

IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST CENTRAL
REGION ON MONDAY 12TH DAY OF DECEMBER, 2022 BEFORE H/H DORINDA
SMITH ARTHUR (MRS.), CIRCUIT COURT JUDGE.

SUIT NO. C4/02/2023

MARK AMPAH ... PETITIONER

CAPE COAST

VRS

STELLA ABBEYQUAYE ... RESPONDENT

407 SANDY COVE, TINTON FALLS

NEW JERSEY, 07753, USA

JUDGMENT

INTRODUCTION

The Petitioner seeks the dissolution of the marriage celebrated on December 13, 2007 between herself and the Respondent at the District Court, Cape Coast.

Per the petition, the petitioner is praying for the following reliefs;

1. A declaration that the marriage had broken down beyond reconciliation.
2. An order for the dissolution of the marriage.

The Respondent was served out of the jurisdiction through Fedex courier to her address at 407 Sandy Cove Tinton Falls, New Jersey, 07753, USA and also via her mobile

number. the respondent did not enter appearance. Then the Petitioner on November 4, 2022 filed a motion ex parte for an order for the entry of judgment against the respondent in default of appearance. The Petitioner/Applicant attached a search conducted at the Registry of this court which indicated that the Respondent was served on September 4, 2022.

CASE OF PETITIONER

The petitioner testified that he is resident in Cleveland, Ohio in the USA but a Ghanaian by birth from Cape Coast. The Respondent is a native of Elmina but also resident in Tinton Falls, New Jersey, USA. He stated that they married under the customary law and the Marriage Ordinance in Cape Coast at the Registry of the District Court on December 13, 2007. He continued that they have no child between them. They were living under the same roof in the city of Cleveland until the Respondent for no justifiable reason relocated to the city of Tinton Falls in the State of New Jersey where she is presently domiciled since 2017. He further stated that they have not had sexual intercourse for a long time where the Respondent has disclosed her lack of interest in the marriage. He continued that there is no love in the marriage but constant misunderstanding. He said that they have attempted reconciliation without success so on July 17, 2022 the Petitioner presented a bottle of schnapps through the lawful attorney to the mother of the Respondent as an indication that the marriage has broken down where the mother also accepted. He therefore prays for the court to declare that the marriage has broken down beyond reconciliation and an order for the dissolution of the marriage. He tendered in evidence a copy of the lawful attorney and a photograph of the mother of Respondent accepting the bottle of schnapps.

EVALUATION OF EVIDENCE AND APPLICATION OF LAW

Before a court can grant a decree of divorce the parties should satisfy the court with the grounds that the marriage has broken down beyond reconciliation as provided under the Matrimonial Causes Act 1971, Act 367.

Has the marriage broken down beyond reconciliation?

And for the purpose of showing that the marriage has broken down beyond reconciliation the onus is on the petitioner to satisfy the court the one or more of the conditions as provided under Section 2(1) Act 367 that;

- (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; 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.

The Petitioner particularised his grounds for dissolution of her marriage on subsection (b) and (c) of Section 2 that the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent and that the respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition.

He averred that the Respondent for no justifiable reason left the matrimonial home and the State of Ohio and relocated at New Jersey since 2017. He also stated that they have not had sexual intercourse and the Respondent has declined to perform her duty as a wife to the Petitioner. He said the Respondent has disclosed to him her lack of interest in the marriage.

I have considered all the assertions and statement made by the Petitioner and as the Respondent has refused to enter appearance for her response to be considered, the court has nothing to consider in her favour.

Can the behavior of the respondent be said to be unreasonable as provided for under the Act?

In the case of KNUDSEN V KNUDSEN (1976) 1 GLR 204 Amissah J.A (as he was then) in a discussion on what amounts to unreasonable behaviour held as follows:

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

The petitioner testified that the Respondent informed the Petitioner that he is no more interested in the marriage but will not take any step to resolve same. Her testimony of the respondent having extra marital affairs, denying her consortium, and denying her access to him at Abura Dunkwa all cumulatively amount to unreasonable behaviour.

I have considered the evidence of the Petitioner and the answer from the Respondent and I am satisfied that the conduct of the Respondent was unreasonable.

The last ground is that the Respondent has deserted her and left for United States of America secretly without her knowledge or notice for the past three years. The Respondent explained that he could not locate the whereabouts of the Petitioner as she had left the matrimonial home and had indicated that the Respondent should not contact her.

The word Desertion as defined in the Osborn’s Concise Law Dictionary page 114 as:

“Desertion is where a husband or wife voluntarily and without reasonable cause leaves the other spouse against his or her will and with the intentions of permanently ending the cohabitation...”

Pursuant to Section 2 (1) (c) of Act 367 supra, Desertion is a ground for divorce for a period of at least 2 years immediately preceding the presentation of the petition.

The Petitioner stated that the Respondent deserted her for USA without her notice and knowledge. The Respondent also stated that it was the Petitioner who left her matrimonial home five months before he left for USA. What caused the Petitioner to leave the matrimonial was given by the Respondent that it was a trivial disagreement between them. If the Respondent was the cause of that trivial disagreement which made the Petitioner leave the matrimonial home then it can be deemed as constructive desertion.

In the book **“Family Law in Ghana” 3rd Edition by William E. Offei** page 243 the learned author provides that:

‘Constructive desertion as I understand it consists of a spouse, by unreasonable behaviour, compelling the other spouse to bring matrimonial consortium to an end or physically desert the matrimonial home.’

See **Arku Vrs Arku and Abraham (1965) GLR 269.**

Here too it can be gleaned from the conduct of the Respondent that his unreasonable behaviour led the Petitioner to leave the matrimonial home which brought the matrimonial consortium to an end. On the contrary, if the desertion is seen from the fact that the Respondent has left Ghana for USA since May 2019 without the knowledge and consent of the Petitioner then his action of leaving for USA has brought the matrimonial consortium to an end.

Flowing from the above it can safely be inferred that the conduct of the Respondent amounts to desertion as he has been away for more than three years.

I have considered that the family of both parties have tried to reconcile the parties without success.

Consequently, the court comes to the only conclusion that the marriage celebrated between the parties has broken down beyond reconciliation as the parties could not reconcile their differences and their differences comes under the grounds for dissolution of marriage.

DISPOSITION/HOLDING

I am satisfied from the evidence led by the Petitioner and Respondent that the marriage between the them celebrated on December 6, 2003 with marriage certificate number per licence No. at I.C.G.C, Tarkwa has broken down beyond reconciliation. The said marriage is hereby dissolved.

For the ancillary reliefs, the court adopted the terms of Settlement dated and filed on May 12, 2022 and endorsed by both parties and their Counsels as consent judgment as follows:

1. That both parties agree that the marriage celebrated between the parties on 6th December 2003 be dissolved.
2. That all landed properties acquired during the subsistence of the marriage be settled on the Respondent.

3. That the Respondent shall pay an amount of Ghc 20,000 as financial provision to the Petitioner.

On the issue of cost, I am directed to consider **Order 74 of C.I. 47** and on the authority of the Court of Appeal case of **GATCO CHEMPHARAM v. PHARMADEX (GHANA) LIMITED [1999-2000] 2 GLR @262** to award an amount that is fair and reasonable for the successful party. I hereby award Cost of Ghc 5000 for the Petitioner against the Respondent.

Judgment for the Petitioner in the terms set above.

H/H DORINDA SMITH ARTHUR (MRS.)

CIRCUIT COURT JUDGE

COUNSELS FREDERICK F. FAIDOO ESQ. FOR PETITIONER.

ALEXANDER K.K. ABBAN ESQ. FOR RESPONDENT.