

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON 22<sup>ND</sup> DAY OF  
DECEMBER, 2022 BEFORE HER HONOUR KIZITA NAA KOOWA  
QUARSHIE, CIRCUIT COURT JUDGE**

**SUIT NO. C5/319/2022**

**NANA AMA OWUSUAA FRIMPONG**

**VS**

**ELIKEM AGBEMABIESE-MEYER**

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**JUDGEMENT**

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On the 21<sup>st</sup> of June, 2022, the Petitioner Nana Ama Owusuaa Frimpong filed a petition for divorce from her husband Elikem Agbemabiese-Meyer. On 7<sup>th</sup> July, 2022 Elikem through his lawyer filed a Notice of Entry of Appearance. Subsequently he took no further steps to answer to the petition or attend court during the pendency of this case.

The framers of the law, mindful of the importance of marriage as the very bedrock of society set a high standard by stating under section 1(2) of the Matrimonial Causes Act 1979 (ACT 367) that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

In order to grant a divorce therefore the court must be satisfied that the marriage between Nana Ama and Elikem has broken down beyond reconciliation.

On one faithful day, in September, the 25<sup>th</sup> day to be precise in 2015 the couple married under the Marriage Act (CAP 127) in Accra. The bliss of every new couple is to officially spend the night together as man and wife on their wedding night.

Trouble however was lurking around as the groom deserted his new wife only to return the next day with traces of make-up and strands of hair on his shirt. Ama said that this was just the tip of the iceberg. On several occasions Elikem would spend his time outside the matrimonial home and refuse to engage her. The

couple were blessed with two children Eli Xolali Agbemabiese-Meyer and Eliora Selali Agbemabiese-Meyer aged 6 and 5 respectively.

In March, 2020, the couple moved to Adenta. Nana Ama noted that Elikem was carrying on an adulterous relationship with one Evelyn. The said Evelyn accosted her and disclosed that Elikem had told her that she knew that Nana Ama and her 'lover' were no longer married as the Respondent had told her so. Though unsolicited the said Evelyn informed her further that her husband had seven other children by other women and she also had a baby for the Respondent.

Apart from the alleged affair and other instances of blatant display of Elikem's extra-marital affairs, Ama states that he was not a responsible husband.

On many occasions he failed to make meaningful financial contributions to the maintenance of the home. Petitioner had to supplement yearly rent with GH¢5,000.00 from her pocket. Again when she went to deliver their first child Eli he failed to settle the hospital bill and the timely intervention of Ama's mother ensured that a balance of GH¢1,500.00 was paid before she could be discharged.

Petitioner lost her job through pregnancy related illness and had to use up all her savings. Elikem's point was that he had taken loans and that had affected his salary hence his inability to cater for the financial needs of the family.

Life after unemployment was tough on the Petitioner. She claims the financial assistance from her extended family was what she had to depend on to cater for her own family.

Finally on the 18<sup>th</sup> of October, 2020, Elikem who had spent most his nights outside the matrimonial home said he was no longer interested in the marriage. He packed off without regard to how rent will be paid.

Irrespective of all the above, Nana Ama's father and her Pastor tried on numerous occasions to resolve the issues between the couple. The Respondent however ignored all the invitations. Subsequently the respondent wrote to inform Nana Ama of his intention to have the marriage dissolved on his own terms without recourse to the court.

As stated previously the Respondent entered appearance but subsequently failed to file an answer.

By a motion filed on the 11<sup>th</sup> of November, 2022, respondent lawyer's prayed the Honourable Court to withdraw legal representation which the court granted.

In the opinion of the court, the Respondent was given the opportunity to be heard and was duly notified. His non opposition to the suit, shows his consent.

The Matrimonial Causes Act 1971, Act 367 section 2(1) a to f of ACT 367 lays down the proof of breakdown of marriage as follows:

For the purpose of showing that the marriage has broken down beyond reconciliation, the petitioner shall satisfy the court with one or more of the following facts;

- a. That the Respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the Respondent.
- b. That the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent
- c. That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition.
- 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 unreasonable withheld, the court may grant a petition for divorce under this paragraph despite the refusal.
- e. That the parties to the marriage have not lived as husband 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 difference. In this case, the court notes that apart from section 2(1) e of Act 367 all other subsection to prove that the marriage between the parties has broken down has been mentioned. Petitioner did not tell the court that as a result of Respondent's adultery she finds it intolerable to live with him. The court will consider whether the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with Respondent and whether the parties after diligent effort have been unable to reconcile their difference.

