

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 13<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/A4/60/2023

REBECCA TSOTSOO AFUTU

PETITIONER

VRS

MICHAEL NII KATEY ADOTEVI

RESPONDENT

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PETITIONER IS PRESENT AND REPRESENTED BY FRANCIS MENSAH WENDLE ESQ.

RESPONDENT IS PRESENT AND SELF REPRESENTED

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## JUDGMENT

### BRIEF FACTS

The parties who are both Ghanaians and teachers by profession were legally married in accordance with Part III of the Marriages Act 1884-1985 (CAP 127) on 16<sup>th</sup> August 2014 at the St. Augustine Anglican Church at Dansoman in Accra. After the marriage, parties cohabited at New Bortianor and have one issue of the marriage namely Hezekiah Nii Adotey Adotevi aged 7 years old.

The Petitioner filed a petition at the registry of this court on 17<sup>th</sup> February 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. She also prayed for custody of the only issue of the marriage with reasonable access to the respondent.

The Respondent filed an answer to the petition on 15<sup>th</sup> March 2023 and denied the claims of the petitioner. He cross petitioned for the dissolution of the parties' marriage.

On 21<sup>st</sup> March 2023, parties were referred to the CCADR for a possible reconciliation. Parties were unable to reconcile but instead filed terms of agreement on 12<sup>th</sup> April 2023 that custody of the issue of the marriage should be granted to the petitioner with reasonable access to the respondent.

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

She particularised the behaviour of the respondent to the extent that respondent is very temperamental such that every issue leads to arguments and quarrels between the parties. She averred that respondent consistently accused her of being disrespectful and not submissive to him. She averred further that on several occasions respondent refused to communicate with her and stayed for months without having any conjugal relationship with her even though they sleep on the same bed. She added that respondent perpetually hurls insults at her and calls her stupid and senseless amidst other degrading words and this has caused her a lot of emotional pain and distress.

According to the petitioner, before the marriage, she had a Caucasian friend who gifted the property in which parties reside to her. She averred that after giving birth to their child, respondent asked her not to share pictures of the baby with anyone however she shared the pictures of the baby with her friend contrary to the instructions of the respondent. This act of hers infuriated the respondent who insisted that she should stop communicating with her friend.

She added that she could not stop communicating with her friend however for peace to prevail, she decided to text him once a while to check on him. Respondent threatened to manhandle her if he feels disrespected again causing her to fear for her safety.

Petitioner says that respondent has deserted the matrimonial home without any notice to her with no intention of resuming cohabitation and as a result parties have not lived as husband and wife for a year and six months.

She averred further that both families have tried to reconcile parties to no avail. She therefore prayed for the dissolution of the parties' marriage.

In support of her case, petitioner tendered the marriage certificate with licence number A.M.A 5274-2012 in evidence and same was admitted and marked as Exhibit A.

She did not call any witness.

#### **THE CASE OF THE RESPONDENT**

The respondent avers that it is rather the petitioner who has been unfaithful to him. It is his case that petitioner is having an affair with her Caucasian friend. It is his further case that anytime her friend visits Ghana, petitioner meets up with him and exposes issues of the marriage to him.

According to him, he met petitioner's friend in their matrimonial home in August 2022 after petitioner had ejected him from same and he had gone there to hand over terminal reports of the issue of the marriage to her for onward submission to the school.

Respondent adds that he has personally sat with petitioner to reconcile with her to no avail. Both families of the parties have also tried on countless occasions to reconcile parties without any success. He concluded that he is not contesting the petition for divorce and prays the court to grant him custody of the only issue of the marriage.

## **BURDEN OF PROOF**

It is trite that sections 11(1) and (4) and 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.

## **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.”

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the respondent and the fact that she cannot reasonably be expected to live with him as a wife.

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.”

From the evidence, I find that apart from the bare assertions of the petitioner, she did not lead any evidence to prove unreasonable conduct on the part of the respondent as a result of which she cannot be reasonably expected to live with him as a wife.

Respondent declined the invitation to cross examine the petitioner on her assertions and also refused to testify as he insisted that he has already given his consent for the dissolution of the marriage and will therefore not contest same.

The respondent did not however deny the fact that he has moved out of the matrimonial home with no intention of resuming cohabitation and as a result parties have not lived as husband and wife for one year and six months.

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 one year and six months due to the desertion of the respondent from the matrimonial home.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Rebecca Tsotso Afutu and Michael Nii Katey Adotevi celebrated at the St Augustine Anglican Church at Dansoman in Accra on 16<sup>th</sup> August 2014 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 12<sup>th</sup> April 2023 is adopted as consent judgment and made a part of the final judgment of this court.

I make no order as to costs.

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**H/W RUBY NTIRI OPOKU (MRS.)**

**(DISTRICT MAGISTRATE**