

IN THE DISTRICT MAGISTRATE COURT HELD AT BAATSONAA ON  
THURSDAY THE 11<sup>TH</sup> DAY OF JANUARY, 2024 BEFORE HER WORSHIP  
MABEL N. L. AHELE, DISTRICT COURT MAGISTRATE

**SUIT NO: A4/02/2024**

**JOHN OFORI NSIAH** ..... **PETITIONER**

VRS

**FELICIA GADZKPO** ..... **RESPONDENT**

## JUDGMENT

1. This is a husband's Petition for dissolution of marriage celebrated between the parties on 3<sup>rd</sup> day of December, 2016 at the Pentecost International Worship Centre, Atomic-Accra. The uncontroverted facts of the case are that the parties after the celebration of the marriage cohabited in Ablekuma in Accra and later relocated to Tema. There are two issues to the marriage who are both currently living with Respondent at Klagon with regular visits from Petitioner at their school and home.

## 2. Petitioner's Case

The Petitioner in his 35 paged divorce petition averred that, Respondent stopped having sex with him for six (6) months and he therefore had to resort to watching pornography and masturbation.

Petitioner asserted that the marriage relationship between him and the Respondent was forced on him by the Respondent, her family, and some elders of their church. According to Petitioner, although he was emotionally

traumatised, he chose to stay in the marriage hoping that things will get better and that Respondent will help him love her. The Petitioner further avers that the Respondent always argue with him and deny him sex which has morally affected him as he resorts to watching pornography and masturbation. He further averred that efforts by Pastors and friends to resolve their differences have proved futile. Petitioner further states that they now live separately and finds the separation very peaceful and healthy, hence prays the Court for the following reliefs;

- a. The marriage celebrated between Petitioner and Respondent on the 3<sup>rd</sup> day of December, 2016 at PIWC Atomic, Accra should be dissolved.*
- b. Custody of the children of the marriage be given to Respondent with reasonable access to Petitioner.*

### **3. Respondent's Answer and Cross-Petition**

Upon service of the petition, the Respondent filed her answer to the divorce petition and cross-petition. In her 43 paragraphed answer and cross-petition, she contended that it was rather the Petitioner who acts in an unreasonable manner, describing him as being autocratic and physically abusive on some occasions. Respondent further stated that she lost her first child due to Petitioner's abusive behaviour. According to the Respondent, she had sexual intercourse with the Petitioner as a wife and husband should. However, she kept her distance from Petitioner when Petitioner, on one occasion, nearly hit, pushed and drove the Respondent from his room when the Respondent made sexual advances at him. The Respondent in her answer to the petition contended that the marriage was never forced on the Petitioner but rather, the Petitioner entered into the marriage at his own will.

Respondent again stated that she took several loans for Petitioner with the current one being an amount of Twenty-One Thousand, One Hundred and

Fifty Ghana Cedis (Ghc21,150.00) which is being deducted at source from her salary.

4. By her cross-petition, she prays for the following reliefs;
  - a) *A Court assisted attempt at reconciliation of the parties, and where reconciliation fails*
  - b) *An order directed to Petitioner to pay back loans plus accrued interest the Respondent has taken on behalf of the Petitioner.*
  - c) *Maintenance of both the Respondent and the children, pending the final determination of the petition.*
  - d) *Custody of their children be granted to Respondent with reasonable access to Petitioner.*
  - e) *A restraining order directed to Petitioner due to threats he has directed at the Respondent for the days the Petitioner comes for the children upon the dissolution of the marriage.*
  - f) *Any other orders the Honourable Court may deem fit.*
5. At the close of pleadings, the suit was set down for trial. Upon directives of the Court, Witness Statements were filed by parties and the Court proceeded to trial where parties testified.

6. **Issue for Determination**

*Whether or not the marriage has broken down beyond reconciliation?*

**Under what circumstances can this Court grant a petition for divorce?**

Section 1(2) 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(3) of Act 367 also states that “... 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”.

Section 2(1) of Act 367 provides as follows;

*“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 so 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; or*
- f. that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.”*

7. It is trite law that a party who asserts a fact assumes the responsibility of proving same. The burden of producing evidence as well as the burden of persuasion is therefore cast on that party and the standard required is proof of preponderance of the probabilities stipulated under **sections 11(1) and 12(1) of the Evidence Act, 1975 [NRCD 323]. See ZABRAMA v. SEGBEDZI [1991] 2GLR 221, ABABIO v. AKWAS III [1994-1995] GBR 774 and ACKAH v. PERGAH TRANSPORT LTD & ORS [2010] SCGLR 728.**

8. The Petitioner in his petition for dissolution of the marriage between him and the Respondent averred that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent. He stated that, for the past five years, he and the Respondent have not lived as husband and wife although both were living under the same roof.

It is his testimony that he resorted to masturbation and watching pornographic movies as a result of the sexual starvation by the Respondent. He further testified that the situation is not healthy for him and therefore cannot reasonably be expected to live with the Respondent.

