

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 20<sup>TH</sup> DAY OF JUNE, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

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SUIT NO. G/WJ/DG/A4/41/2023

CHRISTIANA TETTEH

PETITIONER

VRS

COLLINS QUANSAH

RESPONDENT

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PARTIES ARE PRESENT AND SELF REPRESENTED

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## JUDGMENT

### **Brief background**

The petitioner is a secretary whilst the respondent is a taxi driver. Both are Ghanaian citizens resident in Ghana.

Parties got married under the ordinance on 28<sup>th</sup> February 2015 at the Apostolic Reformed Church, Mudor near the old UTC in Accra. After the celebration of the marriage, the parties cohabited at Top Town in Amanfrom and have no issue of the marriage.

The Petitioner filed a petition at the registry of this court on 11<sup>th</sup> January 2023 and prayed for the dissolution of the parties' marriage as in her estimation same has broken down beyond reconciliation.

The respondent filed an answer to the petition on 14<sup>th</sup> March 2023 and cross petitioned for the dissolution of the parties' marriage.

After close of pleadings, the court set down for determination the issue of whether or not the marriage celebrated between the parties has broken down beyond reconciliation.

## **THE CASE OF THE PETITIONER**

The Petitioner grounded her claim on the fact that the marriage between the parties has broken down beyond reconciliation due to the unreasonable behaviour of the respondent and the fact that the petitioner cannot reasonably be expected to live with him as a wife.

She particularised respondent's unreasonable behaviour to the extent that respondent has throughout the pendency of the marriage disrespected her and called her useless. She averred that respondent sleeps outside the matrimonial home, picks quarrels with her and abuses her physically without any provocation. She averred further that respondent has informed her that he will maltreat her until she leaves the matrimonial home on her own volition. She added that respondent has refused to go with her for medical appointments to help them achieve conception. She added that respondent has unilaterally sold off a parcel of land parties bought at Aman from without her consent and has given her the sum of money she invested in the purchase of land.

According to her, she was compelled to move out of the matrimonial home due to respondent's physical abuse and lack of respect for her.

In support of her case, she tendered marriage certificate with licence number AMA/10151323/2015 in evidence. Same was admitted and marked as Exhibit A.

## **THE CASE OF THE RESPONDENT**

The respondent denied the allegations of the petitioner and stated that the parties' marriage has broken down due to the desertion of the petitioner from the matrimonial home since 7<sup>th</sup> May 2021 after a quarrel between the parties.

He averred that just a year into the marriage, the parties had a series of misunderstandings which generated into many quarrels between them. He added that petitioner often packed out of the matrimonial home at the slightest misunderstanding

and would usually return after a week or more depending on the nature of the quarrel. He averred further that petitioner denies him sex and is not hospitable whenever his mother pays parties a visit as she will often say that she is sleepy and would go to bed leaving respondent's mother all by herself.

According to the respondent, in the midst of a quarrel, respondent alighted from his car in the middle of the road at Sakaman in anger and as a result when the parties' tenancy expired, he refused to pick up calls from the petitioner.

Respondent admitted that there were times when he slept outside the matrimonial home save that he did so anytime his vehicle broke down when he could not afford transportation cost. He often slept over at the house of his friend Emmanuel who was his best man during the wedding ceremony. He again admitted selling off the parties' land save that the purpose was to pay off a taxi he had acquired with the consent of the petitioner. He informed the court that after the sale, petitioner deducted the sum of GHC1, 500.00 from the proceeds of the sale with the excuse that she had deducted the sum she invested in the land plus interest.

He again admitted that he failed to attend hospital with the petitioner on only one occasion due to heavy vehicular traffic.

He added that the family of both parties have attempted to reconcile parties to no avail and that the petitioner's family has returned the customary drinks presented for petitioner's hand in marriage.

He prayed the court to grant the petition for divorce.

## **BURDEN OF PROOF**

It is trite that sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

In **ABABIO V AKWASI IV [1994-1995] GBR 774, AIKINS JSC** delivered himself thus;

“The general principle of law is that it is the duty of a plaintiff to prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins if not he loses on that particular issue.”

In **T.K. Serbeh & Co. Ltd [2005-2006] SCGLR 341 at 360-361, Dr. Date Bah JSC** held as follows;

“For however credible a witness may be, his bare affirmation on oath or the repetition of his averments in the witness box cannot constitute proof. This is trite law...this proposition is applicable to even matters whose proof does not require collaboration as a matter of law. Moreover the burden of proof rests on the plaintiff.”

### **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 fact that respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him.

At page 307 of the book "The Law on Family Relations in Ghana" by William Cornelius Ekow Daniels, the learned author on unreasonable behaviour of respondent stated 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 or constructive desertion. It means more than that. Under the old law the respondent had to be treated with cruelty. 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 even 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."

From the pleadings and the evidence before this court, I find that apart from the bare assertions of the petitioner, she failed to lead any evidence to prove unreasonable behaviour on the part of the respondent

Respondent on the other hand accused petitioner of desertion from the matrimonial home however when she was invited to cross examine him on his assertions, she declined the invitation to cross examine him.

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

From the totality of the evidence therefore, I find as a fact that the marriage between the parties has indeed broken down beyond reconciliation due to the desertion of the petitioner from the matrimonial home since 7<sup>th</sup> May 2021 and has shown no intention of resuming cohabitation.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Christiana Tetteh and Collins Quansah celebrated at the Apostolic Reformed Church of Ghana in Accra on 28<sup>th</sup> February 2015 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)**

