

IN THE HIGH COURT OF JUSTICE ADENTAN BEFORE HER LADYSHIP JUSTICE
ENYONAM ADINYIRA ON MONDAY THE 16TH DAY OF NOVEMBER 2023.

SUIT NO C5/001/2022

TIME: 8:41 a.m.

PRINCE AHUGAH
HSE NO. N2 OAK VILLA ESTATE
ABOKOBI ACCRA

... PETITIONER

VERSUS

BERLINDA MAWUKU MAYOR AHUGAH ... RESPONDENT
GRAVEL PIT NEAR ESTATE JUNCTION
OYARIFA – ACCRA

PARTIES

Petitioner present

Respondent present

REPRESENTATION

Stella Adu-Duodu for the Petitioner – present

Respondent unrepresented

JUDGMENT

The Petitioner initiated the instant action on 8th April 2022 and prayed for a dissolution of the marriage based on the following grounds as deposed to in the Petition:

1. That the marriage celebrated between the Parties on the 11th of November 2017 be dissolved.
2. That the Respondent be granted custody of the children of the marriage.
3. Any other order(s) of the court.

PETITIONER'S CASE

The Parties were lawfully married under the Part Three, Marriages Act 1884-1985 (CAP 127) on 2 of December 2017 at Global Evangelical Church, Adonai Madina, Accra.

That after the marriage, the parties lived at Lakeside Estate for some years before moving to Abokobi all in the Greater Accra Region. The Parties have two issues of the marriage namely: Barak El - Roi Ahugah who is 3 years old and Ziv El - Liron Ahugah who is about 8 months old.

Parties are both citizens of Ghana and domiciled in Ghana. While the Petitioner is an Information Technology Consultant, Respondent works with the Parliamentary service as a Hansard Reporter.

There have been no previous proceedings in this or any other court regarding the marriage or the children of the marriage and that the marriage between the parties has broken down beyond reconciliation.

The Petitioner alleges that after the first year of marriage, he and the respondent have never lived in peace. In addition, the Respondent has been suspicious of the Petitioner to the extent that she has been accusing him of infidelity and this accusation in most cases has resulted in serious fights between them to the extent that it has forced Petitioner to resign to his room to avoid such accusations.

In addition to that, Petitioner avers, the Respondent has also been accusing Petitioner of engaging in fraud and she keeps calling him names without Petitioner having given Respondent any cause for such an accusation.

Petitioner says that Respondent has been worrying him to the extent that somewhere last year, Petitioner wanted to take his own life to end all the cruelty Respondent has been meting out to him. Petitioner says that due to these suspicions on the part of the Respondent, Petitioner has lost jobs or was forced to quit jobs just to satisfy the Respondent.

Petitioner says that when he married the Respondent, she was working at BT Institute as a language Consultant but stopped some few months after the marriage without telling Petitioner about it. That when Petitioner questioned her as to the reason for her resignation, she gave flimsy excuses.

Petitioner says that it was when Respondent stopped working that she started accusing him of all the negative things she could think of. That she at one time wanted Respondent to also quit his job without thinking of how they were going to be fed, but Petitioner refused.

That after several pleas to look for something to do to enable her get busy, Respondent eventually started work as a Hansard reporter somewhere August 2021. That as soon as she started work, she once again started pressuring Petitioner to stop work and take care of the children, but Petitioner refused by telling Respondent to get a house help to assist in the house, but she refused to that suggestion.

Petitioner says that all there is about their marriage is mistrust, accusation upon accusation, fighting and so on and so forth. Petitioner says that somewhere last year, the two families met

with the hope of settling whatever misunderstanding there was between the two of them. That while he felt the issues had been dealt with, Respondent without informing the Petitioner just packed her things and left with her mother.

Petitioner says, before Respondent left the house, he felt his life was in danger because of the constant threat by the Respondent. However, since Respondent left with her mother, he feels more secured and relaxed at home and has been experiencing some kind of inner peace he has not experienced since he got married to the Respondent.

Petitioner says that he cannot guarantee the safety of both parties under one roof and so wants the court to grant him divorce so that both parties can go their separate ways and live their lives in peace.

RESPONDENT'S CASE

Respondent indicates the Petitioner started acting differently in the year 2020 after he lost a job. That there has been no fight in relation to infidelity as she has not accused Petitioner of infidelity. That there have been no serious fights in the marriage except usual arguments in marriage.

Respondent also denied accusing the Petitioner of engaging in fraud and calling the Petitioner names. Respondent also indicates she did not worry Petitioner and rather allowed Petitioner to have all the space he needed. That she just managed his on and off attitude as she believed he was usually stressed from work.

Respondent indicates Petitioner did not satisfy her by quitting any job as she never had any problem with any job he did. That this information was completely new to her. That the Petitioner usually worked from home and all she did was to try and make the environment conducive for him.

Respondent further states she informed Petitioner about the idea of resigning from her job because of two major reasons. First, they had a baby in January 2019 who had a low birth weight and as a first time mother, she wanted to cater for the child herself. Second, conditions at work were not good and he knew about them. He however did not agree or disagree but later even asked her to have their second baby before finding another job. That there was no official resignation as Respondent was already on maternity leave then and she did not go back to work.