9. The Respondent in her evidence-in-chief stated that she kept her distance from Petitioner because on one occasion, she was nearly hit, pushed and drove out of the room of the Petitioner when she made sexual advances at the Petitioner.

10. There is ample evidence on record that the parties are living separate from each other. It is also on record that parties have not had any intimacy for some time now. A situation which has resulted to the Petitioner's indulgence in masturbation and watching pornographic movies.

In **OPOKU-OWUSU v OPOKU-OWUSU [1973] 2 G. L.R.** it was held that, “*a wilful refusal by one spouse to have sexual intercourse entitle the other party suffering to leave if in all the circumstances of the case it could properly be regarded as grave and weighty and if it had an adverse effect on the health of the other spouse. Such conduct might also amount to a just cause for leaving even though it lacked the element of intent to injure*”.

11. I find that the sexual deprivation by the Respondent is causing suffering to the Petitioner. The resultant of the sexual deprivation is having an adverse effect on the Petitioner’s health which amounts to a just cause to leave the marriage.

12. It is also on record that the parties attempted reconciliation but have been unsuccessful. The Respondent among her reliefs endorsed under her cross-petition sought an assisted reconciliation between her and the Petitioner by the Court.

This Court, on the authority of **Section 8 of Act 367** and fortified by the decision in **OFORI v. OFORI [1981] GLR 745** where it was sated that;

*“The Matrimonial Causes Act, 1971 (Act 367) encourages attempts being made to reconcile parties to divorce suits. Indeed section 8 gives the Court power to adjourn the proceedings for a reasonable time to enable attempts to be made to effecting reconciliation”*, adjourned proceedings and referred parties to the Court Connected Alternative Dispute Resolution (CCADR) to attempt a reconciliation. The attempt at reconciliation was not successful after a month adjournment of proceedings. Unable to reconcile their differences, the parties rather attempted an amicable settlement of the ancillary reliefs before this Court.

13. **Section 2(2) of Act 367** enjoins the Court, on a petition for divorce, to inquire, so far as is reasonable, into the facts alleged by the Petitioner and the Respondent. Upon enquiry why the parties were unable to reconcile their differences, the Petitioner stated that there was no hope in reviving the marriage because he finds no intimacy or affection with the Respondent. He further stated that he finds the current separation between himself and the Respondent very peaceful and healthy. The Respondent, on her part testified that she had, on several occasions, made attempts to rekindle the love between her and the Petitioner, but the Petitioner gets irritated whenever she does.

14. On the totality of the evidence on record, I find that the marriage between the parties has broken down beyond reconciliation. In that circumstance, the Petitioner is entitled to a decree of divorce.

15. **Custody and Access of the children**

Having declared the marriage dissolved, I will now determine the issue of custody and access of the two (2) children of the marriage. **Section 22(2) of Act 379** provides that, the Court may, either on its own initiative or on application by a party to any proceedings under the Act, make any order concerning any child of the household which it thinks reasonable and for the benefit of the child. See **HAPPEE v. HAPPEE [1974] 2 GLR 186**, and **Sections 2 & 45 of the Children's Act, 1998 (Act 560)**.

16. The parties did not join issue on custody and access of the two children, aged 4 years and 8 months and 1 year and 8 months respectively. The Petitioner, in his reliefs, prayed the Court to grant custody of the children to the Respondent and to him, a reasonable access. It must be stated that, as part of the Terms of Settlement filed at the Court's Registry by the parties, a

settlement was reached by the parties that the two children should be in the custody of the Respondent with reasonable access to the Petitioner on weekends, from 9am to 6pm.

17. Notwithstanding the agreement by the parties, the Court is statutory obligated to take into account the best interest of the children and the importance of the young children to be with the mother when deciding on the grant of custody as provided under Sections 2 and 45(1) of the Children's Act.

18. Upon consideration of the circumstances of this case, I am of the opinion that it is in the best interest of the two young children, aged 4 years and 8 months & 1 year and 8 months respectively, that custody be granted to the Respondent. This will enable continuity in their care and control as provided by Section 45(2)(e) of the Children's Act. In that circumstance, the agreement between the parties that the two children be in the custody of the Respondent with reasonable access to Petitioner on weekends, from 9am to 6pm is hereby adopted as consent judgment of the Court.

19. **Maintenance of the two Children**

I must state here that, one of the reliefs sought by the Respondent under her cross-petition was for an order for maintenance of both the Respondent and the children, pending the final determination of the petition. However, the Respondent made no application for an order during the pendency of the trial proceedings and therefore, no interlocutory order was made by this Court in respect of the relief.

20. **Section 47 of Act 560** imposes obligation on parents to maintain, be responsible for necessities of life of a child, education, health and provide reasonable shelter for the child.



