IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST, CENTRAL REGION ON TUESDAY 29TH DAY OF NOVEMBER, 2022 BEFORE H/H DORINDA SMITH ARTHUR (MRS.), CIRCUIT COURT JUDGE.

SUIT NO. C4/14/2022

MARY ANKOMAH ... PETITIONER

UNIVERISTY J.H.S, CAPE COAST

VRS

SETH SELASSIE DZAH … RESPONDENT

SCHOOL OF NURSING & MIDWIFERY, U.C.C, CAPE COAST

JUDGMENT

INTRODUCTION

The Petitioner seeks the dissolution of the marriage celebrated on 19th day of August, 2012 between herself and the Respondent at Seventh-Day Adventist Church Pedu, Cape Coast.

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

a) An order for the dissolution of the marriage between the parties.

b) An order for the custody of their child to Petitioner and be maintained by Respondent
c) An order for the 2 bedroom apartment to be given to the Petitioner with no renovation done by the Respondent.
d) Any other relief or reliefs the Court may deem fit.

CASE OF PETITIONER

Petitioner testified that they married under the marriage Act at a ceremony at the Seventh Day Adventist Church, Pedu Branch on the 19th of August 2012. After the marriage they cohabited at Amamoma, UCC a suburb of Cape Coast. The Petitioner is a teacher and the Respondent is a nurse but lectures at the School of Nursing & Midwifery, UCC. They have one issue but the marriage has broken down beyond reconciliation. The Petitioner stated that the Respondent has refused to have sexual intercourse with her for the past six years without sufficient reasons or justifications. The Respondent in order to avoid any effort by Petitioner to resolve their lack of sexual intimacy, sleeps in a separate room and locks himself by denying Petitioner access to that room. The Respondent openly informed the Petitioner to look for another man because he is fed up with the Petitioner and does not love her anymore. The breakdown of intimacy was as a result of the Respondent's increasing attachment to his female friends. The Respondent subjects the Petitioner to verbal attacks and abuse sometimes in the presence of their child, Petitioner's friends, students and younger siblings. He openly told the Petitioner that he hates her. She further stated that the Respondent brings his students to the matrimonial home at odd hours without prior notice to the Petitioner. The Respondent does not want the Petitioner to wash his clothes and does not allow her the freedom to do anything to improve herself and frowns at any personal

development of the Petitioner which even includes procurement of a driving license. Meanwhile, the Respondent is pursuing three different programs aside a PhD at UCC but hid same from the Petitioner until May 2022 where she got to know of same. The Respondent does not interact with the Petitioner on anything and does not recognise her as his lawful wife. He rarely stays home and the few times he is at home, he will be either on phone with his students, friends or be working on his car. According to Petitioner, they agreed to build their matrimonial home and acquire a vehicle before they marry and together they contributed to the construction of their home and acquisition of a vehicle before they married. She financially contributed to all the projects they embarked on as well as to the acquisition of plots of land and vehicles during their marriage where the Respondent was keeping her ATM card. She added that the Respondent has refused to repair roof leakages, electrical faults, complete the construction work in the house nor furnish the rooms of their matrimonial home for over four years and stopped maintaining the Petitioner. He does not communicate his decisions or movement with the Petitioner and does not respect the Petitioner and openly informed her that he hates her. That the Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with him for the Respondent has caused her emotional pain, anxiety, distress, humiliation and embarrassment. She tendered in evidence a copy of an indenture between Ebusuapanyin Kobina Tawiah and Azar Seth Sellasie and Mary Ankomah dated 12/12/2011 and a handwritten document dated 28th June, 2014 in which the Respondent is transferring his interest in the matrimonial home to the Petitioner.

