

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 18TH DAY OF JULY, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/83/2023

ERIC BOADI

PETITIONER

VRS

MAGDALENE ADDO

RESPONDENT

PETITIONER IS ABSENT AND REPRESENTED BY IVAN MENSAH DADZIE ESQ.

RESPONDENT IS PRESENT AND SELF REPRESENTED

JUDGMENT

BRIEF FACTS

The petitioner a seafarer and the respondent a fashion designer, both citizens of Ghana were married under Akan customary law and converted same into an ordinance marriage under Part III of the Marriages Act 1884-1985 (CAP 127) on 15th April 2017 at the Ga South Municipal Assembly at Weija in Accra. After the marriage, parties cohabited at Ablekuma and have two issues of the marriage namely Alexis Boadi aged 5 years old and Mark Hardy Boadi aged 2 years old.

The Petitioner filed a petition at the registry of this court on 12th April 2023 and prayed for the dissolution of the parties' marriage on the ground that same has broken down beyond reconciliation due to the unreasonable behaviour of the respondent. He also prayed the court to grant custody of the issues of the marriage to the respondent with reasonable access to him.

The Respondent filed an answer to the petition on 5th May 2023 and denied the claims of the petitioner. She cross petitioned for the following reliefs;

1. Dissolution of the ordinance marriage celebrated between the parties

2. Custody of the issues of the marriage with reasonable access to the petitioner
3. An order for petitioner to maintain the issues with the sum of GHC2,500.00 monthly subject to a yearly review.
4. An order for petitioner to pay the educational and medical expenses of the issues as and when payments fall due.
5. An order for the petitioner to settle her with a lump sum of GHC50,000.00

On 10th May 2023, parties were referred to the CCADR for a possible reconciliation. Parties were unable to reconcile but instead reached terms of agreement on the ancillary reliefs dated 25th May 2023.

ISSUES

The court therefore set down the issue of whether or not the marriage between the parties has broken beyond reconciliation for determination.

THE CASE OF THE PETITIONER

The Petitioner averred that the marriage between the parties has broken down beyond reconciliation due to the unreasonable behaviour of the respondent and that he cannot reasonably be expected to live with her as a husband.

He particularised the behaviour of the respondent to the extent that respondent has been insensitive to his needs as a man and husband. He averred that respondent has consistently disrespected and disregarded him and does not properly communicate to him as a husband. He averred further that respondent has on daily basis demonstrated that the marriage is not her priority and that the marriage is not based on love but on sheer convenience. He added that respondent has informed him in clear terms that she is no more interested in the marriage.

According to the petitioner, respondent has shown no interest in adjusting the differences of the parties despite the good efforts of the petitioner and she does not seem bothered by how her conduct has affected and continue to affect him.

He averred that throughout the period of the marriage, he has provided support to the respondent but he does not receive care, affection, support and cooperation and understanding from respondent as a wife and this has occasioned unnecessary emotional trauma on the petitioner.

Petitioner adds that without trust, love, respect and communication, it is impossible to keep or sustain a meaningful marriage. He concluded that communication between the parties has completely broken down and parties have not lived together as man and wife for twelve months and all attempts to reconcile parties have been unsuccessful.

He prayed for the dissolution of the marriage between the parties.

THE CASE OF THE RESPONDENT

The respondent denies the averments of the petitioner and states that it is rather the petitioner who has behaved in such a way that she cannot reasonably be expected to live with him as a wife.

According to her, petitioner has refused to have sex with her for more than two years despite all attempts by respondent to have sex with the petitioner.

Respondent adds that petitioner is mostly at sea thus leaving respondent mostly on her own and that she has tried on five occasions to settle differences between the parties by inviting their families to no avail as petitioner insists that he is no longer interested in the marriage and wants a divorce.

Respondent avers that petitioner has refused to support her fashion designing business and she had to acquire a loan to continue her business. She admits that trust, love, respect and communication is lost in the marriage and that parties have not lived together as

husband and wife for more than twelve months. She prayed for the dissolution of the marriage.

BURDEN OF PROOF

It is trite that sections 12(1) and (2) of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

In the case of **ACKAH V PERGAH TRANSPORT LTD [2010] SCGLR 728 AT PAGE 736**, Sophia Adinyira JSC (as she then was) delivered herself as follows;

“It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail.”

