

IN THE CIRCUIT COURT HELD AT AGONA SWEDRU ON  
THURSDAY THE 21<sup>ST</sup> DAY OF NOVEMBER, 2022 BEFORE HIS HON.  
JONATHAN D. NUNOO CIRCUIT JUDGE

SUIT NO: A4 /13/2022

RHODA KWAKYEWAH AGYEI .... PETITIONER

VS.

FRANCIS AMOAKO NYAMEKYE .... RESPONDENT

Petitioner Present.

Respondent Absent.

### J U D G M E N T

The petitioner issued this petition from this court seeking for an order for dissolution the marriage and custody of the child of the marriage and any other order(s) that the honourable court may seem fit.

Petitioner states in her petition as follows:-

1. That they got married under the ordinance on 8<sup>th</sup> August 2018 at Four Square Gospel Church at Mataheko in Accra
2. That after the marriage the parties cohabited at Ablekuma fan milk, Respondent's mother's house
3. That they have one issue name Huldah Ewura Nyamekye Osei 2years 9 months old.
4. That the parties are both citizens of Ghana and domiciled in Ghana.

5. That the Petitioner is a nurse and the Respondent is a pupil's teacher.
6. That there have been no previous proceedings in this or any other Court concerning the said marriage.
7. That the marriage has broken down beyond reconciliation and therefore irretrievable
8. That the Respondent has behaved unreasonably and the Petitioner can no longer be expected to live with the Respondent.
9. That the Respondent by custom has not even named the only issue of the marriage let alone to talk of maintenance and other duties.
10. That when the Petitioner was seven (7) months old pregnant, both parties agreed that the Petitioner should go and stay with her parents and come back to the matrimonial home after delivery, outdooing an naming.
11. That some months after the Petitioner has delivered, the Respondent never avail himself for the outdooing and naming of the child claiming he has no money to pay for the bills and expenses that petitioner's parents incurred during and after the petitioner's delivery
12. That the Respondent has deserted the Petitioner and the only issue of the marriage for a continuous period of three years therefore depriving the Petitioner of love, affection, sex, happiness and maintenance.
13. That the Respondent packed the petitioner's belongings and threw them outside their matrimonial home and later

called the Petitioner to come for same of which the Petitioner's father and brothers had to go for the belongings because the Petitioner's condition after delivery was unbearable.

14. That the Respondent told the Petitioner to go for divorce if it pleases her because he (Respondent) will no longer marry Petitioner.

15. That the parents of the Petitioner and other elders in the family invited the Respondent and his parents to come to enable them settle any misunderstanding that exists between the parties but Respondent and his family did not honour the invitation

16. That the petitioner's former Pastor who blessed the marriage also invited the Respondent to enable him identify and settle the problems in the marriage but the Respondent never honoured that invitation too.

17. That the Respondent on several occasion calls the Petitioner on phone and quarrels with her amidst insults, threats, curses and also telling the Petitioner that he is not interested in the marriage anymore and that the Petitioner should pay him back all monies that he (Respondent) used in marrying Petitioner.

18. That the trauma of the Respondent's behaviour towards the Petitioner and Hulda Ewurama Nyamekye Osei the only issue of the marriage is now unbearable hence the Petitioner resorts to this divorce

**The Respondent filed an answer to the petition and he avers as follows:-**

1. That Respondent admits paragraphs 1-7 of the Petitioner's petition.
2. Respondent denies paragraph 8 of the petition and says that he has at all material times behaved reasonably towards the Petitioner since they got married.
3. Respondent denies paragraph 9 of the petition and says that he took care and every responsibility towards the upkeep and maintenance of the Petitioner when she was pregnant and paid for the hospital bills after delivery.
4. Respondent admits paragraph 10 of the petition
5. Respondent denies paragraph 11 of the petition and says that anytime he visited Petitioner at her family house at Anyaa, petitioner will quarrel with him and insult him without any provocation. Also, petitioner's father instructed him that he wanted to have a meeting with all family members of the Respondent which Respondent disagreed
6. Respondent says that petitioner's father wanted to dictate the pace of his life towards the naming ceremony and otherwise issues concerning the petitioner which he also did not yield to his demands.
7. Respondent admits paragraphs 12 of the petition and says that Petitioner and her family named the child as they had wished without consulting him hence he felt rejected by their actions so to say that he is not the father of the child.

