

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

SUIT NO. G/WJ/DG/A4/33/2023

CYNTHIA NAA ADEI KOTEY

PETITIONER

VRS

ABRAHAM NII BORTEY BORKETEY

RESPONDENT

PETITIONER IS PRESENT AND REPRESENTED BY THOMAS SARFO ESQ.

RESPONDENT IS PRESENT AND SELF REPRESENTED.

JUDGMENT

Brief background

After parties celebrated their customary law marriage in the early hours of 5th February 2015, they converted their customary law marriage to an ordinance marriage pursuant to the Marriages Act (CAP 127) at a ceremony officiated upon by the officiating minister of Marriages at Ga South Municipal Assembly at Weija on 5th February 2016.

Parties cohabited at petitioner's house at Bortianor in Accra and have no issue of the marriage.

The Petitioner filed a petition at the registry of this court on 8th December 2022 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 16th December 2022 and cross petitioned for the dissolution of the parties' marriage.

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

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 she cannot reasonably be expected to live with him as a wife.

She particularised respondent's unreasonable behaviour to the extent that he insists that petitioner attends his church and whenever she refuses, he gets angry and gives her a cold attitude. She added that respondent blames her for not bearing him a child without any scientific proof and keeps insinuating that parties' inability to have children is as a result of petitioner's bad luck. She averred that respondent makes unnecessary monetary demands from her such as buying him a car and when she was unable to afford same, he became angry.

According to her, respondent is engaged in amorous relationship with other women including a white woman on face book whom he has constant communication with on WhatsApp and Facebook.

It is her case that respondent cloned her phone and read all her private messages, emails and bank account information. It is her further case that respondent has been calling numbers stored on her phone with male names to threaten them with death. She added that respondent has destroyed three of her phones and her dashboard without any provocation.

She again stated that respondent has been subjecting her to cruel and inhuman treatment and has been beating her without any provocation. She averred that respondent once

pulled her from her vehicle and slapped her causing her to fall on the ground. She averred further that her life is in danger because of the ferocious nature of the respondent.

Petitioner stated that when parties got married, she gave respondent money and other materials to give a facelift to his shop and was solely responsible for maintaining the matrimonial home including payment of medical bills and that whilst she was in Cape Coast respondent was demanding money for electricity bills even though he was living in her house and was gainfully employed.

She added that respondent has failed to maintain her even though she is presently unemployed. She concluded that all attempts at reconciliation have proven futile and therefore prays for the dissolution of the parties' marriage.

In support of her case, she tendered without objection marriage certificate with licence number GSMA/ 70307931/16 and WhatsApp communication between respondent and one Esther. Same were admitted and marked as Exhibits A and B respectively. She did not call any witness.

THE CASE OF THE RESPONDENT

The respondent denied all the allegations of the petitioner and stated that the parties' marriage has broken down due to the fact that petitioner keeps late nights and would not return home as soon as she closes from work as she used to do. He averred that petitioner started telling lies about her whereabouts and also started keeping her phone on silence and stopped picking calls when she was with him.

He averred further that petitioner slapped him on three occasions without provocation and he warned her severally to desist from such behaviour.

According to the respondent, petitioner was transferred to Cape Coast around 2018 and she relocated and prevented him from visiting her. He added that he once visited her and

petitioner locked him out with the excuse that he did not give her prior notice before paying her a visit. He averred that he paid her a visit sometime in June 2019 and found that she had bought a new phone which contained chats on her sexual escapades with other men including one Jeff who was also living in one of the company's bungalows close by.

Respondent averred further that when he saw the messages he confronted the said Jeff and advised him to stay away from his wife. This did not go down well with the petitioner who insisted that respondent had invaded her privacy and therefore left respondent in her house and refused to return to same until he left. Petitioner subsequently blocked him and broke all form of communication with him.

It is his case that he reported the conduct of petitioner to her mother Rose Kortey who advised him to move out of the matrimonial home as same belonged to her daughter. He therefore left the matrimonial home as he was mentally stressed out by the events.

It is his further case that all attempts at reconciliation have been frustrated by the petitioner and as a result parties have not lived as husband and wife since 2019.

He prayed the court to grant the petition for divorce.

In support of his case, he tendered whatsapp messages from one Jeff and one Rose Kortey, mother of petitioner without objection and same were admitted and marked as Exhibits 1 and 2 respectively. He did not call any witness.

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.

In *Gilbert Anyetei v Sussana 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.”

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 she 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."

Both parties declined the invitation to cross examine one another on the veracity of their claims.

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 pleadings and evidence before this court, I find as a fact that the marriage between the parties has indeed broken down beyond reconciliation due to the

fact that parties have continuously lived physically apart and have ceased to recognise the marriage as subsisting since June 2019.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Cynthia Naa Adei Kotey and Abraham Nii Bortey Borketey celebrated at the Ga South Municipal Assembly in Accra on 5th February 2016 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)**