

**IN THE GENDER-BASED VIOLENCE CIRCUIT COURT AT SEKONDI-W/R, HELD
ON THURSDAY, 13TH OCTOBER 2021 BEFORE H/H NAA AMERLEY AKOWUAH
(MRS.)**

.....
C4/21/2021

GIFTY NTIAMOAH

PETITIONER

v

MOSES NTIAMOAH

RESPONDENT

.....
PARTIES: PRESENT

C/PET.: CYNTHIA COBBINAH h/b for SAMUEL AGBOTTAH, Esq.

C/RESP.: PAMELA ARVOH-MENSAH, Esq.

.....
JUDGMENT

Petitioner and Respondent entered into a marriage contract on 13/04/2003 at the Assemblies of God Church, Takoradi and promised each other the proverbial “till death do us part”. However, both want that contract terminated because the other partner, individually, is responsible for its breakdown, not themselves. A previous petition to the Circuit Court, Takoradi for the dissolution of the marriage was discontinued and the instant one filed.

The crux of the new petition is the alleged unreasonable behavior exhibited by the Respondent and the fact that they have been living apart for two years. Particulars of the alleged unreasonable behavior are Respondent unjustifiably inflicting physical and verbal harm/abuse on Petitioner, threatening to kill her without provocation, incidents

which led to complaints lodged to the police, failing to pay their children's school fees, medical bills and generally being irresponsible. Petitioner claimed that due to the above and others, which have caused her hardship, anguish and embarrassment leading to she and Respondent being separated for more than 2 years. She prayed the Court to grant her custody of the children, an order for Respondent to pay her a lump sum of GHC100, 000 for the pain, hardship and disgrace caused her, equal share of the 3 plots of land acquired during the pendency of the marriage and an order for maintenance of the children, in addition to providing the necessities of life and education.

In a detailed rebuttal, Respondent denied the allegations, averring that it was rather Petitioner who had developed an intimate relationship with a fellow church member called Charles Edward Mensah, which relationship has been to the detriment of their marriage. Despite his complaints about the relationship, Petitioner vehemently refused to end the friendship or at least, review how close she had become to him. He denied the allegations of physical abuse, irresponsibility and failing to meet Petitioner's and the children's medical, educational and basic needs. Indeed, that he regularly remitted Petitioner through her bank accounts except a few months when he needed to allocate money for the repair of his vehicle after he was involved in an accident. He contended that he had a very healthy relationship with his children but it was Petitioner who kept them away from him and he had to resort to unconventional ways just to see them, a situation that has caused him emotional trauma, pain and anxiety. Respondent pleaded that since he earned almost the same salary as Petitioner, he could not afford to pay the lump sum Petitioner claimed. Respondent contended that even though Petitioner unceremoniously vacated the matrimonial home, he magnanimously paid part of her rent in addition to paying the rent for the matrimonial home, a situation that further stretched his finances. Although grudgingly, as contended in his Pleadings, Respondent cross-petitioned for a dissolution of the marriage, custody of the children to Petitioner

with reasonable access to him, an order for equal sharing of the properties acquired in the marriage, payment of lump sum of GHC100, 000 for emotional stress and loss of self-pride caused by her actions, costs and any other orders deemed fit.

In line with s. 2(2) of the Matrimonial Causes Act, 1971 (Act 367) the court carried out its duty to “*inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent*” using s. 2(1) (b) & (d) as guiding principles.