In the book “The Law Family Relations in Ghana by William Cornelius Ekow Daniels page 308 states the test of unreasonable behavior is stated as follows;

*“All that the Petitioner is required to do in this content is to give particulars or the extent of the behaviour of the Respondent which has necessitated the presentation of the petition. Thereafter, he is required to establish that as a result of that particular behaviour he cannot reasonably be expected to live with the Respondent”.*

In the case of Hughes v Hughes (1973) 2 GLR 342 Sarkodee J., in his judgment said;

*“To succeed, the Petitioner must show that the Respondent’s conduct reached a certain degree of severity that no reasonable person would tolerate”*

In Happe v Happe & Anor. {1974} 2GLR 186 the Husband a native of Netherlands was the Petitioner. They were married under the Marriage Ordinance and domiciled in the Netherlands but resident in Ghana. The Petitioner filed a petition in 1972 for divorce on grounds of cruelty. According to him, the Respondent frequently heaped insults on him in public, once when Petitioner was in a meeting with his solicitor the Respondent went there created a scene and demanded her Marriage Certificate from the Petitioner.

The Petitioner once seated on an aircraft ready to take off for the Netherlands said the Respondent entered with two policemen arrested Petitioner and detained him for two hours before he was released. The court held that the Respondent’s conduct was unreasonable and ordered a dissolution of the marriage.

See the cases of Poku-Wusu v Poku-Wusu (1973) 2 GLR 349 and Addo v Addo (1973) 2 GLR

*“Whatever test is applied demands that the court should have regard to all the relevant matters appertaining to the marriage and to the individual spouses before it as well as to their individual perceptions of each other in order to determine what is reasonable”* pages 308-309 The Law of Family Relations in Ghana by William Cornelius Ehow Daniels (supra).

In the case of Danquah v Danquah (1979) GLR 371 @ 361, Osei Hwere J said:

*“Act 367 imposes on the court a series of restriction which is unique. For having established by section 1(2) that the sole ground for granting a petition for divorce shall be*

*that the marriage has broken down beyond reconciliation and having by section 2(1) laid down those facts, the proof of which shall, prima facie, show that the marriage has so broken down, Section 2(3) checks the court from rushing in to grant a petition for divorce unless the court is satisfied, on all the evidence that there has been an irreconcilable breakdown of the marriage”.*

In this particular case with the exception of Act 367 from Section 2(1) e (as earlier mentioned) all the other subsections are applicable and overwhelmingly demonstrate that the marriage between the parties has irretrievably broken down.

To quote an unknown writer from Google *“Being deeply loved by someone gives you strength while loving someone deeply gives you courage”. The only thing we never get enough of is love and the only thing we never give enough of is love. There is one happiness in this life to love and be loved”.*

Unfortunately what was to be a lasting union of love between the parties was not to be because one party failed to love enough.

The court after looking at the facts and the evidence firmly believes that the marriage between Nana Ama Owusuaa Frimpong and Elikem Agbemabiese-Mayer has broken down beyond reconciliation.

BY COURT: The court makes the following orders:

1. An order for a divorce decree on this 22<sup>nd</sup> day of December, 2022
2. An order granting custody of the children
  - a. Eli Xolali Agbemabiese-Mayer
  - b. Elicora Selali Agbemabiese-Mayer to the petitioner with reasonable access to the Respondent on times to be agreed by the parties.
3. An order for the Respondent to pay GH¢100,000.00 alimony to the Petitioner.
4. An order for the amount of GH¢1,000.00 to be paid monthly for the maintenance and upkeep of the children.
5. An order for the petitioner to pay the tuition fees of Elicora and the respondent to pay same for Eli Xolali
6. An order for each party to make equal contribution to the medical bills of the children except in the event that either or both children attend a hospital required by the employees of the Respondent, the benefit

associated with the dependents of the Respondent shall apply to both children.

7. An order for Respondent to pay GH¢12,000.00 to the Petitioner's father for rent renewal of the Adenta matrimonial home.

The parties are to bear their own legal costs.

**(SGD)**

**H/H KIZITA NAA KOOWA QUARSHIE  
CIRCUIT COURT JUDGE**