the marriage Ordinance Cap 127 be dissolved accordingly.
- b) Any other order or orders that this Honourable Court may deem fit.

Respondent also filed an answer to the divorce petition on 19th April, 2023 and cross petitioned as follows:

- i. An order for the dissolution of the marriage celebrated between the parties since it has broken down beyond reconciliation.
- ii. Petitioner should fulfill his promise of stocking Respondent's shop for her.
- iii. Any other order(s) this honourable Court may deem fit.

Parties were referred to ADR and terms of settlement filed on all the ancillary reliefs. Parties filed their written statements and the Court proceeded to take evidence to establish the breakdown of the marriage beyond reconciliation.

EVIDENCE OF BOTH PARTIES

The Petitioner led evidence in proof of the breakdown of the marriage beyond reconciliation and called no witnesses herein. The nub of Petitioner's evidence is that both parties have not slept on the same matrimonial bed for the past six years and have not had sex with each other too for the past six years. That Respondent is lazy and does not want to work, she is ungrateful and does not appreciate whatever he does.

Petitioner claimed that both parties have been able to settle their issues and that he is willing to stock up Respondent's shop as compensation as Respondent demanded.

Petitioner claimed that both he and Respondent are incompatible, have irreconcilable differences and lack love for each other which has made living together as man and wife impossible therefore the mutual understanding to go their separate ways. He therefore prayed the Court for an order of the dissolution of the marriage.

Respondent led evidence that during the marriage she had ectopic pregnancy and lost one of her wombs and through that child bearing became an issue for her. That Petitioner does not eat her food and has not slept with her on their matrimonial bed for the past six years.

Respondent averred that Petitioner verbally abuses her as a lazy woman and that she lives in the matrimonial home like a stranger. That Petitioner has divided the bedrooms

and she lives in one of them and a hall behind the house and access to ventilation is a problem to her on her side. She further claimed that Petitioner is getting married and will be staying in the same house with her and since she does not have anywhere to go, she prayed the honourable Court to share the matrimonial house equally so she can have her share of the said property to avert any issues with Petitioner and his new wife.

Respondent averred that she needed the Petitioner to fulfil his promise of stocking up her plumbing shop as compensation since that is her only source of income.

Respondent finally averred that both parties have irreconcilable differences, incompatible and lack love for each other hence the mutual understanding to go their separate ways. She therefore prayed the Court for an order of dissolution of the marriage celebrated between the parties on 27th October, 2007.

Having laid down the charges made by the parties in their respective statements, on which of them did the burden of proof lie in this case? It is a settled principle of law that the court before which a petition for dissolution of marriage is filed, was under a statutory and positive duty to inquire so far as it reasonably could, into the charges and counter charges alleged by parties in a divorce suit as this one. But the onus of proof is on a petitioner to prove all allegations made against any such respondent. The converse is that where a respondent made a counter allegation, he/she in accordance with section 14 of the Evidence Act, 1975 (NRCD 323), bears the onus of proof to establish those allegations. It is worthy of note that in discharging the onus of proof cast on the petitioner, it was immaterial that the respondent had not contested the petition; such petitioner was under a statutory duty to prove the charges and, flowing from all the evidence before the court, the court must be satisfied that the marriage had irretrievably broken down. See **Danquah v. Danquah [1979] G.L.R. 371; Donkor v Donkor [1982-83] GLR 1158.**

Thus, the burden of producing evidence of any particular fact, as in civil cases, is on the party against whom a finding of fact would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323. The authorities are also in harmony that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of NRCD 323.

Closely associated with the above is the fluctuating nature of the burden cast on a party. The principle has always been that the burden of proof is not static but could shift from party to party at various stages of the trial depending on the obligation that is put on that party on an issue. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 as follows:

“14 Except as otherwise provided by law, unless it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting”.

So, in accordance with the general rules of procedure as above mentioned, the Petitioner had the burden of proving all the assertions and allegations she made against the respondent on a preponderance of probabilities. If she succeeds in establishing her assertions by evidence, the onus will then shift to the Respondent to lead some evidence to rebut same failing which a ruling may be made against him on any particular issue (which he failed to rebut). It must also be stated that the respondent having filed a relief in his cross-petition, he bore the burden to prove the allegations made in order to succeed on his relief endorsed on his cross-petition.

By way of statement of the law, it bears stating that the Matrimonial Causes Act, 1971 (Act 367) regulates divorces and other like causes in this country. Under section 1(2) of the Matrimonial Causes Act, 1971 (Act 367), a Court shall not grant a petition for divorce unless the marriage is proven to have broken down beyond reconciliation. And under Section 2(1) of Act 367, for the purposes of showing that the marriage has broken down beyond reconciliation, a petitioner for divorce 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;
- c. that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- 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;
- e. that the parties to the marriage have not lived as husband 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.

It has been held in a line of cases that the Matrimonial Causes Act, 1971 (Act 367), did not permit spouses married under the Marriage Ordinance, Cap. 127 (1951 Rev.), to come to court and pray for the dissolution of their marriage just for the asking. The courts have held that the petitioner in such a case for dissolution of marriage must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act (above), not only by pleading them but also by proof for the purpose of showing that the marriage had broken down beyond reconciliation. The courts have explained further that Section 2 (3) of Act 367, provided that even if the court found the existence of one or more of those facts, it should not grant a petition for divorce unless it was satisfied that the marriage had broken down beyond reconciliation. See the case of **Donkor v Donkor [supra]**.

What evidence then, did the petitioner lead to prove breakdown of the marriage beyond reconciliation? The Petitioner gave evidence in a bid to prove break down of the marriage. Petitioner did not call any witnesses as well as the Respondent. The summary of the case as presented by the petitioner is to the effect that the respondent is his wife and they live together in the same matrimonial home which was acquired during the pendency of the marriage. Petitioner as at the time of giving evidence in this suit claimed he and the Respondent have not lived as husband and wife for continuously over seven years now. They have no sexual relationship for over seven years and this is because both parties are not compatible. This evidence is corroborated by the Respondent. Petitioner and Respondent have been married since 7th October, 2007 and pray the Court for dissolution of the said marriage because all attempts at reconciliation of their disputes have proved futile.

In the result, and based on the available evidence assessed on a balance of probabilities and the relevant law, the Petitioner succeeds in terms as follows:

- i. The marriage between the Petitioner and the Respondent contracted on 7th October, 2007 under the Marriages Act, 1884-1985, Cap 127 is dissolved.
- ii. It is hereby ordered that the matrimonial property located at Amrahia shall be divided equally among the parties herein as agreed by the parties at ADR.
- iii. To this end, it is ordered that a bailiff from this court accompany the parties to the subject property and assist in sharing and carving out the various portions of the matrimonial home among the parties with the assistance of the Registrar of this Court.
- iv. Petitioner to pay Twenty Thousand Cedis (GH¢20,000.00) to Respondent at a date not later than July 20, 2023 as agreed by the parties at ADR.
- v. That the land and house shall be divided into two for both of them with a fence wall erected by the Petitioner on or before 31st August, 2023.

Given the circumstances of this case, the financial strengths of the parties, and the circumstances under which the marriage has come to an abrupt end as is borne out by the evidence on record, I am inclined to make an order for costs of GH¢10,000 in favour of Respondent.

(SGD)

HER WORSHIP BRIDGET AKPE AKATTAH

DISTRICT MAGISTRATE