

IN THE DISTRICT COURT HELD AT AKIM ODA ON 23RD NOVEMBER 2023 BEFORE HER
WORSHIP ADELINE OWUSUA ASANTE (MS.) SITTING AS THE DISTRICT MAGISTRATE

A4/36/22

PENELOPE GIDISU - PETITIONER
OF AKIM ASAWASE

VRS

BISMARCK AWUAKYE - RESPONDENT
AKIM ODA

JUDGMENT

Introduction

This suit was commenced by Petition filed by the Petitioner on 15th July 2022 against the Respondent praying for;

- (a) An order dissolving the Ordinance marriage between the Parties.*
- (b) An order for the Petitioner to take custody of the two children*
- (c) An order for the Respondent to maintain the two children at GHS 500.00 a month effective 1st July 2022 subject to renewal and also to provide their necessities such as clothing, health, education, shelter etc.*

The parties herein, married under Part Three of the Marriages Act, 1884-1985 (CAP 127) on 15th July 2017 at Our Lady of Fatima Catholic Church, Akim Oda. The parties have two (2) children who at the date of institution of the suit were, 4 years and 2 years respectively. The Petitioner had one (1) child from a previous relationship prior to her marriage to the Respondent. The Parties cohabited at Akim Oda after the celebration of the marriage but Petitioner has relocated to Akim Asawase. The Petitioner is a public servant with the Ghana National Fire Service whilst Respondent is a Teacher.

It is the Petitioner's case that the marriage between her and Respondent has broken down beyond reconciliation and as such cannot reasonably be expected to live with Respondent due to certain reasons as outlined by her in her Petition.

It is the Petitioner's case that the Parties enjoyed marital bliss until the Respondent started abusing her emotionally in 2019. She averred that Respondent would call her a witch, fool, insult and assault her to the extent of using a belt on her, tie her hands and forcibly have sexual intercourse with her.

The Petitioner averred that she reported to the DOWVSU office at Akim Oda and after deliberations, Respondent was advised to live with and treat her as a wife however Respondent continued to harass her by raining curses on her. She added that there is no peace in the marriage as a result of the Respondent's behavior and this has caused her much anxiety and stress.

In his Answer filed on 15th August, 2022, the Respondent averred that although there are occasional quarrels, the Parties were advised by DOWVSU to live together peacefully and has fulfilled his part as he has not done any of the acts mentioned in the petition. He further stated that it is Petitioner who is rather violent as she smashed Respondent's android phone, hit the Respondent with a coffee table on an occasion, sometimes travels without notice, abandons the issues of the marriage, has been unfaithful yet he still lived peacefully with the Petitioner. Respondent stated that he should be the one to file the petition taking into account the behavior of Petitioner however since he still loves the Petitioner he did not want a dissolution of the marriage.

Issues

The main issue for determination by this court is *whether or not the marriage between the Petitioner and the Respondent has broken down beyond reconciliation*

The court will then consider the ancillary matters pertaining to custody of the issues of the marriage, their educational, health, maintenance and other related needs.

The burden of Proof

It is settled law that the standard of proof is one on the balance of probabilities in civil cases. The proof prescribed in civil trials is provided under **section 11 (1) and 11(4) of the Evidence Act, 1975 (NRCD 323)**.

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 **Akiah v Pergah Transport Limited & Ors [2010] SCGLR 736; Ababio v Akwasi III (1994-1995) 2 GBR 774**

Evaluation of evidence/Resolution of Issues

Issue 1: Whether or not the marriage between the Petitioner and the Respondent has broken down beyond reconciliation

A Court will only dissolve a marriage that has broken down beyond reconciliation. See **section 1(2) of the Matrimonial Causes Act, 1971 (Act 367)**. This means, the Court will not decree a divorce on either party's whim.

The law requires the petitioner to plead and prove to the satisfaction of the court , one or more of the six marital offences set out 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**.

The onus lies on the party making allegations to adduce sufficient, cogent and reliable evidence to support the allegations contained in the petition for the court to arrive at the decision that the acts alleged exist. Although it is the duty of the court to inquire so far as it reasonably can, into the facts alleged by both parties, in practical terms the burden on the petitioner is solely to establish one of the facts and it is for the respondent in a defended suit

to show, if he wishes, that the marriage has not broken down irretrievably. See **Ash v Ash (1972) 1 All ER 582; Pheasant v Pheasant (1972) 1 All ER 587.**

According to the Petitioner's evidence in chief by way of her witness statement filed on the 8th February 2023, the parties married on 15th July, 2017. Her evidence was essentially a repetition of her averments in her petition. She however stated that she had played her role well as a good wife. The Respondent's lawyer subjected the Petitioner to cross examination in respect of the evidence led.

The Respondent filed his Witness Statement on the 20th January 2023. He also filed a supplementary affidavit dated 22nd February 2023 submitting a general medical form issued to Petitioner. The medical form was admitted and marked as '**Exhibit 1**'. His testimony was largely a repetition of the averments in his answer to the petition. He however corroborated the fact that Petitioner accused and reported him to DOVVSU at Akim Oda for assault but denied it and added that Petitioner abuses him emotionally by accusing him of having extra marital affairs and even goes to the extent of insulting some of his friends on phone. He further averred that Petitioner without his consent, knowledge and approval has moved out of the matrimonial home and is staying at Asawase without any provocation and has taken the issues of the marriage with her. He prayed for reasonable access to the issues of the marriage should the marriage be dissolved.