CASE OF RESPONDENT

The Respondent testified that he is an assistant lecturer at the college of Nursing and Midwifery, UCC, Cape Coast. He stated that he was making efforts to resolve their marital impasse and so he was surprised when he was served with the Petition. He agreed that they have not had sexual intercourse for the past six years but it was because he was not happy with how they are bringing up their child. According to Respondent, both of them are sickle cell positive so he suggested that the Petitioner feeds the child fresh foods and not canned one even though the child is not a sickling positive. They do not agree on how to train the child even though they had agreed to create a healthy family culture. Also, he did not want to have another child so he suggested they use condoms but the Petitioner refused. So these disagreements led them to prolong having sex which went from days to years. He further stated that he has been responsible for the payment of their daughter's school fees, utility bills and buying food stuffs in the house but he could not continue to give the Petitioner financial support for sometime because he is now in school. He admitted that they acquired three and half plots of land between Kwapro and Ankaful but same has been sold when they had financial difficulties. He said he sold a portion to one Maame Yaa, a cousin for Petitioner but she requested for her a refund and he was able to refund her money to her from the proceeds of the sale of that portion. He also admitted that they acquired a building at Amamoma. He said they decided on that before marriage as he did not want them to rent due to landlord issues and sharing of utility bills. So he pulled together the resources they had and constructed that house. it was a two bedroom house but he has extended to a three bedroom house. They built the house before marriage and that was where they cohabited after marriage. He admitted transferring his share of the house to the Petitioner in a document he wrote and added that he did so to protect the Petitioner from his fifteen siblings. He said he has a complicated family background with six siblings from his mother's side and nine siblings from his father's

side. He said some of them scared him sometimes with their behaviour and utterance hence that document against any emergencies and to prevent his wife and child from being thrown away from their house. He admitted that he bought a plot of land in the name of the Petitioner with the same explanation. He further added that the Petitioner has since 23/09/22 left the matrimonial house with their daughter and he has not seen her again. He pleads with the court to reserve some part of the house to him as his part so that he gets some place to stay. He agrees that the Petitioner should have custody of the child but he has to be given reasonable access.

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 her grounds for dissolution of their marriage on subsection (b), (e) and (f) of Section 2 that the Respondent has behaved in a way that the Petitioner cannot be reasonably expected to live with the Respondent as husband and wife and that they have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition, and they have, after diligent effort, been unable to reconcile their differences.

For the purposes of proving Respondent's unreasonable behaviour, the Petitioner testified that the Respondent without any provocation subjects her to verbal attacks and abuse sometimes in the presence of their child, friends, students, and brothers. Respondent brings his students to the home at odd hours; Respondent does not allow her to wash his clothes and never wears any clothe Petitioner washes; Respondent does not allow the Petitioner the freedom to do anything and he's against her personal development; Respondent does not recognise her as his lawful wife and does not interact with her; Respondent rarely stays at home and does not communicate with her and openly told her that he hates her.

Can the behaviour 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."**

From the evidence of the Petitioner, the Respondent does not respect her, verbally abuse her without any provocation in the presence of her child and other persons, and

does not communicate or interact with her. These and many others as stated by the Petitioner can be said to be of sufficient gravity because the acts have continued or persisted over a period of time and their cumulative effect when taken together is enough to course her the emotional, pain, anxiety, distress, humiliation, and embarrassment as stated under paragraph 12 of her petition.

The Respondent failed or did not cross examine the Petitioner on these salient averments and all the questions asked were to support the assertion that the marriage between the parties have broken down beyond reconciliation.

In **Quagraine vrs Adams [1981] GLR 599**, the court held that where a party makes an averment and his opponent fails to cross-examine him on it, the opponent is deemed to have acknowledged that averment.

See also **Fori v Ayerebi [1966] 2 GLR 627** for a most direct and helpful authority on the point about undenied averments.

I then move to the next ground which is that the parties have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition. From the evidence of the Petitioner, the Respondent has refused to have sexual intercourse with her for a continuous period of six years without sufficient reasons or justification. She continued that the Respondent sleeps in a separate room and locks himself up denying her access to the room.

The Respondent did not deny this assertion by the Petitioner but rather admitted same in his evidence in chief and also under cross examination. It is noted that the Respondent mentioned that he wanted the Petitioner to use contraceptives where she

refused but under cross examination it was revealed that the Petitioner agreed to the use of condoms and they started using condoms six months after she delivered their child. Therefore, the assertion of the Respondent that the Petitioner refused to use contraceptives was collapsed.

The court therefore accepts the evidence of the Petitioner as credible as the Respondent could not discredit her evidence either through cross examination or by proving contrary cogent evidence.

In that regard, the court can safely infer that the parties did not live as husband or man and wife for a continuous period of six years immediately preceding the presentation of this petition.

I must add that nobody should be made to go through such rejection by a spouse for such long period of time. The callous behaviour of the Respondent should not be entertained by any person and it is sad that the Petitioner was made to go through such painful and cruel experience by the Respondent.

I have considered all the assertions and statements made by both parties and find that the Respondent was unreasonable and insensitive to have refused to have sexual intercourse with the Petitioner for more than six years. He was insensitive and inhumane to have refused to communicate or interact with his wife for so many years and for abusing or insulting the Petitioner in the presence of their child and others.

