

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
MONDAY THE 10TH DAY OF OCTOBER, 2022 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO. C4/25/2022

BETWEEN:

HANNAH MENSAH

H.NO. UNNUMBERED

OPAH

...

PETITIONER

AND

ASAKIAH AWUNI

H/NO. UNNUMBERED

...

RESPONDENT

PARTIES: PETITIONER PRESENT

RESPONDENT PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

By a Petition filed on 28th February, 2022, Petitioner claims against
Respondent the following reliefs:

- a. "An order for dissolution of the ordinance marriage contracted between Petitioner and Respondent at Accra on 3rd February, 2014 which said marriage had broken down beyond reconciliation.
- b. An order compelling respondent to provide monthly maintenance GH¢800.00 or as may be determined by the Court for the upkeep of the children namely:- Emmanuella Awuni-6 years Miriam Awuni – 4 years Kakra and Panyin – 5 month.
- c. Any other order or orders deem fit by this honourable court."

Petitioner says that she got married to the Respondent in 2014 and there are four issues in the marriage. According to her, the behaviour of Respondent suddenly changed and he has become abusive. She says that without provocation Respondent insults her and calls her a prostitute. It is the case of Petitioner that it is not worth living with the Respondent as his actions have made Petitioner lose respect in the community. She says that there is no trust between them, and the Respondent has stopped eating her food because he says that she will poison him.

Respondent entered appearance and filed an Answer on 9th March, 2022. He denies the allegation of a change in his behaviour by Petitioner. According to him, the marriage has not broken down beyond reconciliation and as such the parties could resolve their differences.

On 29th April, 2022, the Parties were given the opportunity by the court to attempt reconciliation, however Petitioner declined. The matter was accordingly set down and trial 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."

To prove that the marriage has broken down beyond reconciliation, the Petitioner has a burden of establishing one or more of the factors listed under Section 2(1)(a)-(f) of Act 367. From the Petition it appears that the factor being relied upon in proof of the breakdown of the marriage beyond reconciliation is behaviour. Section 2(1)(b) of Act 367 provides as follows:

“2. Proof of breakdown of marriage

(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:

(b) that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;”

The testimony of Petitioner is that she was in a relationship with Respondent and lived with him for four years before they got married in 2014. According to her, four years ago, the behaviour of Respondent changed towards her as he became verbally abusive and insults her without provocation in front of people. She testified that several times he did that in front of her sales girl Rebecca Baah (PW1). She stated that when she closes from church, there is a taxi driver who drops her and the children home and on one occasion in 2020, the Respondent called her a prostitute. According to her, Respondent poured black dirty oil on her church clothes and those of the children. She attached as ‘*Exhibit A*’ a photograph of the dress. Petitioner says that since 2019, the Respondent does not eat food prepared by her and when he is in the kitchen, and she enters he will not leave until she does because he says that she will poison him. She says that they have not slept together for about a year now.

PW1 was Rebacca Baah Nyarko, she testified that she works with the Petitioner and there are times when Petitioner calls her at dawn to go and buy

goods for Petitioner's shop. She testified that whenever she goes to the house, she hears the parties quarreling and hears Respondent insult Petitioner.

In the case of **MENSAH V. MENSAH [1972] 2 GLR 198** it was held as follows:

"the test is however is an objective one; it is whether the petitioner can reasonably be expected to live with the respondent and not whether the petitioner in fact finds it intolerable to do so. The answer must be related to the circumstances of both the petitioner and respondent, and is eminently a question of fact in each case..."

During cross examination of Respondent by Petitioner, it became apparent that the parties have not had sex for the past two years though they live under the same roof. I therefore find that the consortium has been determined between the Parties.

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 at the Principal Registrar of Marriages Office at Accra on 3rd February, 2014 between the Parties is hereby Dissolved.

Petitioner prays for an amount of GH¢800.00 as maintenance for the upkeep of the issues. Parties were ordered by this court to file affidavit of means to assist the court in making a determination as to their financial standing. Petitioner filed hers on 12th September, 2022, therein she indicated that she is a petty trader and earns between GH¢600.00 and GH¢800.00. She however failed to indicate how often she earns this amount, that is weekly, monthly etc. She attached her bank statement which she indicated is inactive. Respondent filed his affidavit on 9th September, 2022. He indicated that he is a

mechanic and earns between GH¢800.00 and GH¢1000.00. According to him, his average monthly expenditure is GH¢1000.00.

In the case of **BARAKE v BARAKE [1993-94] 1 GLR 635** it was held as follows:

“Under section 20 (1) of Act 367, the court had power to grant financial provision where married couples were divorced. The basic consideration was not based on proof of ownership or contribution towards acquisition of the properties to be awarded but on the needs of the parties.”

In making an order for financial provision, a key factor the court is to consider is whether or not the person making the claim for financial provision is financially dependent on the other party. In this case, it is apparent that both Parties have jobs and earn at least GH¢600 or GH¢800 a month. I shall in the circumstance order that Respondent pays an amount of GH¢400.00 a month for the maintenance of the issues of the marriage.

I shall make no order as to costs.

H/H ENID MARFUL-SAU

CIRCUIT JUDGE

AMASAMAN