When Counsel for Respondent probed why Petitioner did not attach a copy of the medical form (**Exhibit 1**) to her Witness Statement, this is what ensued;

Q: So that means that upon report at DOVVSU, you were ordinarily given a medical form to go to the hospital

A: Yes

Q: Were you given a medical form to go to the hospital

A: Yes

Q: You had knowledge of the report from the doctor or the hospital

A: Yes

Q: Why did you not attach a copy of that to your witness statement?

A: That was not the first time of him assaulting me and at DOVVSU I thought he would stop that behavior but he did not. I actually went to DOVVSU mainly on the curses issue and when the assault continued I told him I would leave the matrimonial home. It also took days before the assault before I reported the matter to DOVVSU and went to the hospital, so you would not see much as evidence of assault.

Q: I am putting it to you that the answer you have given to the question I just asked is an untruth?

A: It is the truth

Q: I am putting it to you that you that you did not attach that medical form because it shows that you were not assaulted.

A: That is not correct

Q: When was the last time you has sexual intercourse with your husband?

A: It would be last year April but I can't recall the exact date but it was after the DOVVSU incident.

Q: You said the Respondent assaults you often. When did he do so or how often is that according to you?

A: He did in April 2022 and three (3) years ago when I was pregnant and some other times. He has been slapping me.

Q: I am putting it to you that you rather assault your husband

A: It is not true.

Q: And on one occasion you assaulted the Respondent in the presence of your mother

A: That is not true.

Q: On another occasion you smashed the respondent's phone and hit him with a coffee table

A: I smashed his phone but I did not smash him with a coffee table.

The court has taken note that the findings by Dr. Shadrach N. A Sowah in Exhibit 1 indicates; stable, not in distress, no lacerations, abrasions or bruises.

I am inclined to believe that the Petitioner was the violent spouse in the marriage considering the evidence on record albeit that same is not sufficient for me to find as more probable than not. Notwithstanding the above, it can be inferred from the processes filed, the evidence and observation of Petitioner's conduct that Petitioner is no longer ready to remain yoked with the Respondent in spite of Respondent's desire to keep the union intact. To borrow the words of Amisshah JA in the case of *Knusdsen vs Knusden (1976) 1GLR 204*

“If a man comes to court saying that his marriage has reached a stage that he cannot reasonably be expected to live with any more, should a Court say to him, Oh yes you can?”

It is also clear from the accusations and counter accusations of Parties that the marriage is fraught with toxicity and a marriage characterized by quarrels, insults, curses, physical/emotional abuse, violence and disrespect is not a union anyone would be happy to live in, embrace or put up with in the long term.

The Parties have both confirmed that they tried to settle their differences in the marriage on two (2) occasions but same has proved futile.

The Court finds as a fact that the marriage between the parties has broken down beyond reconciliation and it would not be in their best interest to resume consortium.

Issue 2: Custody, maintenance and other related needs of the two (2) issues of the marriage

In any matter concerning children, the Court's paramount consideration is what is in their best interest-Welfare principle. See **section 2(1) of the Children's Act, 1998, Act 560**. In addition to the welfare principle, the Court will consider the importance of young children being with the mother, the need for continuity in the care and control of the children, desirability for siblings to be together, and the children's independent views. See **sections 45(1) and 2(a), (c), (d) and (e) of Act 560**.

The law is settled that custody of young children would be given to the mother who can better tend to them unless it is proved that she is unfit to look after them. See **Re B (An Infant) [1962] 1 ALL E.R 872, CA**

The issues of the marriage are young, 4 years and 2 years so ordinarily the Petitioner would be granted custody to them. It is also worthy to note that Respondent does not contest the Petitioner having custody of children. He has impliedly agreed to the Petitioner having custody of the children as he has prayed in his witness statement to be granted reasonable access to the issues of the marriage. There is also nothing on record to suggest that the mother is unfit to have custody of the children. Moreover, the children have been under the Petitioner's care and control since she left the matrimonial home in July 2022. In the circumstances, the Petitioner will retain custody of the two (2) children. The Respondent's fear of being prevented from accessing his children by the Petitioner as his counsel informed the Court that the Petitioner comes up with all manner of excuses when he wants to see them will be allayed by my access orders.

The parties have parental responsibilities under sections 6 and 8 of Act 560 towards the children in respect of their wellbeing, maintenance and shelter. But the relative share of the responsibilities is split between parents based on their circumstances. I understand per the record that both parties have viable sources of income; the Petitioner is an officer with Ghana Fire Service and the Respondent is a Teacher. Thus, they will each bear the financial responsibility of providing for the children's needs.

Conclusion

Having determined that the marriage between the parties has broken down beyond reconciliation. It is hereby ordered that;

- (1) The marriage celebrated between the parties on 15th July 2017 at Our Lady of Fatima Catholic Church, Akim Oda is dissolved.***
- (2) Custody of the two (2) issues of the marriage, is granted to the Petitioner with the Respondent granted reasonable access to them every fortnight weekend (Fridays after school and return them by 5pm on Sundays). During vacations, the children will spend the***

first half of the vacation with the Respondent while the second half is spent with the Petitioner.

- (3) The Respondent is to maintain the two (2) children at GHS 500.00 per month effective 30th November 2023 subject to renewal.*
- (4) Respondent shall be 100% responsible for the educational expenses of the two (2) children.*
- (5) Respondent shall contribute 50% towards the medical expenses of the two (2) children. For the avoidance of doubt, whenever the Petitioner presents a medical expense to the Respondent, he should pay half of the amount stated on the bill/ receipt.*
- (6) Apart from school uniforms, Petitioner will be 100% responsible for clothing the children.*
- (7) Parties are to contribute equally towards sheltering the two (2) children until the 2nd child attains the age of 18years or the Petitioner remarries- whichever occurs sooner.*

There will be no order as to costs.

(SGD)

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