After listening to both parties and scrutinizing their respective Witness Statements, the exhibits on record, the sole issue for determination is;

i. Whether or not the particulars set out by either party amounted to unreasonable behaviour

Before I deal with the only issue for determination, I will deal with the admitted fact of the parties not living together for two years prior to the presentation of the petition. S. 2(1) (d) of Act 367 provides 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:

(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;

Despite the controversy and denials by both sides, they joined issue on the fact of separation when Petitioner left the matrimonial home. In paragraph 6 of her Witness Statement, adopted as her Evidence-in-Chief, Petitioner admitted leaving the

matrimonial home in June 2018 together with the children because her life was in imminent danger. Under cross examination at page 16 of the Record of Proceedings, she reiterated this fact. In paragraphs 18, 19 & 20 of his Answer and also his EIC, Respondent confirmed that Petitioner left the matrimonial home, resulting in their living apart for some time now. Paragraph (d) of s. 2 (1) of Act 367 requires that not only should the parties be living separately for 2 years, but according to Mrs. Frederica Ahwireng-Obeng at page 128 of her book *“Contemporary Principles of Family Law in Ghana”*, *“each party carries on with life as if the other was not present. Indeed, there is no consortium and all marital obligations are withdrawn”*. The evidence on record was that the parties could not be more separate than the word connotes because it is a tussle for Respondent to merely see and interact with his children. There was further evidence of disagreements, allegations of threats of harm and death, physical abuse, allegations of infidelity, the previous petition, etc., indicative of tension and a hostile relationship environment between the parties. On the authority of s. 18 of the Evidence Act, 1975 (NRCD 323), it is fair to infer that under such living circumstances, conjugal relations, matrimonial duties and the pleasantries of married life ceased several years prior to this action.

Respondent consented to the grant of divorce though he said it was a reluctant choice. From his testimony, demeanor and the entire proceedings, I find this a façade meant to sway the Court’s initial impression and portend a spouse who was interested in keeping a marriage when same could not be farther from the truth because of his cross petition, a reflection of Petitioner’s reliefs.

With this admission and on the authority of Or. 23 r. 1&6 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) and the case of *Ewusie-Mensah v Ewusie-Mensah* [1992]1GLR 271, neither party had to lead evidence to support same and a finding of fact is hereby made that s. 2(1) (d) has been established, even if admitted.

To the matter of unreasonable behavior, when Respondent denied Petitioner's pleadings and testimonies of unreasonable behaviour, and vice versa, both had a duty to lead cogent evidence to support their claims (reference s. 11(1) of NRCD 323 not merely mount the witness box and repeat their pleadings. Reference the case of *Majolagbe v Larbi* [1959] *GLR 190@192*.

The examples of Petitioner's allegations of physical and verbal abuse centered on Respondent allegedly locking her up and beating her up, mostly without provocation and as she testified, because Respondent was temperamental. Yet, she failed to give sufficient particulars of the said incidents, which for an average person would leave an impression. In this case, Petitioner is an educated and world-savvy Assistant Registrar of Takoradi Technical University and should such events have taken place, she should have offered some material evidence to support her allegations, such as hospital or other medical records, corroborative evidence from other witnesses who would have testified to injuries she sustained, etc. petitioner claimed that she lodged a report on the death threat on her life by Respondent but failed to tender evidence of the said complaint. It is factual that Respondent admitted that a complaint was indeed lodged but disputed that it was based on criminal conduct on his part. Rather, that the report was on the issue of his reservations with her too-close relationship with Charles Mensah.

s. 11(1) of NRCD 323 requires that *"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 him on the issue"*. Sufficient evidence cannot be repeating Pleadings and allegations when under oath. See the case of *Asante-Appiah v Amponsah@Yaa Mansa* [2009] *SCGLR. 90*. On the evidence, I find that Respondent failed to prove her allegations of unreasonable behavior as related to physical abuse and threats of death. She failed to discharge the burden on her to provide sufficient evidence to avoid a ruling against her as. See the case

of *Audrey Addo Mensah v Isaac Otti Yeboah* [High Court, Suit No. DM0041/2016, 20th October 2016] on proof of unreasonable behavior and considerations for same.

