

CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,
DISTRICT COURT '2', KANESHIE, SITTING AT THE FORMER STOOL LANDS
BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS'
COLLEGE, ACCRA ON 19TH JANUARY, 2024.

SUIT NO. A8/97/2022

LEONORA MAWUTOR GORDOR

DARKUMAN, ACCRA.

::

PETITIONER

VRS.

BENJAMIN ENOCH

::

RESPONDENT

DANSOMAN, ACCRA

JUDGMENT

Introduction

The Petitioner commenced this action against the Respondent on 4th March 2022 praying for the following reliefs:

- 1. Dissolution of the Ordinance marriage contracted between the parties as having broken down beyond reconciliation.*
- 2. Custody of the issues of the marriage should be granted to Petitioner with reasonable access to the Respondent and Respondent compelled to maintain the issues of the marriage including but not limited to the payment of school fees and medical bills as and when it falls due'*
- 3. Any further order(s) this Honourable Court may deem fit.*

According to the Petitioner, the parties married in accordance with customary law on the 29th of January, 2009 at Darkuman and later converted their marriage into an ordinance one under Part III of the Marriages Act, 1884-1985 (Cap 127) on 30th January, 2009 at the

Lighthouse Chapel International, Accra. The parties thereafter cohabited at Sukura, Accra until the Petitioner moved out of the matrimonial home in September, 2018. The Petitioner is a Production officer at GIHOC whereas the Respondent is a Pastor. The parties have two issues who at the date of institution of the suit were aged 12 years and 6 years respectively.

It is the Petitioner's case that the marriage between her and the Respondent has broken down beyond reconciliation, with Petitioner alleging unreasonable behaviour on the part of the Respondent. She averred that the Respondent disrespected her, abused her physically and verbally and on one occasion, made her sleep outside the matrimonial home for three days. She further averred that the Respondent had been falsely accusing her of marital infidelity, constantly threatened her which led to her eventual vacation of the matrimonial home, failed to account to her in respect of the proceeds of a commercial vehicle the parties purchased during the marriage and had also ceased communication with her. She stated that the Respondent had bought a mobile phone for their first issue which interfered with her studies.

Petitioner asserted that the parties have not lived together as man and wife for a period of three years and have not known each other intimately as a result of their separation. She further added that all attempts by her family to reconcile their marital issues have failed as the Respondent has shown by his conduct that he does not want anything to do with her.

In his Answer to the Petition and Cross Petition filed on 21st April, 2022, the Respondent denied having behaved unreasonably, stating that it was rather the Petitioner who had behaved unreasonably, resulting in a breakdown of their marriage. According to him, the Petitioner neglected her duties as a wife such as cooking, cleaning and caring for the children and he therefore had to perform all these duties until he grew tired of Petitioner's behaviour and confronted her. This, he says, gave birth to all their marital issues which has persisted to this day.

The Respondent however admitted making the Petitioner pass the night outside their matrimonial home for the reason that she constantly returned to the matrimonial home at ungodly hours after work. Respondent also admitted accusing Petitioner of infidelity and added that she was having an affair with one Simon while the parties were still together as man and wife. It was the case of the Respondent that it was rather the Petitioner who refused to communicate with him save for matters concerning the wellbeing of the children of the marriage.

The Respondent further averred that the Petitioner only gave him an amount of Gh¢1,300 to supplement the Gh¢11,000.00 he already had to purchase the commercial vehicle. According to him, the vehicle was not jointly owned by the parties and he was under no obligation to discuss the operation of the vehicle with Petitioner. He asserted that he purchased the mobile phone for their first issue because of the eLearning introduced as a result of COVID-19. He added that it was only to aid her with her studies and to also allow her to contact him since Petitioner refused to allow the children use her phone to contact him. He disputed Petitioner's assertion that the mobile phone was a distraction to the child's studies.

He stated further that the parties have not lived as husband and wife for four years and not three years. It was the case of the Respondent that the parties have not been able to settle their marital issues mainly due to Petitioner's lack of cooperation and Petitioner's conduct in the marriage had caused him pain, emotional trauma and embarrassment and he cannot reasonably be expected to live with her. Respondent thus cross petitioned as follows;

- i. *Dissolution of the Ordinance marriage contracted between the parties as same has broken down beyond reconciliation.*
- ii. *Custody of the issues of the marriage should be granted to Petitioner with reasonable access to the Respondent and Respondent continues to maintain the*

issues of the marriage including but not limited to the payment of school fees and medical bills as and when it falls due.

iii. Any further order(s) this Honourable Court may deem fit.

