

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
FRIDAY THE 25TH DAY OF NOVEMBER, 2022 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO. C4/06/2016

BETWEEN:

MRS. ESTHER QUARSHIE

H/NO. C14

SUHUM

...

PETITIONER

AND

MR. EMMANUEL OKLU QUARSHIE

P.O.BOX 229

ACHIMOTA-ACCRA

...

RESPONDENT

PARTIES: PETITIONER PRESENT

RESPONDENT PRESENT

COUNSEL: ERIC ANSAH AWUAH ESQ. FOR PETITIONER ABSENT

JUDGMENT

By a Petition filed on 5th May, 2016, Petitioner claims against Respondent the following reliefs:

1. "That the said marriage be dissolved.
2. That petitioner be granted custody of all the 3 children.

3. That respondent be ordered to make to the petitioner such maintenance pending suit and thereafter such periodic payment as may be just.
4. That respondent be made to pay petitioner a lump sum of GHC 5,000.00 as financial settlement.
5. That the co-owner matrimonial one which is a building without any house number with four rooms be shared equally between the parties.
6. That the joint shares in the Premier Insurance Company be shared equally among parties.
7. That the respondent be ordered to pay costs of incidental to this suit.”

Petitioner says that the parties got married under the ordinance on 10th July, 2015 at the Registry of the Accra Metropolitan Assembly. She says that the parties cohabited at Ofankor and there are three issues to the marriage. According to petitioner, the marriage has broken down beyond reconciliation. She says that on two occasions Respondent packed her bags and asked her to leave the matrimonial home and on several occasions, Respondent has beaten her up for no apparent reason. She says that Respondent has committed adultery. According to her, on 28th May, 2014 Respondent apologised for his behaviour at the family house of Petitioner in the presence of both families but soon after the apologies, Respondent beat her up and the matter ended up at the Police station. She says that she has left the matrimonial home, but Respondent continues to threaten to end her life hence the instant Petition.

Respondent entered appearance and filed an Answer on 13th May, 2016. He contends that there are four issues to the marriage. He agrees that the marriage between the parties has broken down beyond reconciliation. He says that Petitioner typically went out and returned late and when confronted, she would get annoyed, and this will result in a misunderstanding. He says that when he was having an exchange of words

with Petitioner, she invited a passerby and encouraged that person to beat him up. He says that Respondent opted on her own to leave the matrimonial home. According to him, the building belongs to the children and further that he purchased shares personally for Petitioner. He adds that he takes very good care of the children.

In her Reply filed on 9th June, 2016, Petitioner contended that the fourth issue was the biological child of Respondent hence there are only 3 issues to the marriage. She says that the youngest issue has been complaining to her that Respondent has been bringing ladies to the house who maltreat them and when hungry Respondent directs them to go and eat at his girlfriend's house which is a distance away from their house and if they refuse to go, they do not eat for the day.

On 4th November, 2016, the parties indicated to this court differently constituted that they wanted to have this matter settled, accordingly the case was referred for Court Connected ADR. On 9th December, 2016, Petitioner filed indicated that the Parties did not really agree at ADR even though terms of agreement had been filed, accordingly the court differently constituted adjourned the matter sine die for parties to attempt settlement. No further step was taken in this matter until Petitioner filed a notice of intention to proceed on 16th June, 2020. The case was accordingly set down and hearing proceeded.

The sole ground for divorce under Ghanaian law is found in Section 1(2) of the **Matrimonial Causes Act, 1971 (Act 367)**. It states as follows:

"The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation."

In proving the breakdown of marriage, the Petitioner has a burden of proving one or more of the factors listed under Section 2(1)(a)-(f) of Act 367. Though

the Petition does not state expressly which of the factor(s) are being relied upon in proving that the marriage has broken down beyond reconciliation, the Petition and evidence led conceivably points to desertion.

Section 2(1)(d) of the **MATRIMONIAL CAUSES ACT, 1971 (ACT 367)** provides as follows:

“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 husband 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 the 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 despite the refusal;”

In her evidence in chief, Petitioner indicated that she has not lived as husband and wife with Respondent for the past two years. Respondent also testified that somewhere in September, 2014, Petitioner left the matrimonial home and did not disclose her whereabouts. He added that Petitioner vacated the matrimonial home for about 2years and that the Parties can no longer live together as husband and wife.

It is not in dispute from the evidence that the Parties have ceased to live together as husband and wife for a continuous period of over two years. It is also apparent that Respondent consents to the grant of the divorce. Accordingly, based on the evidence, I am satisfied under section 2(3) of Act 367 that the marriage between the Parties has broken down beyond reconciliation. I therefore decree that the marriage under the ordinance celebrated between the parties on 10th July, 2005 at the Accra Metropolitan

Assembly is hereby dissolved on the ground that the marriage has broken down beyond reconciliation.

I shall now turn to custody of the issues. From the evidence, it is apparent that one of the issues is in the University. Accordingly, I shall grant custody of the minor issues to the Petitioner with reasonable access to the Respondent. The Petitioner is to consult Respondent on issues pertaining to the welfare of the issues. Respondent is to pay maintenance of GH¢300.00 a month.

Respondent testified that after he purchased the land for the matrimonial home, he added Petitioner's name for the processing of the documents but Petitioner took the said documents away. Section 20 of Act 367 provides as follows:

"The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable."

Therefore based on the evidence before me, I find that the matrimonial property situate is the joint property of Parties and same is to be shared equally between them.

Per relief 6, Petitioner claims that the parties have joint shares at the Premier Insurance Company and prays that same is shared equally between the parties. During cross examination by respondent of Petitioner, she indicated that there were three share certificates, one in the name of Respondent, another in her business name and another purchased in both of their names. She claimed to have those certificates but did not tender same before the court. Respondent testified that while he purchased shares for himself, he did so for Petitioner as well. He tendered Exhibit 2 which is a letter of validation from Prime Insurance indicating the shares purchased by Respondent being

4000 shares. In the case of **DON ACKAH VRS PERGAH TRANSPORT [2011] 31 GMJ 174** the Supreme Court stated as follows:

‘It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-existence’.

Having claimed that both Parties purchased shares jointly, and the Respondent having denied this averment, there was a burden on Petitioner to prove that the said joint shares did exist. This she however failed to do. I therefore find that relief 6 fails and I so hold.

Under Section 19 of the **Matrimonial Causes Act, 1971 (Act 367)**, the Court may, whenever it thinks just and equitable, award financial provision to either Party to the marriage, after the Court has considered the standard of living of the Parties and their circumstances.

Though both parties are employed, there is no evidence of their earning capacities before this court. In the case of **AIKINS v. AIKINS [1979] GLR 223** it was held that ‘the court was entitled under section 20 of Act 367 to order lump sum payment and where the husband had capital assets sufficient for that purpose the court should not hesitate to order a lump sum’. I do not consider from the evidence before me that it has been shown that Respondent has assets sufficient for the payment of a lump sum as alimony. I therefore order that Respondent pays an amount of Five Thousand Ghana Cedis (GH¢5,000.00) as alimony to Petitioner. This amount may be paid in reasonable installments. There shall be no order as to costs.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**