The second leg of Petitioner's claims of unreasonable behavior was irresponsibility on Respondent's part towards the welfare of their children. Petitioner pleaded that she had been responsible for their children's school fees, etc., since they attained school-going age. She did not tender documentary or other evidence to support her assertions. On the other hand, Respondent tendered copious copies of receipts of school fees paid in the names of dating from 2015-2021 (Exhs. 1-1X), receipts of medical bills paid in Petitioner's and their two children's names (Exhs. 2-2X) and Respondent's Salary Advice (Exh. 3) from his employer, the National Investment Bank (NIB). On the face of the exhibits tendered, Respondent disproved the allegations of general irresponsibility made against him.

On the preceding, I cannot find unreasonable behavior proved against Respondent.

I have read through the proceedings, and without more, I dismiss Respondent's allegations of unreasonable behaviour against Petitioner, i.e., that her friendship with Charles E. Mensah. Respondent fell short of accusing Petitioner of adultery and it will be outside my ambit to presume same. With her denial, it would have been helpful to the Court if his assertions were corroborated by the several names mentioned as persons who sat on the matter and attempted to resolve same. Being in dispute, his stating his allegations without proof or corroboration does not satisfy the burden on him. Reference the case of *Continental Plastics Ltd. v IMC Industries (2009) SCGLR 298@306-307* on burden of proof.

PROPERTIES

In his Pleadings and EIC, Respondent agreed on the equal sharing of the properties acquired in the marriage between himself and Petitioner. However, under cross

examination she admitted that the two plots of land situate behind the SSNIT Flats used to be under litigation but has been suspended after both were sold to and taken over by third persons. The remaining land at Assaeké is undisputed as matrimonial property as evidenced by the following:

Q: The 3 plots of land acquired during the marriage, you are aware that 2 of the plots being T25 and T27 are no longer available. To be specific, the ones situate behind the SSNIT flats

A: I know it is under litigation for now even though we genuinely acquired it

Q: The case is no longer pending at the Court are you aware of that

A: Yes, for some time now, it has been suspended

Q: As we sit here, those lands were sold to 3rd parties who have now taken possession of the lands

A: I am aware

Q: So in fact, the only land available is the one situate at Assaeké which was acquired during the marriage

A: Yes

Orders on property settlement will therefore be in respect of the remaining plot of land.

DECISION

On the foregoing, I hereby grant the petition for divorce dated 24/09/2020 on the finding that the marriage between the parties has broken down beyond reconciliation on the basis of s. 2 (1) (d) of Act 367.

On the authority of s. 42 (1) (b) of the Courts Act, 1993 (Act 459) the Ordinance Marriage between Gifty Ntiamoah and Moses Ntiamoah celebrated on 13/04/2003 at the Assemblies of God Church, Takoradi is hereby dissolved and a certificate of divorce shall issue.

CUSTODY

Custody of Janet & Grace Ntiamoah is granted to Petitioner, with reasonable access to Respondent.

MAINTENANCE & OTHERS

With Petitioner having custody and the attendant day-to-day expenses of taking care of children in prevailing economic times, at their present ages, Respondent is ordered to pay monthly maintenance of GHC2,000 for the upkeep of the two children.

Respondent is ordered to fully pay for the school fees of both children till completion of their respective tertiary education.

Petitioner shall bear all other education-related expenses including stationery, school uniforms, transportation to and from school, extracurricular activities and incidentals.

Medical care for the children shall be borne by the Respondent

FINANCIAL SETTLEMENT

I have considered the salaries of both parties; GHC5, 508 for Petitioner and GHC7, 402 for Respondent as contained in their respective Affidavits of Means and Exh. 3 and I find the claim for GHC100, 000 by each party unmerited and same are dismissed.

PROPERTY DISTRIBUTION

One plot of land located at Assaeke in the Western Region shall be distributed equally between the parties.

RESTRAINING ORDER

With no evidence of physical abuse, the prayer for a restraining order is dismissed.

No order as to costs.

.....
H/H NAA AMERLEY AKOWUAH (MRS.)