The Petitioner responded to Respondent's Answer by way of a Reply filed on 4th May, 2022 wherein she denied all the allegations of unreasonable behaviour levelled against her by the Respondent. She averred that it is rather the Respondent who shirked off his duties as a husband by refusing and failing to provide for the upkeep of their home. She further asserted that Respondent locked her out of the matrimonial home not because she returned home at ungodly hours but because she refused to purchase a laptop for him when he requested same from her. She vehemently denied being involved in any extra marital affair.

According to her, she contributed Gh¢2,000 towards the purchase of the commercial vehicle but the Respondent sold it without her knowledge. Subsequently, she contributed Gh¢1,300 towards the purchase of another vehicle, which transaction turned out to be unsuccessful but the Respondent failed to refund her money to her and threatened to beat her if she ever demanded for her money. She further averred that the Respondent had been physically abusive towards her, citing some instances and indicating that she had to vacate the matrimonial home due to the abuses she was suffering at the hands of the Respondent. She stated that she left on 2nd September 2018.

Issue

The main issue for the Court to determine is whether or not the marriage between the parties has broken down beyond reconciliation within the purview of the Matrimonial Causes Act, 1971 (Act 367). Matters in respect of the children would be considered as ancillary after the determination of the main issue.

Evaluation of evidence

It is trite that in civil cases, the general rule is that the party who in his/her pleadings or writ raises issues essential to the success of his/her case assumes the onus of proof. See **Sections 11(1) & (2), 12(2) and 14 of the Evidence Act, 1975 (NRCD 323)** as well as the cases of **Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 @ 900; GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458**. The Petitioner had the duty in the course of the suit to produce sufficient evidence in respect of her claims on a balance of probabilities for a determination to be made in her favour. In the same vein, the Respondent also bore the burden of producing sufficient evidence in respect of his cross petition.

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. **Section 1(2)** of the Act further emphasizes that, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In order to prove that a marriage has broken down beyond reconciliation, a Petitioner has the duty of satisfying the Court of the existence of at least one of the six facts specified in **Section 2(1)(a) - (f) of Act 367**. Proof of any one of these facts raises a presumption that the marriage has broken down beyond reconciliation. If any of the facts is made out, the Court must grant the dissolution unless it is satisfied that the marriage has not broken down irretrievably. These facts include the following:

- a. That the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or
- b. That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or
- c. That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or
- d. That the parties to the marriage have not lived as man 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 such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal;

- e. That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or
- f. That the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

It is material to point out that although the Court may find the existence of one or more of the facts specified above, the law does not require the Court to decree divorce unless it is satisfied, on all the evidence that the marriage has indeed broken down beyond reconciliation. See the case of **Kotei v. Kotei [1974] 2 GLR 172**.

From the pleadings and evidence adduced in court, the parties seek to rely on **Sections 2(1) (b) and (f) of the Matrimonial Causes Act, 1971 (Act 367)** which is to the effect that;

“(1) 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:

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or

(f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.”

The Petitioner testified by relying on her witness statement filed on 12th May, 2022 and her supplementary witness statement filed on 13th July 2023 which were adopted by the Court as her evidence in chief. She tendered in evidence a photocopy of the parties’ marriage certificate to attest to the marriage between the parties which was celebrated on

30th January 2009. To prove the alleged unreasonable behaviour on the part of the Respondent, the Petitioner testified by rehashing her averments in her pleadings on oath. She added that the said Simon whom the Respondent refers to as her paramour is actually a family member and there is no way she will have an amorous relationship with him. According to her, Respondent's conduct has caused her unbearable pain, emotional trauma and embarrassment. As such, she cannot be reasonable expected to continue to live with Respondent. Thus, her reliefs prayed.

The Respondent also testified by relying on his witness statement filed on 13th January, 2023. Like the Petitioner, Respondent also testified by stating what was contained in his Answer and added some more matters. He added that, when the Petitioner moved out of their matrimonial home sometime in 2018, he tried to reason with her. He even engaged their lady pastor by name Pamela Dickson who was their counsellor and Petitioner's former boss. Despite her intervention, Petitioner continued to live separately and decided not to return to their matrimonial home. He testified that the Petitioner abandoned him.

According to him, even though the Petitioner often abused him verbally and disrespected him, he never for once laid a finger on her. Respondent insisted that the said Simon was Petitioner's paramour. It was his case that the Petitioner and the said man during the subsistence of the marriage had long unending conversations on phone at ungodly hours. He added that it was known among Petitioner's working colleagues that the Petitioner and Simon were in an amorous relationship which he overheard from one of Petitioner's colleagues.

It was the testimony of the Respondent that Petitioner stopped wearing her wedding ring when she started attending Accra Technical University. He stated that Petitioner has to this day stopped wearing her wedding ring. According to him, although he has constantly been supporting the Petitioner even through her tertiary education, Petitioner has been very unsupportive when it comes to matters that concern him. He testified that

the car Petitioner referred to has been sold. He added that he assured Petitioner to refund the amount of Gh¢1,300.00 she gave to him in respect of the car however, Petitioner herself broke his savings box and took everything in it.

