

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
FRIDAY THE 18TH DAY OF NOVEMBER, 2022 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO. C4/03/2021

BETWEEN:

JOYCE AMUZU
AMASAMAN
PETITIONER

...

AND

SAMUEL AMUZU
AMASAMAN
RESPONDENT

...

PARTIES: PETITIONER PRESENT
RESPONDENT PRESENT

COUNSEL: EMMANUEL OPOKU SOMUAH ESQ. FOR PETITIONER
PRESENT
EDEM AMADZOR ESQ. FOR RESPONDENT ABSENT

JUDGMENT

By a Petition filed on 25th August, 2020, Petitioner claims against Respondent the following reliefs:

- a. "Dissolution of the marriage between the parties.
- b. Lump Sum Financial Settlement
- c. Custody of the second issue with reasonable access to the Respondent
- d. An order for Respondent to maintain the second issue with an amount Six Hundred Ghana Cedis a month, pay medical bills and school fees as and when they fall due.
- e. Any other reliefs this court may deem fit."

Petitioner says that she got married to Respondent under customary law on 6th March, 2000. According to her, there are two issues to the marriage. It is the case of Petitioner that the marriage has broken down beyond reconciliation as Respondent has caused her so much pain and embarrassment that she cannot reasonably be expected to remain married to him. She says that in the course of the marriage they jointly acquired a three-bedroom house at Amasaman, three corn mills and a plot of land at Kasoa. According to her, she used to operate one of the corn mills for income to take care of the issues, but Respondent sold it. She states that Respondent is currently married to another woman, and they have an issue together. According to her, efforts at solving the marital problems have been unsuccessful hence this Petition.

Respondent filed an Answer on 7th September, 2020. He contends that it is the Petitioner who has caused him great pain, embarrassment, and anxiety. He says that Petitioner packed her belongings to another room so there has not been any intimacy between them. He contends that Petitioner was having an extra marital affair with a man in the matrimonial home. He says that he pays for the school fees, housing, and health of the minor issue. He says that he acquired the land for the house at Amasaman before he got married to Petitioner. According to him, he has bought just one corn mill during the pendency of the marriage which he gave to Petitioner to operate at the matrimonial home. He prays that the marriage is dissolved.

Section 41(2) of the **Matrimonial Causes Act, 1971 (Act 367)**, permits the application of the provisions of the Act to a marriage other than a monogamous marriage. I shall therefore in determining whether or not the marriage has broken down beyond reconciliation apply the provisions of Act 367. 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.

Both Parties agree that the marriage has broken down beyond reconciliation. Petitioner testified that there has not been any intimacy between the parties for the past four years and this evidence was not contradicted by Respondent. In the case of **REX V CREAMER, [1919] 1 K.B 564** Darling, J stated as follows:

“In determining whether a husband and wife are living together the law has to have regard to what is called consortium of the husband and wife. A husband and wife are living together not only when they are residing together in the same house, but also when they are living in different places, even if they are separated by high seas, provided the consortium has not been determined.”

Under the law, desertion is not a withdrawal from a place but from a state of things. (See. **MARK-HANSEN V. MARK-HANSEN (1969) C.C. 141**) The Parties herein have ceased to cohabit as husband and wife. In this regard, I find that Petitioner has ceased to recognise the marriage as subsisting. Both Parties admit that they have been separated and no longer have sexual relations between them. This separation determined the consortium. Having regard to the evidence before me, I find that the marriage between the Parties has broken down beyond reconciliation. Consequently, I decree that the Customary Marriage celebrated between the Parties on 6th March, 2000 is hereby dissolved.

I shall now turn to custody of the minor issue. The evidence is that the said issue currently lives with Petitioner and Respondent prays for his custody. It is not in dispute that Respondent currently lives with another wife with whom he has a child. I do not consider from the evidence before me that the parenting of Petitioner has been called in issue thereby rendering her unfit to be a primary care giver to the issue. I shall therefore grant custody of the minor issue to Petitioner with Reasonable access to Respondent. The Petitioner is to consult the Respondent on issues concerning the welfare of the issue. As responsibility for the welfare of a child which is paramount under

the laws of Ghana and is placed squarely on the shoulders of the parents, the school fees of the issue are to be borne by the Respondent. The medical expenses of the issue are to be the shared responsibility of both Parties as and when they arise.

Next, I shall consider the issue of property settlement. Petitioner seeks equitable distribution of the three-bedroom house, three corn mills and plot of land at Kasoa. In his answer, Respondent offers to settle land at Okushibiade, Ashalaja and the dismantled corn mill on the Petitioner. He also prays to pay an amount of GH¢10,000.00 as Petitioner's share in the matrimonial home. Petitioner indicated under cross examination that she currently occupies the matrimonial home with the issues while Respondent lives elsewhere with his second wife. Respondent claims that he purchased the land on which the matrimonial home is built before the marriage but agrees that the house was put up during the pendency of the marriage. He admits that Petitioner was operating a corn mill at the home and further that the matrimonial home was funded with proceeds from the corn mill business.

Under Section 20(1) of the Matrimonial Causes Act, 1971 (Act 367),

"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."

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."

I therefore find that the matrimonial home is joint property and same is to be shared equally between the Parties. I am unable to find evidence of the existence of a plot of land at Kasoa before this court hence that prayer fails. The dismantled corn mill situate at the matrimonial home is to be settled on the Petitioner.

Petitioner prays for a lump sum payment. 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, the Petitioner is a hairdresser while the Respondent operates a corn mill. Aside knowing the occupation of the Parties, there is no other evidence before this court as to the financial standing of the Parties.

As both Parties have a source of livelihood and having regard to the fact that Respondent has other issues, he is responsible for, I order that Respondent pays an amount of GH¢300.00 a month for the maintenance of the minor issue.

I do not consider from the evidence that it has been shown that Respondent has assets sufficient for the payment of a lump sum as alimony. Having already made an order for the payment of GH¢3,600.00 per annum as maintenance and in order not to cripple the Respondent financially, I order that Respondent pays an amount of GH¢7,000.00 to Petitioner. The amount may be paid in reasonable installments. There shall be no order as to costs.

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