This position of the law was re-echoed by Benin JSC in the case of **ARYEE V SHELL GHANA LTD & FRAGA OIL LTD [2017-2020] 1 SCGLR 721 AT PAGE 733** as follows;

“It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved.”

THE COURT’S ANALYSIS AND OPINION

Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2 (1) of Act 367 explains that 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 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 provided that the consent shall not be unreasonably withheld and where the court is satisfied that it has been withheld the court may grant a petition for divorce under this paragraph despite the refusal
- (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
- (f) That the parties after a diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also provides that although the court finds the existence of one or more of the facts specified in subsection (1), the court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation.

In **GILBERT ANYETEI V SUSANNA ANYETEI, CA/J4/67/2021 DATED 2/3/2023**, Pwamang JSC held as follows;

“The law is that the only ground on which a court would order the dissolution of a marriage is that the marriage has broken down beyond reconciliation particulars of which are required to be specifically pleaded and proved by evidence adduced in court. It is

therefore not sufficient for a judge to grant a divorce just because both parties endorsed that relief on their pleadings.”

The Petitioner failed to attend court during the trial and as a result his case was dismissed pursuant to Order 25 r 1(2) (b) of the District Court Rules 2009, C.I. 59 and respondent was allowed to prove her cross petition.

With regard to the cross petition of the respondent, it is trite that the respondent bears the same burden as a petitioner in proving her cross petition which is on the preponderance of probabilities as stated by the authorities cited supra.

In **TETTEH AYAA IDDRISU V. WINFRED OTUAFRO & ANOR [2010] SCGLR 818**, the Supreme Court held as follows;

“A party who counterclaims bears the burden of proving his counterclaim on the preponderance of probabilities and will not win on that issue only because the original claim failed.”

ANSAH JSC IN JOSEPH AKONU-BAFFOE AND 2 OTHERS V LAWRENCE BUAKU AND ANOTHER, CIVIL APPEAL NO. J4/6/2012 emphasized the position of the law on counterclaim as follows;

“In essence, a defendant’s counterclaim is to be treated in the same way as the plaintiff’s case. The roles are reversed and the defendant as plaintiff in the counterclaim assumes the burden to prove his case.”

The respondent based her allegations for the breakdown of the marriage on the unreasonable behaviour of the petitioner and the fact that she cannot reasonably be expected to live with him as a wife. She tendered the marriage certificate of the parties with licence number GSMA/6642103/17 as evidence of the parties’ marriage.

At page 307 of the book “**The law on family relations in Ghana**” by **William Cornelius Ekow Daniels**, the learned author on unreasonable behaviour states as follows;

“Behaviour in this context includes most of the ingredients of acts or omissions which amounted to legal cruelty under the old law without the need to establish injury or apprehension of injury to life, limb or health and constructive desertion. It means more than that. Under Act 367, the emphasis is on the behaviour of the respondent. The popular meaning of the word can be found in the concise oxford dictionary which defines “behaviour” to include deportment, manners, way of conducting oneself, moral conducting, treatment shown to or towards others in response to stimulus. The Act did not use the adjective “unreasonable” to qualify it, for it has been said it is not the behaviour that needs to be unreasonable but the expectation of cohabitation.”

Counsel for the Petitioner declined the invitation to Cross Examine the respondent on her assertions.

In **QUAGRAINE V. ADAMS [1981] GLR 599** it was held that in a situation where a witness testifies and his opponent fails to cross-examine him, the court may consider the witness’s testimony as admitted by his opponent

Accordingly, from the totality of the evidence, I find that the marriage between the parties has indeed broken down beyond reconciliation by reason of the fact that the parties have not lived as husband and wife for more than twelve months due to the unreasonable behaviour of the petitioner.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Eric Boadi and Magdalene Addo celebrated at the Ga South Municipal Assembly at Weija in Accra on 21st April 2017 is hereby dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

The Terms of Agreement between the parties dated 25th May 2023 is adopted as consent judgment and made a part of the final judgment of this court.

I make no order as to costs.

.....
H/W RUBY NTIRI OPOKU (MRS.)
(DISTRICT MAGISTRATE