8. Respondent denies paragraph 13 of the petition and says that there was misunderstanding between his sister and that of petitioner's sister, who then caused the arrest of his sister. He was not enthused of the incident and therefore called petitioner to come for her belongings from the house. This happened while he respondent was in Kumasi.
9. Respondent says that after he had returned from Kumasi and found the belongings in his room, he removed them and packed them into another room in the house before the brothers came for it.
10. Respondent admits paragraph 14 of the petition.
11. Respondent denies paragraph 15 of the petition and says that he did not receive any formal invitation from his father in law.
12. Respondent denies paragraph 16 and says that at the time the pastor called to meet him, he made it known to the pastor that he was in Kumasi and would not be able to honour the invitation anytime soon until he return.
13. Respondent denies paragraph 17 of the petition and says that he called petitioner to bring the child for naming ceremony, she agreed but few days thereafter she refused to respond to any of his calls.
14. Respondent denies paragraph 18 of the petition and says that petitioner is comfortable living in her family house.
15. Respondent repeats paragraphs 1-14 of his answer to the petition and cross- petition as follows

- a) An order for the dissolution of the marriage
- b) An order for Petitioner and her family to permit the Respondent to name the child to enable him take responsibilities of the issue as well
- c) An order for custody of the child.

The Respondent cross examined the Petitioner after she has testified and she closed her case without calling any witness and the matter was adjourned for the Respondent to open his defence but he failed and hearing notice was served on him but he failed refused or neglect to come and participate in the proceedings

The conduct of Respondent left the court with no option than to proceed without him in order not to burden the Petitioner with unnecessary cost and to avoid delay.

The law is that to enable a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to the prescribed standard as provided by statute.

This position is buttressed by various provisions of the evidence Act 1975 (NRCD 323).

Section 14 of the Act provides that "Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting"

The burden of providing evidence as well as burden of persuasion is on both parties and the standard required to discharge the burden of persuasion is “preponderance of probabilities” see Section 12 (1) of the Act.

Section 12 (2) of the same Act defines “preponderance of probabilities” to mean degree of certainty of belief in mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence”.

Section 11 (4) of evidence Act (NRCD323) provides that a burden of providing evidence is discharge when a party provides sufficient evidence, so that on all the evidence a reasonable mind could conclude that the existence of a fact is more probable than its non-existence.

In the case of *Ababio V Akwan III* (1994-95) GBR 774 the Supreme Court per Akins JSC at page 777, delivered the lead opinion of the court on this principle of law thus;

The general principle of law is that it is the duty of the plaintiff to prove his case he must prove what he alleges, in other words, it is a party who raises in his pleadings an issue essential to his case who assumes the burden of proving it. The burden only shift to the defence to lead sufficient evidence to tip the scale in his favour when on 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.

The position of the Defendant had been more appropriately described by Brobbey JSC in the case of *IN RE ASHALLEY BOTWE LANDS: ADJETEY*

AGBOSU & ORS. VRS. KOTEY & ORS. [2003 – 2004] SCGLR 420. In his supporting opinion Brobbey JSC stated of a Defendant at a trial in Holding 5 as follows:

“The effect of Sections 11(1) and 14 and similar Sections in the Evidence Decree 1975 may be described as follows:

A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to court has to prove what he claims he is entitled to from the Defendant. At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on evaluation of facts and evidence, the Defendant must realize that the determination cannot be made on nothing. If the Defendant desires the determination to be made in his favour then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court, which may turn out to be only the evidence of the Plaintiff. If the court chooses to believe the only evidence on record, the Plaintiff may win and the Defendant may lose...”

The case of the Petitioner is that she got to know the Respondent through his auntie who is a prophetess. She said she was invited to the church and the prophetess said claimed she has spiritual marriage and she prayed and delivered her and introduce the Respondent as her son whom she want her petitioner to marry. Respondent response was that they have to know each



other before considering settling down but the prophetess piled pressure on them to get married as soon as possible and that if the Petitioner fails to marry the Respondent she will not have any man marrying her though she knew the bases for settling down with a man is love she told herself that people learn to love so went ahead and married the Respondent in August 2019 and got pregnant in November 2019.

It is her case further that seven months into the pregnancy her mother had discussion with the Respondent that the Petitioner should come and leave with them to and deliver and return to her matrimonial home after delivery.

The Petitioner said that she was admitted at the hospital twice and delivered through cesarean section but the Respondent did not pay all her bills.

She stated that when she was discharged with the baby the Respondent did not visit them, but the prophetess visited them two weeks after their discharge from the hospital and this infuriated his father badly.

The Petitioner submitted that Respondent called to say that she should bring the child for naming when she just came from the hospital and cannot do anything and asked that the Respondent to come and see her family to discuss the naming and outdoorings but the Respondent heaped insult on her and her family saying that he is a man and that there is no need to discuss anything with her family.