Therefore, the Petitioner cannot be made to live with the Respondent due to his unreasonable and cruel behaviour.

The last ground is that the parties to the marriage have, after diligent effort, been unable to reconcile their differences. The Petitioner testified that their families have attempted

on several occasions to resolve their conflicts without success as well as church elders, Professors, and esteemed friends. Under cross examination it was revealed that the Respondent made no efforts at all to end the long impasse of not having sexual intercourse with the Petitioner and indeed he rather informed the Petitioner that he hates sex. It is therefore not surprising that the Petitioner moved out of the house.

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, it can be gleaned from the conduct of the Respondent that his unreasonable behaviour led the Petitioner to leave the matrimonial home even though in their case the matrimonial consortium has already being brought to an end by the Respondent. Therefore, the action of the Respondent made the Petitioner to constructively desert the matrimonial home.

I have considered the evidence of the Petitioner and Respondent and I am satisfied that the conduct of the Respondent was unreasonable, cruel, and insensitive.

I must state that even though the Petitioner did not plead adultery, it can be gleaned from the evidence that a reasonable man would arrive at the conclusion that the Respondent has been satisfying himself elsewhere especially where from the evidence of the Petitioner, the Respondent brings his student to his room at odd hours, lock his door and does not allow the Petitioner to enter the room. For any reasonable man

without any medical condition cannot live with his wife in the same house and refuse to have sexual intercourse with her for continuous six years.

Consequently, the court comes to the only one conclusion that the marriage celebrated between the parties has broken down beyond reconciliation as the Respondent per his insensitive, disrespect, and cruel behaviour toward the Petitioner has ended the marriage.

I then move to the ancillary reliefs as pleaded by the Petitioner since the Respondent did not cross-petition.

The Petitioner prays for the court to grant her custody of their daughter and for the Respondent to maintain her.

From the evidence, the only issue in the marriage is a female child of eight years. The Petitioner testified that the Respondent is rarely at home and when he comes, he is either on his phone, chatting with his students, or working on his car. The Respondent admitted and agreed that custody of the child be given to the Petitioner as he is currently in school and pursuing three educational degrees at the same time.

Aside from the fact that the child is a female and a minor, the Respondent through the evidence has not shown any ground for which the court can infer otherwise than to grant that prayer.

Therefore, the court grants custody of the daughter to the Petitioner where the Respondent is given reasonable access. He should communicate and agree with the Petitioner as and when he can have access to the child. It is on record that the

Respondent does not stay in the house, is pursuing three different degrees from three different schools and stays outside Cape Coast throughout the weekdays.

Additionally, the Respondent should continue to pay the school fees of the child, maintain the child by providing medical care, clothes, food and other necessaries of life for the child.

The last prayer is for the court to grant to the Petitioner the 2 bedroom house. The Petitioner tendered in evidence an indenture between Ebusuapanyin Kobina Tawiah and Dzah Seth Sellassie and Mary Ankomah dated 12th December 2011. She led evidence which was satisfactory to the court that she contributed to the acquisition of the land and construction of the house. The Respondent in his evidence in chief admitted that he gathered all their resources together to construct the house but later under cross examination attempted to deny that the Petitioner contributed to the construction of the house. It is noted that the date of the indenture precedes their marriage which support the assertion that they pulled together their resources and constructed the house for them to have their own matrimonial home after their marriage ceremony.

The law is trite and same supported by statute that for a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law. This position is supported by **Section 12(2) and Section 14 of the Evidence Act 1975 (NRCD 323).** Also, in **ABABIO VRS. AKWASI IV [1994 – 1995] GBR 774** Aikins JSC expounded that:

> *"The general principle of law is that it is the duty of a Plaintiff to 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 issue, 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".

By the above statement of the law Aikins JSC reiterated the position of the Supreme Court that the party who asserts has the burden of proof in the case of **ACKAH V. PERGAH TRANSPORT LTD & ORS [2010] SCGLR 728.** See also **ZABRAMA V. SEGBEDZI. [1991] 2 GLR 221**.

Flowing from above, each party in a case has the burden of persuasion and prove to adduce cogent evidence to prove his or her assertion which should meet the required standard prescribed by law which is prove by the preponderance of probabilities.