Respondent further alleges she did not ask Petitioner to quit any job and never conceived that thought and neither did she call the Petitioner names. That while she got a job, she did not ask Petitioner to quit his job. That the Petitioner informed her of quitting his job and staying without working for at least three months to enable him rest since he was stressed. That this was even before she got her job and when she asked of how they were going to survive, he responded saying they were covered. Respondent she avers she did not accuse her husband, nor did she distrust him. That he did not give her reasons to distrust him. The only challenge

she had with him was his on and off attitude. Respondent further averred that they also never had any fights.

The Respondent further stated that the families did not meet to settle marital issues between them. That the Petitioner's family came over to the house because Respondent's mum called them to. That Respondent's mum who was then living with them because Respondent had given birth to the couple's second baby heard and witnessed Petitioner waking up and screaming and attempting to beat Petitioner and their three-year-old at 3am on 26th July 2021 exactly a week after the baby was born because he said he could not sleep and that they were the cause of his sleeplessness. He was advised to see a doctor as he told his family he had insomnia and was unable to fall asleep at all. Petitioner saw a doctor who prescribed a medicine to him for a month. Upon questioning, Petitioner admitted the medicine helped a bit since he could at least fall asleep but his challenge even while taking the medicine was that he could not sleep for long.

That everything went smoothly in the house for one month before Petitioner started acting differently again. To the Respondent this was because the medicine from the doctor had finished. On the 2nd of September 2021, Respondent alleges she was threatened by Petitioner while he pointed a cutlery knife at her saying 'this knife is yours if you do not leave here.' This was after Petitioner had angrily asked when Respondent's mother was leaving his house without any prior discussion. Respondent indicates she called his family and it was the family that advised she should leave the matrimonial home and she personally was afraid to stay further. Respondent further stated that she never threatened her husband on anything at all and she has not been a source of danger to him in anyway. That his constant anger rather caused her to live in fear sometimes. The Respondent further indicated she did not want the marriage to be dissolved as she was convinced that Petitioner needed help and would get back to his usual good self with an urgent intervention and prayed that the court orders the Petitioner to have a psychological check as he has been acting out of character. Respondent further averred the Petitioner had made up claims that never happened. He had also been overly angry and isolated from everyone including family and associates for close to a year and did not listen to anyone and literally accused everyone of having done something to him.

Analysis

By virtue of **Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367)**, the sole ground for the grant of a decree of divorce is that the marriage has broken down beyond reconciliation. **Section 2 (1) of Act 367** prescribes facts, one or more of which a Petitioner must establish for the purposes of showing that the marriage has broken down beyond reconciliation and they are as follows:

- 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) *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; or*
- 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."*

Section 2 (3) of Act 367 provides:

"Notwithstanding that 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."

It is trite that he who asserts must prove. In the case of **ABABIO V. AKWASI III (1994- 1995) 2 GBR, 774**, the Court held that:

"The general principle of law is that it is the duty of a plaintiff to prove his case, that is he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular fact the plaintiff leads some evidence to prove his claim, If the defendant succeeds in doing this he wins; if not he loses on that particular issue."

The court not convinced that the parties had made diligent efforts to resolve their differences as required per section 2(1) f of Act 367 ordered the parties to attend marriage counselling on 25th May 2022 particularly as at that time the period separation had not persisted for two years. The court also ordered the Petitioner to seek psychological counselling as the Respondent had repeatedly informed the court the Petitioner needed psychological counselling and she did not want a dissolution of the marriage but will also not force the Petitioner to stay in the marriage against his will. (See paragraph 19 of the Answer).

Petitioner counsel reported to the court on 15th June 2022 that the Petitioner had refused to attend counselling nor had the families met to attempt a resolution of the matters in issue.

The court on 20th February 2023, refused the prayer for the dissolution of the marriage and made interim orders for custody, access and maintenance and directed the Parties to attempt counselling again. The court further ordered the Petitioner to file a formal report detailing compliance with all the above orders and report to the court on 16th October 2023.

On 16th October 2023, the Petitioner appeared in court with his counsel without filing the report. His counsel informed the court the Petitioner had refused to submit to counselling as directed by the court and wanted the marriage to be dissolved. The court thus fixed a date for final judgement and hereby makes the following orders:

1. That the marriage celebrated between the Parties on the 11th of November 2017 is hereby dissolved.
2. The Respondent is granted custody of the children of the marriage with reasonable access to the Petitioner every 2 weeks on a Sunday from 12:30 p.m. to 5:00 p.m.
3. The Petitioner is directed to provide the Respondent GHS 1000 per month as maintenance for the children.
4. Both Petitioner and Respondent shall share equally the education and health expenses of the two children of the marriage.
5. The Petitioner is ordered to pay GHC 20,000 cedis to the Respondent as financial provision.
6. No award as to cost is made.

Enyonam Adinyira
High Court Judge.