For the reason that the duties and responsibilities of a parent under **Section 47 of Act 560** is binding on each parent to ensure that the welfare of the child is not deprived, whether or not the parents of the child are married or not, the relief on maintenance agreed by the parties to be paid by the Petitioner is hereby adopted by the Court as Consent Judgment.

It was agreed as follows:

- (a) The Petitioner agreed to continue to pay a sum of Eight Hundred Ghana Cedis (Ghc 800.00) to the Respondent towards the maintenance of the two children.
- (b) The Petitioner also agreed to provide a rent allowance of Seven Hundred Ghana Cedis (Ghc 700.00) to provide shelter for the children.
- (c) The Petitioner shall be responsible for the educational expenses of the two children. The Petitioner shall pay directly to the school the fees of the two children.
- (d) The Petitioner shall also be responsible for the medical expenses of the children, where the necessity for payment of same arises.

**21. Order at Petitioner to pay back loans plus accrued interest taken by the Respondent on behalf of the Petitioner.**

Respondent by her cross-petition is seeking an order directed to Petitioner to pay back loans plus accrued interest the Respondent has taken on behalf of the Petitioner.

Respondent testified that she procured a loan of Twenty-One Thousand, One Hundred and Fifty Ghana Cedis (GHc 21,150.00) from IZWE Savings and Loans on behalf of the Petitioner for a tricycle business. According to her, the loan is being deducted at source from her salary. She tendered Exhibits “1”

and “2”, the loan document and her pay slip respectively as evidence of the said loan.

Petitioner did not dispute this fact and agreed at the CCADR to make repayment of the loan Respondent procured on his behalf. The terms of settlement filed at the Court’s Registry on 29<sup>th</sup> September, 2023 stated as follows; *“Petitioner assured Respondent the repayment of the loan amount of Twenty-One Thousand Ghana Cedis (Ghc21,000.00) Respondent took from her employer for him by 31<sup>st</sup> December, 2023, through this Court”*.

Judgment is hereby entered in favour of the Respondent on her relief.

## **22. Alimony or financial Provision**

It was noted that the Terms of Settlement filed by the parties at the Registry of this Court included a claim of Thirty Thousand Ghana Cedis (GHc30,000.00) as alimony by the Respondent. Petitioner on his part did not make any commitment to the Respondent’s claim rather referred to the Court for determination.

23. It must be stated here that, the Respondent did not seek a relief of alimony or financial provision when she cross-petitioned, neither did she urge the Court on why the Petitioner should pay her alimony. Furthermore, no evidence was adduced by the Respondent on the payment of alimony.

24. I have had regard to the maintenance orders made in favour of the Respondent. I have entered Judgment for repayment of the loan by the Petitioner. A loan which was procured by the Respondent to help the Petitioner establish a truck business out of which Petitioner has been remitting the Respondent Four Hundred and Fifty Ghana Cedis (GHc450.00) monthly beginning from January 2023.

I have also averted my mind to the principle espoused in the case of **AIKINS v. AIKINS [1979] GLR 223-233** to the effect that, lump sum payment has the advantage of enabling the payee to invest it and use the income to live on. In some cases, it will enable the wife to meet any liabilities as expenses already reasonably incurred in maintaining herself and the children of the marriage. It will also help to remove the bitterness.

25. I find from the evidence that the children are living with the Respondent. And the Petitioner, since the separation, has been remitting the Respondent and the children of an amount of Ghc450.00 every month. And since no evidence was adduced by the Respondent to establish the amount of Ghc30,000.00 claimed, I am of the considered view that it is just and equitable that I make no award of financial provision.

26. Judgment is accordingly entered as follows;

- 1) A decree of dissolution is hereby granted dissolving the marriage celebrated between the parties on 3<sup>rd</sup> day of December, 2016 at the Pentecost International Worship Centre, Atomic-Accra.
- 2) Custody of the two children is granted to the Respondent with reasonable access to Petitioner on weekends, from 9am to 6pm.
- 3) Petitioner is ordered to repay the loan amount of Twenty One Thousand Ghana Cedis (Ghc21,000.00) Respondent took from her employer on behalf of the Petitioner.
- 4) The Petitioner shall pay a sum of Eight Hundred Ghana Cedis (Ghc 800.00) to the Respondent towards the maintenance of the two children. The Petitioner shall pay to the Respondent on 1<sup>st</sup> of every month effective January 2024.
- 5) The Petitioner shall pay a rent allowance of Seven Hundred Ghana Cedis (Ghc 700.00) to the Respondent to provide shelter for the children. The Petitioner shall pay to the Respondent on 1<sup>st</sup> of every month.

- 6) The Petitioner shall be responsible for the educational expenses/school fees of the two children. The Petitioner shall pay directly to the school.
- 7) The Petitioner shall also be responsible for the medical expenses of the children, where the necessity for payment of same arises.
- 8) Petitioner is ordered to make his place of residence known to the Respondent.
- 9) No order as to cost.

**(SGD.)**

**H/W MABEL N. L. AHELE**

**(MAGISTRATE)**

**11/01/2024**