

A4/15/23

KWAKU OPOKU WARE
AKIM AKYEM JUANSA : PETITIONER

VRS

AKYAA HANNAH : RESPONDENT
AKIM ASUBOA

JUDGMENT

Introduction

This suit was commenced by a Petition for Divorce filed on 3rd February, 2023, wherein the Petitioner prayed for the following relief;

An order dissolving the marriage between the Parties

Pleadings of Parties

According to the Petition, the parties herein married customarily on 23rd August 2014 and the marriage was blessed at the Presbyterian Trinity Congregation, Akyem Asuboa. The Parties lived in their respective homes at Asante Akyem Juansa and Akyem Asuboa respectively after the celebration of the marriage. There are two (2) issues of the marriage at the time of filing the Petition. The Petitioner and Respondent are both in the teaching profession. It was averred that the marriage has broken down beyond reconciliation and that the only alternative is a dissolution of the marriage.

It is the Petitioner's case that few months after the celebration of the marriage, the Respondent started confronting him for not being able to impregnate her and alleged that one, Kwabena Sireboe had even impregnated his wife.

The Petitioner as a result of the complaints by the Respondent sought herbal medicine from a native doctor at Hwiediem (Asante-Akyem) but the Respondent refused to consume it. The Respondent however subsequently became pregnant and there are currently two (2) issues in the marriage.

He averred that a point in time, he decided to attend Trinity Theological Seminary at Legon, Accra and therefore asked Respondent to assist him financially but Respondent refused. The Respondent without any cause, became extremely arrogant, rude and disrespectful and started making unnecessary financial demands, does not want him to care for his mother and other family members and this has brought great enmity within his family.

Petitioner says that since both of them live separately, it was agreed each will visit the other within a period of two (2) weeks but out of the blue the Respondent stopped. That from the month of April 2022, their marriage has suffered greatly and when it became clear that the Respondent is not ready to continue the marriage, Petitioner called Respondent to also inform her that he could not continue with the marriage.

On the 19th August 2022, Petitioner went to Respondent's uncle one Papa Dompseh at Akim Asuboa with the message that he should tell Respondent's parents of his desire not to continue the marriage. The Parties went before the Reverend Minister of the Presbyterian Church for mediation which proved futile. On 10th January 2023, the Respondent called Petitioner on phone informing him that Petitioner should build a 3 bedroom self-contained house for her and the children before the dissolution of the marriage will proceed. On the 21st January 2023, Petitioner met the Krontihene of Akim Asuboa and some elders where the Respondent was invited but the Respondent refused to attend.

Petitioner averred that Respondent is impatient and of turbulent anger that she would flare with anger anytime or any day, unsupportive emotionally, financially and spiritually and have not had sexual relations in the past 10 months.

Respondent's conduct has caused him so much anxiety and stress and that he cannot reasonably be expected to live with the Respondent.

In his Answer filed on 13th February, 2023, the Respondent also Cross Petitioned for the following reliefs:

- 1) *That the Petitioner be ordered to pay Thirty Thousand Ghana Cedis (GHS 30,000) as alimony to the Respondent.*
- 2) *That the Respondent be granted custody of their two (2) children with reasonable access to the Petitioner.*
- 3) *That the Petitioner be ordered to maintain the two children at One Thousand Cedis (GHS 1,000.00) monthly and be responsible for their medical bills, clothing and school fees.*
- 4) *That the Petitioner be ordered to rent an apartment for Respondent and their two (2) children and be responsible for the monthly rent.*

Respondent averred that their marital issues went before the Presbyterian District Minister for same to be resolved but Petitioner refused to honour the invitation. That the Petitioner constantly accused her of causing abortions before their marriage and also attributed her inability to conceive as a problem confronting Respondent's entire family. It subsequently turned out after the intervention of Respondent's father when they went to Presbyterian Hospital, Agogo that it was detected the Petitioner had low sperm count and was given medication which resulted in the 2 issues of the marriage. She also averred that her inability to continue visiting the Petitioner every 2 weeks was as a result of the extreme difficulties associated with putting the children aboard a commercial vehicle for 6 hours just to see Petitioner. She admitted that she informed Petitioner she will agree to a divorce only when the Petitioner builds a 3 bedroom house for her and the children.