The Petitioner tendered in evidence a declaration by the Respondent dated 28th June 2014 duly executed and signed by the Respondent transferring the entire house to the Petitioner. The declaration is as follows:

"I Selassie Seth Dzah do hereby declare that I unconditionally transfer my part in the land and the entire house hereby contained on it to Mary Ankomah. Under no condition shall I or any member of my family take it from her unless she personally decides to give it out."

The declaration is duly signed by the Respondent and he did not deny that he gave the Petitioner such a declaration. The content of the declaration is clear and without any ambiguity that the Respondent has transferred his part in the land and the entire house as contained on the land to the Petitioner. He further stated that family member or him should take the house from her because he has given her the house unconditionally.

The court respects the wishes and declaration of persons who voluntarily and purposefully execute a document like in this instance. It is noted that the Respondent explained the purpose of the declaration and the explanation confirms that he gave the Petitioner out of his own volition his part in the house in its entirety. Therefore, whether the house is now a three bedroom or not does not defeat his intention as same is catered for in his declaration.

Furthermore, the court prefers documentary evidence as same provides clear, concise, and reliable evidence. See **FOSUA & ANOR VRS DUFIE** (deceased) & **ANOR [2009] SCGLR 310** where the Supreme Court held that "it was settled law **that documentary evidence should prevail over oral evidence".**

Here, the declaration as tendered in by the Petitioner provides a clear, reliable, and credible evidence to the effect that the Respondent agreed to transfer his part of the house to her.

It is noted that the Petitioner in her evidence stated that she only listed the house because that is the only property the Respondent is willing to give her even though they have other plots of lands. in the course of the trial however, three and half plots they acquired was mentioned and it was realised that the Respondent sold one of the three and half plots and the proceeds was used to defray their indebtedness to one Maame Yaa. What became of the remaining two and half plots was not properly ascertained. Furthermore, the Petitioner mentioned other plots they have acquired but was not aware of the acreage. Out of the lot, the Petitioner only requested for this matrimonial home which has been transferred to her by the Respondent some years back.

Therefore, it is safe for the court to conclude that the Respondent unconditionally transferred his part of the house to the Petitioner on 28th June 2014 and as such same is respected. The prayer of the Petitioner is hereby granted.

In the course of the hearing, it became clear that a plot of land was acquired in the name of the Petitioner by the Respondent. This plot is not in dispute and the Respondent did not cross-petition for that plot hence the court will respect and uphold same to be the property of the Petitioner. This is because a person who acquires property in the name of his wife or child is presumed to have intended to give the property to the woman or child as a gift. This common law presumption of advancement has been quoted with approval and applied in a number of Ghanaian cases including the Supreme Court decision in **KWANTENG VS. AMASSAH [1962]1GLR 241 SC.**

On the contrary, the Supreme Court held that the presumption of advancement is rebuttable.

In **SESE V.SESE [1984-86] 2 GLR 166,** the Court of Appeal held that the presumption of advancement may be rebutted by evidence to the effect that the person presumed to have advanced the property did not intend to forgo his interest in the property. This is not seen in this case as the Respondent did not lead any evidence to rebut such evidence and in any case that plot of land was not an issue for determination..

DISPOSITION/HOLDING

I have considered the evidence of both the Petitioner and Respondent and am satisfied from the evidence led that the marriage between the parties celebrated on August 19, 2012 under the Marriage Act (CAP 127) at Seventh Day Adventist Church, Pedu in the Central Region of the Republic of Ghana with Certificate No. CCMA/256/2012 has broken down beyond reconciliation. The said marriage is hereby dissolved.

For the ancillary reliefs, the court grants the prayer of the Petitioner as follows:

1. The Petitioner is granted custody of the child in the marriage with reasonable access to the Respondent.

2. The Respondent to maintain the child by paying school fees, medical expenses, and providing the necessaries of life for the child.

3. The Petitioner is granted the matrimonial house as same has already been transferred to her by the Respondent. She is the sole owner of the matrimonial house and the Petitioner to have possession of same where the Respondent should yield possession of the house to the Petitioner within three months from today.

4. The Respondent to compensate the Petitioner with the sum of Thirty Thousand Ghana Cedis (Ghc 30,000).

5. Cost of Three Thousand Ghana Cedis for the Petitioner against the Respondent.

Judgment for the Petitioner in the terms set above and a decree of dissolution of marriage should be drawn in favour of the Petitioner.

H/H DORINDA SMITH ARTHUR (MRS.)

CIRCUIT COURT JUDGE

COUNSELS:

PHILIP M. YOUNG ESQ. FOR RESPONDENT.