She said her father went to see the prophetess and her husband to find out why the Respondent has not visited mother and child since they were discharged from hospital and since she has informed her parents about

what the Respondent said about the naming of the child he told them what the Respondent has said but the prophetess her husband rather supported the Respondent and they said she should bring the child because she did not deliver through cesarean section and her father told them that if the Respondent does not show up in three months' time he will he will organized the naming ceremony for his grandchild and he sought the opinion of their pastor and a date was fixed and the naming ceremony was done and the child was name after the parents of the Respondent and this incensed the Respondent and started insulting and even said he was not the father of the child and that he want DNA test conducted and asked her to pack her belongings out from his house else he will throw her them out and he kept reminding her to come for her things and later packed the things into container in the house and she woke up one day to see her brothers brought her things to the house but she did not know whether the Respondent sent them a message of what he has done and Respondent sent her a message to pay her all the monies he spent before and during the wedding and added that he will torment her life amidst insults but she decided to ignore him but what broke the camel's back was that was the Respondent sent a message that he cannot associate with "stupid Agyei family" and they enter into 2021 she would dead if she should come back not allow any prophetess to li to her to come back into his life and that he is no longer interested in the marriage so she should file a divorce because he does not care and that she may want to marry.

The Petitioner said they have dissolved the customary aspect of their marriage.

Whether or not the marriage has broken down beyond reconciliation?

Section 1 of Matrimonial Causes Act (Act 371) provides as follows:

A petition for divorce may be presented to the court by either party to a marriage.

Section (2) provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

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 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.

On a petition for divorce it shall be the duty of the court to inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

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.

I will start this decision by saying that it is unfortunate that the Petitioner has to be treated the way she has in the hands of the Respondent just because a baby was born and she has to be named.

Children are supposed to a blessing to a couple but this was not to be for the Petitioner.

I say so because it appears to me that the Respondent has no iota of respect for the Petitioner and her family and this can be seen from the correspondences between the parties especially WhatsApp messages that the Respondent sent to the Petitioner.

I will quote the contents of the messages tendered in evidence which the Respondent proudly admit as his handiwork in the course of this opinion which speaks to the gross disrespect shown by the Respondent to the Petitioner and her family to support my view.

Reading the WhatsApp messages which I will publish to support my conclusion and orders about to make, I can say without any equivocation that this marriage between the parties has broken down beyond reconciliation.

The relationship between the parties has become so toxic that warrants the marriage to be dissolved.

There is evidence to effect that the Respondent has packed the belongings of the Petitioner from the matrimonial home and his family members have gone for it

There is also evidence that the Petitioner's family has given the ring and Bible to the Respondent who as accepted same with delight which is an indication also that the marriage has broken down totally.

With respect to the issue of custody it has been said in Barake v Barake [1993] 1GLR 635-668 in the head notes holding 6 that under section 16(2) of the Courts Act 1971 (Act 372) the welfare the child was the primary consideration for the determination of the custody of a child. The welfare of the child however had to be considered in its largest sense. Although some of the factors taken into account in deciding the welfare of the child were the positions of the parents, the position of child and the happiness

of the child, the first consideration should be who his parents were and whether they were ready to do their duty...”

Section 45 on the same Act also provides that the family tribunal shall consider the best interest of the child and importance of a young child being with the mother when making an order for custody or access.

Section 45 (2) also provides I addition to subsection (1) a family tribunal shall consider

- a) the age of the child
- b) that it preferable for a child to be with the parents except where the rights of the child are persistently being abused by his parents
- c) the views of the child if the views have been independently given
- d) that desirable to lead siblings together
- e) The need for continuity in care and control of the child and
- f) Any other matter that the court may consider relevant.

Section 18(2) of the Courts Act 1993 (Act 459) provides that the welfare of the infant shall be the primary consideration of the High Court in the exercise of its powers under this section.

I think it will be in the best interest of the children to be with her mother due to the age of the child and the fact that she has lived with the Petitioner since co habitation seized.

The child may be familiar with the environment in which she has found herself and taking her away from the mother will not be in the interest of the child.

The child has been with mother since co habitation seized and this father has even questioned whether the child is his and has stated that the Petitioner should conduct DNA test (but I think he is the one to take that step not the Petitioner) if he has doubts that he is the father of the child.

The Respondent has even stated that the Petitioner can keep the child for all he cares.

He has failed to give the child a name and even the name that has been given to the child which is his parents name, he is asking the name to be taken away and that he will change the name

That is his prerogative as father if he likes he can take steps to change the name of the child.

I do not even believe that the Respondent is serious with his relief that he should granted custody considering the way he has carried himself both in and out of court.

In view of the evidence adduced I do not have any compelling reason(s) to take the child from the Petitioner and give her to the Respondent

The Petitioner is granted custody of the child with reasonable access to the Respondent

The interim orders made in terms of maintenance of the child is made absolute.

The Respondent is ordered to pay GH¢300.00 per month as maintenance allowance, pay her school fees and provide health care and other necessities of life. There is evidence to the effect that he did not pay all the

medical bills of the Petitioner when she delivered so Respondent is to pay Ghc2000.00 to take care of the medical bills

The Respondent is to pay compensation or push off to the Petitioner considering the way he has treated her.