Respondent further testified that he has been a responsible father even though as a lay pastor he relies on gratuitous donations and his media work has also not been yielding much lately. He testified that he wishes to support the children's education, healthcare, clothing and recreational activities. Respondent however prayed for the Petitioner to be ordered to also assist in catering for the children of the marriage.

The Cambridge Advanced Learner's Dictionary (4th Edition) has defined behaviour generally as "the way that a person behaves in a particular situation or under particular conditions. **Baker P in Katz v Katz [1972] 3 All ER 219** put it as follows: *"behaviour is something more than a mere state of affairs or state of mind, such as for example a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating the husband's love, or not being as demonstrative as he thinks she should be. Behaviour in this context is action or conduct by one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct, and, in my view, it must have some reference to the marriage."*

Unreasonable behaviour in marriage can take several forms such as cruelty, nagging, infidelity, drunkenness, threats or violence. In dealing with behaviour, the question, is whether the Petitioner can reasonably be expected to live with the Respondent and it is for the court to, and not the Petitioner, to answer it as it is an objective test. The Court must have regard to the personalities of the individuals before it and it must assess the impact of the Respondent's conduct on the particular Petitioner in the light of the whole history of the marriage and their relationship.

The test generally accepted is the one formulated by Dunn J in the case of **Livingstone-Stallard v Livingstone-Stallard** as follows:

“would any right-thinking person come to the conclusion that this husband has behaved in such a way that this wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities of the parties?”

The test was even more fully spelt out in the case of **Ash v Ash [1972] 1 All ER 582**, where Bagnall J stated:

“I have to consider not only the behaviour of the respondent but the character disposition and behaviour of the petitioner, the general question may be expanded thus: can this petitioner, with his or her character and personality, with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, reasonably be expected to live with this respondent?”

In **Knudsen v Knudsen [1976] 1 GLR 204**, the court went on to state as follows:

The behaviour of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of one act if it is of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.

In **Mensah v Mensah [1972] 2 GLR 198**, the court further stated that:

In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him the court must consider all the circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice...

From the evidence adduced before this Court, both parties levelled allegations of unreasonable behaviour against each other. According to the Petitioner, the Respondent locked her outside the matrimonial home due to a misunderstanding in respect of a laptop which Respondent asked her to buy for him but she refused. She had to therefore

pass the night outside. The Respondent did not deny this allegation levelled against him by the Petitioner. He in fact stated that he locked Petitioner outside but his reason was that she constantly returned to the matrimonial home at ungodly hours, an allegation which was denied and remained unproven.

Again, Petitioner testified that the Respondent on one occasion when she was pregnant, strangled her by the neck against the wall. Respondent was unable to impugn the evidence of the Petitioner in respect of this allegation. Having regard to his calibre and social standing, Respondent would least be expected to conduct himself in such a manner. As a pastor and teacher of the word, Respondent certainly knows the manner in which the Bible requires husbands to love their wives. Are husbands not required to love their wives like Christ loved the church? Respondent's conduct towards his wife is one which is inconsistent with the teachings of the bible, the very bible he preaches to others.

It appears that Respondent himself failed to act in accordance with the teachings of the good book. How can he then expect same from those he preaches? By his conduct, he exposed Petitioner to danger as he threatened her security, the very one Respondent was supposed to provide for her and the children of the marriage. It is therefore not surprising for Petitioner to testify that she left the matrimonial home out of fear for her own life. I find Respondent's behaviour as appalling and irresponsible; one which ought to be absent from a loving and caring home.

Respondent also levelled allegations of unreasonable behaviour against the Petitioner. According to him, Petitioner during the subsistence of the marriage stopped wearing her wedding ring when she started attending Accra Technical University. Even to this day, she has refused to wear her wedding ring. Petitioner did not deny this allegation levelled against her. In the opinion of the Court, the wedding ring signifies so much than just an accessory. It is evidence of the parties' union and commitment to each other. It is that one thing which physically binds them to each other. Petitioner's conduct of removing same, without any tangible reason, is a sign that she no longer wants to remain in consortium

with Respondent. Such conduct exhibited by her is unreasonable, a fact this Court has found.

Again, Respondent raised allegations of infidelity against the Petitioner. He averred that the Petitioner during the pendency of the marriage was having an affair with one Simon. The Petitioner however denied this assertion. The Respondent therefore had to do more than barely repeating his averments on oath. The onus was on him to establish those allegations he levelled against the Petitioner to the satisfaction of the Court. Respondent did not call any witness neither did he produce any evidence, even if circumstantial, to back his assertions which had been denied by Petitioner.

