

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/A4/40/23

**PATIENCE VERA MAWUSI PAPPOE
VRS**

PETITIONER

JOSEPH ADOTEI PAPPOE

RESPONDENT

PETITIONER IS PRESENT AND REPRESENTED BY FRANCIS MENSAH WENDLE ESQ WITH SADICK LASKAYA ESQ. HOLDING BRIEF FOR JANE TACHIE MENSON
RESPONDENT IS ABSENT.

JUDGMENT

Background

The petitioner is a secretary whilst the respondent is a sales representative and both are Ghanaians resident in Ghana. The parties got married under Part III of the Marriages Act, 1884 -1985 (CAP 127) at the Accra Metropolitan Assembly in Accra in April 1998.

After the celebration of the marriage, the parties cohabited at respondent's family house at Odorkor in Accra for a period of four months before moving to Darkuman also in Accra. Parties are blessed with two issues of the marriage namely Allen Marrett Nii Kpakpo Pappoe aged 23 years and Saint Anthony Nii Akwei Pappoe aged 21 years.

The petitioner filed a petition for divorce at the registry of this court on 11th January 2023 praying for an order dissolving the ordinance marriage celebrated between the parties as same has broken down beyond reconciliation.

The respondent filed an answer to the petition on 20th January 2023 and cross petitioned for the dissolution of the parties' marriage.

THE CASE OF THE PETITIONER

The petitioner grounded her petition for divorce on the unreasonable behaviour of the respondent and the fact that she cannot reasonably be expected to live with him as a wife.

She particularised the behaviour of the respondent to the extent that parties lived in the family house of the respondent and as a result there was a lot of interference in the marital relationship such that there was no peace and happiness in the marriage.

According to the petitioner, there was a myriad of issues which were never resolved between the parties and this was essentially due to the fact that the respondent was not responsible and petitioner solely took care of maintenance of the matrimonial home

including payment of medical bills and other essentials with little or no contribution whatsoever from the respondent.

She added that when she was pregnant with the second child, she suggested that parties should move out of respondent's family home as she found the environment they were living in not conducive for her health and pregnancy which suggestion was vehemently opposed to by the respondent. Being fed up with the respondent's uncaring attitude, she moved out of the matrimonial home and went to live with her mother at Mamprobi in the year 2001 and since then the parties have been separated.

She concluded by stating that since the separation of the parties, respondent has had four children with two women and all attempts at reconciliation has proved futile. She therefore prayed the court to dissolve the parties' marriage.

She supported her claims with a copy of the registrar's certificate dated 23rd April 1998, statutory declaration of her father, Mr. Anthony Kojo Tudzi filed on 6th June 2023 and photos taken on the wedding day. All Exhibits were admitted in evidence and marked as Exhibits A, B and C.

THE CASE OF THE RESPONDENT

Respondent on the other hand admits that the marriage has broken down beyond reconciliation. According to him, petitioner deserted the matrimonial home and all attempts by family, friends and church elders to reconcile parties have been unsuccessful as she never made herself available for the said reconciliation.

Respondent added that having lived apart without any communication for over twenty years, the marriage as it exists now is an empty shell and there is no reason why the parties should stay married to each other.

He prayed the court to dissolve the marriage between the parties.

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

It is trite that in civil cases, proof 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.”

SHIFTING OF THE BURDEN OF PROOF

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, unless and until 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 he is asserting.

In the case of *Re Ashalley Botwe Lands; Adjetey Agbosu v Kotey* [2003-2004] SCGLR 420, it was held as follows;

“It is trite learning that by the statutory provisions of the Evidence Decree 1975 (NRCD 323) the burden of producing evidence in a given case is not fixed but shifts from party to party at various stages of the trial depending on the issue(s) asserted.

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.

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent.

To succeed under the fact of unreasonable behaviour, the petitioner must first establish unreasonable conduct on the part of the Respondent and secondly, she must establish that as a result of the bad conduct, she cannot reasonably be expected to live with him.

At pages 123 and 124 of the book "At a glance! The Marriages Act and The Matrimonial Causes Act Dissected" by Mrs. Frederica Ahwireng-Obeng, the learned writer on unreasonable behaviour writes;

"Unreasonable behaviour has been defined in English Law as:

Conduct that gives rise to injury of life, limb or health or conduct that gives rise to a reasonable apprehension of such danger.

...the court will require strong evidence to establish unreasonable behaviour. Normal wear and tear incidents of married life will not amount to unreasonable behaviour."

Respondent refused to cross examine the petitioner on her assertions and also refused to testify.

It was held in *Fori vs. Ayirebi and Others* [1966] GLR 627 that:

“When a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact.”

See also **Western Hardwood Enterprises Ltd. vs. West African Enterprises Ltd. [1989-1999] SCGLR 105.**

From the totality of the evidence before me, I find that the marriage between the parties has broken down beyond reconciliation as parties have not lived together as husband and wife for well over 20 years.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Patience Vera Mawusi Pappoe and Joseph Adotei Pappoe celebrated at the Accra Metropolitan Assembly in 1998 is hereby dissolved.

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

I make no order as to costs.

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