This was the correspondence between the Petitioner and the Respondent through WhatsApp

“... ”

1. For what reason do you name the child without my knowledge if I'm the father? Even if its twenty years, that name will be changed unless you had her with another man. Take my mother's name of her
2. I give you a week to come and pack all your things of my house, a weeks after, I won't be responsible for whatever happens to them.
3. Take my father's surname off the child. She's not mine until you prove it with a paternity result because you're capable of anything.

You have just a week to come and pack your things out of my house. Failure to do so will get them thrown out. Don't ever think I'm joking with this.

Your woes have just began and it's not ending soon. All my money used before, during and after the marriage should be paid back. And if you don't, that's where you and your family will see how a lifetime torment really looks like. But first, your things should be out of my room and the Amoako Nyamekye name taken off. Don't say I didn't warn you.



And as for Nana Akua who made that audio to insult me, tell her I have her naked videos and pics. I am waiting for the manipulators of my brains to give me the go ahead and it will be all over on every whatsapp group. If the go ahead doesn't come, I will take her advice and be a man of my own and share it as much as possible.

You have just up to today to come and pick your borla goods out of my house. I do not want to have any association and affiliation with the Agyei family.

I'm giving you.

You have just up to today to come and pick your borla goods out of my house. I do not want to have any association and affiliation with the Agyei family. I'm giving you.

Are you aware that you have two days left to come and carry your goods out of my room? I'm in my hometown, I don't want to come and see your things still in my room next week. You have Saturday as the last day, shd I come and find them in my room, it means you don't like them and I will take a decision on it. I am my own man now so I do things the way I like without being manipulated like that foolish girl told me.

As we enter into yet another new year, make sure, things are the way they've been. Don't let any prophet deceive you and come saying

you want to come back into my life. I am not accepting a foolish being like you into my life together with the stupid parents and siblings you call a family. It's still a NO for me in the coming year so don't try. You would be dead if you are forced on me to marry you again.

**10/04/2022**

Thank God your father has returned my drinks and rings back to me. I'm the happiest man alive now. God bless him. But that's phase 1. I've asked him to d(...)you're in 40yrs old or even more when I've given birth to all my children so force them to do the needful with immediate effect. But for my daughter, whether you'll bring her or not. That's your... all my children so force them to do the needful with immediate effect. But for my daughter, whether you'll bring her or not, that's your choice. But all the same, thanks to the Agyei family for making my day.

I have a surprise for you in court on the 5<sup>th</sup> July, 2022. I have finished with laying all my responses and facts concerning your irresponsible and unreasonable haste on naming a child that was none of your fucking business. I will embarrass, disgrace and humiliate you in court. If your family thought I was a walkover like Nii Koranye, just wait for the surprise. When responsible fathers are racking brains to leave a legacy for their children, you have turned your miserable self into naming officer. Wait and let's see how this unfolds".

As stated it can be gleaned from the above conversation how arrogant and disrespectful the Respondent is.

Through his auntie he managed to get into the life of the Petitioner only cause her nothing but pain.

The Petitioner delivered through cesarean session only for the Respondent to add insult to her injury suggesting that the child may not be for him simply because the child was named by the Petitioner's family when he was the one to be blamed.

I am of the view that but for Respondent's arrogance and disrespectful conduct they would not have gotten to this point.

What prevented the Respondent from going to his parents in law to iron out any misunderstanding that may have ensued between them as a result of naming his own child if not for his arrogance and disrespectful nature?

The Respondent is behaving as though he is more human than the Petitioner and her Agyei family. He only took advantage of the Petitioner married her and just dumped her without any tangible reasons in my view.

The Petitioner is saddled with one child and she has to go the marriage market to look for a suitor which I believe will be difficult for her if she is not that fortunate.

The Respondent has just wasted the time of the Petitioner and she need to be compensated though I am not sure the amount granted her will suffice but in such matters I am not sure there could be a way in which a court can grant adequate compensation to an aggrieved Petitioner who has been

treated the way and manner this Petitioner has in the hands of the Respondent.

The marriage between the parties has broken down beyond reconciliation and it is dissolved. Custody granted to the Petitioner with access to the Respondent. The interim order made on the 7<sup>th</sup> June, 2022 for the maintenance of the child is made absolute. The Respondent is to pay GHC300.00 as monthly maintenance allowance, pay school fees of the child, provide health care and other necessities of life. The Respondent is to pay two thousand cedis (GHC2,000.00) to cover the medical expenses incurred by the Petitioner during delivery. Respondent is to pay Twenty Thousand cedis (GHC20,000.00) as compensation to the Petitioner.

Costs of GHC1500.00.

(SGD)

H/H JONATHAN DESMOND NUNOO  
CIRCUIT JUDGE