Issues

From the pleadings of the parties, the only issue for this Court's consideration is;

Whether or not the marriage between the Petitioner and the Respondent has broken down beyond reconciliation?

The burden of Proof

The proof prescribed in civil trials is provided under **section 11 (1) and 11(4) of the Evidence Act, 1975 (NRCD 323)** as follows;

- (1) *For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against hi, on the issue.*
- (2) *In order circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.*

A party who bears the burden of proof is to produce the required evidence of facts in issue that has the quality of credibility short of which his claim may fail. See **Ackah v Pergah Transport Limited & Ors [2010] SCGLR 736**

Evaluation of evidence/Resolution of Issues

Whether or not the marriage between the Petitioner and the Respondent has broken down beyond reconciliation

Section 1(1) of the Matrimonial Causes Act, 1971 (Act 367) allows either party to a marriage to present a petition to the court for divorce. The section further emphasizes that, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

A Petitioner in demonstrating that his or her marriage has broken down beyond reconciliation has a duty to prove to the Court's satisfaction that there is in existence at least one of the six facts specified in Section 2(1) (a) - (f) of Act 367. Where the Court finds that any of the facts has been made out, a presumption is raised that the marriage has broken down beyond reconciliation. See the case of **Kotei v. Kotei [1974] 2 GLR 172**

It is inferred from the pleadings and the evidence, that the Petitioner intends to rely on Section 2(1) (b) and (f) of Act 367 which is to the effect that the Respondent has behaved in such a

way that the petitioner cannot reasonably be expected to live with him and that the parties have irreconcilable differences.

The court ought to take cognizance of the personalities of the individuals before it and evaluate the impact of the respondent's conduct on that particular petitioner, having due regard to the history of the marriage and their relationship. See the case of ***Knudsen v Knudsen [1976] 1 GLR 204.***

The Petitioner testified by relying on her witness statement filed on 23rd March, 2023 which is a recount of the averments in his Petition. He however averred that after the celebration of the marriage, the Respondent took all the gifts (money and items) made to them by friends and family members. That when he questioned Respondent on her bad character and unnecessary financial demands, Respondent was unable to give any meaningful explanation.

According to the Petitioner, the marriage between the parties had broken down beyond reconciliation due to Respondent's impatience, turbulent anger, unsupportive, unnecessary financial demands and bad character.

The Parties were referred to the CCADR in a bid to salvage the marriage as it was believed the parties could settle their differences. After diligent efforts, the parties could not reconcile their differences. The Court finds as a fact that the marriage between the parties has broken down beyond reconciliation. The parties resolved the ancillary reliefs pursuant to the terms of agreement dated 19th September 2023 as follows;

- 1) ***That the Petitioner is to pay alimony of GHS 8,000.00 to the Respondent as follows;***
 - a. ***Petitioner paid GHS 3,000.00 to the Respondent on 19th September 2023 and is to pay the remaining amount at GHS 3,000.00 and GHS 2,000.00 on 31st October 2023 and 30th November 2023 respectively.***
 - 2) ***Custody of the two (2) issues of the marriage, is granted to the Respondent with the Petitioner granted access to them every fortnight weekend (Fridays after school and return them by 5pm on Sundays).***

- 3) *The Petitioner is to maintain the two children at GHS 600.00 a month effective from the month of September 2023. The monthly maintenance is subject to renewal.*
- 4) *Petitioner shall be responsible for the clothing, school fees and health needs of the children.*
- 5) *The Petitioner is to pay one year rent advance in the sum of GHS 1,200.00 to the Respondent on or before the 31st December 2023.*

Conclusion

Having come to the conclusion that the marriage between the parties has broken down beyond reconciliation, the marriage celebrated between the parties on 23rd August 2014 is hereby dissolved. The terms of agreement in respect of the ancillary reliefs entered into by the parties at the CCADR on the 19th September 2023 are hereby adopted as consent judgment of the parties.

(SGD)

**ADELINE OWUSUA ASANTE (MS.)
(MAGISTRATE)**

Parties

Petitioner Present

Respondent Present