It is trite law that bare assertions or merely repeating a party's pleadings in the witness box without more does not constitute proof. Thus, it was held in the case of **Majolagbe v Larbi & Anor [1959] GLR 190 @ 192** that *"where a party makes an averment capable of proof in some positive way, eg. by producing documents, description of things, reference to other facts, instances or circumstances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true."* The Respondent did not prove to the satisfaction of this Court the unreasonable behaviour he preferred against the Petitioner.

From the evidence, it does appear that both parties during the pendency of the marriage conducted themselves unreasonably. Unreasonable behaviour is an objective test and this court is minded to conclude that both parties behaved unreasonably to each other during the time they stayed together, a fact this Court has found. On this basis, the court is satisfied that unreasonable behaviour under section 2(1) (b) of Act 367 has been properly established.

From the evidence adduced before this court, efforts to solve the parties' marital disputes have been fruitless. Even after the matter was reported to their lady pastor by the Respondent, the parties were unable to settle their marital issues. Her intervention did

not make matters any better. It is important to also note that the parties have been living apart from each other for about four years now. The following as happened under cross examination of Respondent by counsel for the Petitioner is worth reproducing:

Q: It is the case that you and Petitioner have not lived together as man and wife for over four years not so?

A: Yes, my lady.

It will therefore not be in the interest of the parties to order them to resume staying together to continue their lives as a married couple having regard to the fact that they have both been living separately and also due to the irreconcilable differences. The Court being satisfied that the parties after diligent efforts have been unable to reconcile their differences conclude on this fact that the marriage has broken down beyond reconciliation thus entitling the Petitioner to her relief for the marriage to be dissolved.

I shall at this stage consider the issues of custody, access and maintenance of the children of the marriage. **Section 22 of Act 367** states:

(1) In all proceedings under this Act, it shall be the duty of the court to inquire whether there are any children of the household.

(2) The court may, either on its own initiative or on application by a party to any proceedings under this Act, make any order concerning any child of the household which it thinks reasonable and for the benefit of the child.

(3) Without prejudice to the generality of subsection (2), an order under that section may –

(a) award custody of the child to any person;

(b) regulate the right of access of any person to the child;

(c) provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage.

In issues concerning the child, it is the best interest of the child which is the paramount consideration as stipulated by **Section 2 of the Children's Act, 1998 (Act 560)**. The parties have two children together; Martha Michelle Enoch and Ida Jerusha Enoch who at the time of instituting this action were 12 years and 6 years old respectively. Both parties agree that custody of these children should be granted to the Petitioner with the Respondent granted reasonable access to them.

There would be no reasonable justification for this Court to disagree with this since the children who are young have been staying with the Petitioner since she left the matrimonial home and are well settled where they are. There is also nothing from the evidence to suggest that their development and proper growth would be negatively affected if they continue staying with their mother, the Petitioner herein. Custody of the two children is therefore granted to the Petitioner and the Respondent is to have reasonable access to them. This access includes the Respondent having the children every fortnight weekend; thus on Friday afternoon and return them on Sundays by 4pm. During vacations, parties are to have equal custody of the children.

Section 47 of Act 560 provides that a parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, education and reasonable shelter for the child. Both parties herein are gainfully employed and have the responsibility of seeing to the children's maintenance. The responsibility of catering for the children ought not to be made the sole responsibility of one party. The Court thus makes an order for the Respondent to bear the health expenses of the children and maintain them monthly at GH¢700.00 subject to yearly adjustments based on the prevailing economic situation in the country. Thus, an application can be brought for the amount to be varied when deemed necessary. The educational needs and expenses of the children should be equally shared by both parties.

Conclusion

Having inquired into the facts as alleged by both parties and from the evidence adduced, it is this court's humble opinion that the marriage between the parties has broken down beyond reconciliation. In the light of the foregoing, I hold that:

1. The marriage celebrated between the parties on 30th January, 2009 at Lighthouse Chapel International, Accra is hereby dissolved.
2. Custody of the two children of the parties is granted to the Petitioner with reasonable access granted to the Respondent every fortnight weekend and custody during vacations should be equally shared between the parties.
3. The Respondent is to maintain the children monthly at GH¢ 700.00.
4. The Respondent is to be responsible for all the health needs of the children.
5. The educational needs and expenses of the children should be equally borne by both the Respondent and the Petitioner.
6. Parties are to bear their own costs.

**AMA ADOMAKO-KWAKYE (MS.)
(MAGISTRATE)**

Counsel

Jane Tachie-Menson, Esq. for the Petitioner.

Theodore Nii Ayi-Bonte, Esq. for the Respondent.