

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON**  
**THURSDAY THE 10<sup>TH</sup> DAY OF MAY BEFORE HER HONOUR KIZITA**  
**NAA KOOWA QUARSHIE CIRCUIT COURT JUDGE**

**SUIT NO C5/144/2023**

**SAMUEL OPPONG GAISIE**  
**ACCRA**

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**PETITIONER**

**VRS**

**LINDA SERWAA BOATEMAA**  
**ACCRA**

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**RESPONDENT**

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**JUDGMENT**

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Then the Lord God said, "It is not good for a man to be alone, I will make for him a suitable companion to help him. "Then the Lord God made the man fall into a deep sleep and while he was sleeping he took out one of the man's ribs and closed up the flesh. He formed a woman out of the rib and brought her to him. Then the man said "At last here is one of my kind Bone taken from bone and flesh from my flesh", that is why a man leaves his father and mother and is united with his wife and they become one. Genesis Chapter 2 v 18, 21-24 of the Holy Bible.

By a Petition for divorce filed on the 16<sup>th</sup> of January 2023 Petitioner prayed that

- a. The marriage between the parties be dissolved.

Respondent entered appearance on the 24<sup>th</sup> of January 2023 and filed an Answer to the petition on the same day. Respondent also prayed for the marriage between herself and the Petitioner to be dissolved. The petitioner filed to set the case down for trial on the 2<sup>nd</sup> of February 2023. The court pursuant to Ord 65 r 21 of C.I. 47, set the case down for trial and ordered the parties to file their pre-trial check lists and witness statements. On the 15<sup>th</sup> of February the Respondent appointed her brother Kojo Amakye as her lawful attorney in respect of the conduct of this case. The Petitioner and the Lawful attorney of the respondent duly complied with the orders of the court and filed their pre-trial checklist and witness statements respectively on the 8<sup>th</sup> of March 2023 and 27<sup>th</sup> of March 2023.

## FACTS

According to Petitioner, the parties got married under the Marriages Act, Cap 127 on the 5<sup>th</sup> of November 2016 at the Christian Action Faith Ministries the parties did not live as man and wife. Petitioner lived at Budumburam, Kasoa and the Respondent at Ministries, Accra. There is no issue between them.

Petitioner is a systems analyst but is currently unemployed and the respondent is a mediator. The petitioner says that the marriage between himself and his wife has broken down beyond reconciliation.

Petitioner cited unreasonable behaviour and gave the following reasons

- That there is total lack of love, trust and a commitment on the part of the Respondent in the marriage.
- That Respondent gets angry and furious at the least misunderstanding between them and sometimes it gets to the stage where she abuses him, to the extent where she talks to him anyhow in public because she has no respect for him.
- Petitioner said that for the past 2 years they have been separated and is no longer interested in the marriage and needs his peace of mind.
- He claims that several attempts have been made by both members of the parties to help them resolve their differences but have been unsuccessful.
- Petitioner stated finally that he cannot be expected to live with Respondent again as man and wife since she has caused him much pain, embarrassment, trauma, worry and anxiety.

The respondent in turn agreed that the marriage between herself and the respondent has broken down beyond reconciliation. She denied the reasons Petitioner has given for the breakdown of the marriage. Her reasons are somewhat identical to the reasons petitioner cited for her unreasonable behavior.

She submitted the following:

- That Petitioner rather is the one who has used abusive language on her for the past two years to which she has turned a deaf ear to those abuses.
- That the numerous insults on her in public has caused her ridicule and injury to her reputation and thus created a bad image for her.
- That he leaves the matrimonial home and comes back anytime he wants without notice to her and has on numerous occasions told her he regrets marrying her.

- That the Petitioner has behaved in a way that she cannot reasonably be expected to live with him as his behavior has caused her much anxiety, distress emotional trauma and embarrassment coupled with physical threats and verbal abuse.

### **ISSUES FOR DETERMINATION**

Per section 1(2) of the *Matrimonial Causes Act, Act 367, 1971*, the sole ground for the granting of a Petition for dissolution shall be that the marriage has broken down beyond reconciliation. The main issue in the opinion of this court is whether or not the marriage between the parties has broken down beyond reconciliation.

The general rule is that he who asserts must prove. He must prove the essential issues central to his case on the preponderance of probabilities which is the standard of proof in a civil matter.

Section 12(2) of the Evidence Act NRCD 323 defines proof on the preponderance of probabilities to be “The degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable/likely than its non-existence.

To determine the issue the court refers to Section 2 of Act 367 that provides the grounds which when proven would lead the Court to this conclusion. And it provides as follows:

- (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*
  - (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 continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to the grant of a decree; provided that such consent shall not be unreasonably withheld, and where, the Court is satisfied that it has so been 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.*

#### **ANALYSIS OF THE EVIDENCE LED**

From the evidence led by the parties I surmise that this petition is brought primarily under section 2(1)(b) (d) and (f) of Act 367.

In the case of *Knusden vrs. Knusden* (1976) 1 GLR 204 CA on the test of unreasonable behaviour it was held that

*"The behavior of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of one act if it is of sufficient gravity of a persistent course of conduct or series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so."*

In respect of what constitutes unreasonable behavior by a spouse, it was held by Hayfron – Benjamin J, in the case of *Mensah vs Mensah* (1972) 2 GLR 198 that

*'In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and mere trivialities will not suffice.'*

*On the 30<sup>th</sup> of March 2023 the parties gave evidence before this Honourable Court. Petitioner when asked at page 373 of the record book by the lawful attorney the following question had this answer to give;*

*Q. Why do you want this marriage dissolved?*

*A. The marriage between myself and the Respondent has broken down beyond reconciliation, I have given the reasons in my Witness Statement paragraphs 10 to 16.*

*Q. So what do you want the court to do for you?*

*A. I want the court to grant me a divorce.*

*The court refers to some of those paragraphs:*

*Paragraph 12. That the Respondent has no respect for him at all especially when they are in public all because the Respondent earns more salary than The Petitioner.*

*Paragraph 13 That the Petitioner says for the past two years the Petitioner has denied him sex. Anytime I call the Respondent that I am coming to visit her the Respondent will give an excuse that she is not around.*

At this juncture the court will consider whether the evidence of Petitioner constitutes unreasonable behavior on the part of the Respondent.

In his book, the law on family relations in Ghana, the learned author William Ekow Williams made the following statement on the test of unreasonably behavior, he writes at page 308.

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

Before I conclude on whether or not the Respondent’s conduct can be said to be unreasonable, I will look at the fact that the parties have neither lived together as man and wife, and also the fact that there has been no sex between them.

Section 2(1) d of Act 367 provides 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 the 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 despite the refusal.”

At page 312 of the “Law on Family Relations in Ghana” (supra) The learned author Williams Cornelius Ekow Daniels states at the second paragraph that *“The expression “have not lived together as husband and wife” does not mean that the parties must be living apart in different households, but rather from the point of view of whether there is absence of consortium or cessation of cohabitation”*.

As Darling J said in **Rex v. Creamer** (1919) KB 564 at 569

*“In determining whether a husband and wife are living together the law has to have regard to what is called consortium between the husband and wife.*

*Petitioner itemized a few but serious reasons why he cannot live with the Respondent. Notable is the fact that respondent heaps insults on him in public and also that she has refused to have sex with him and that they have not lived as man and wife for the past two years”*.

According to the learned author *“It is required of the petitioner to prove not only the factum of separation for two years, but also that he or she had ceased to recognize the marriage as subsisting and never intended to return to the other spouse.”*

To understand the word consortium in marriage, a google definition provided the following:

In the context of family law, consortium means a spouse is entitled to receive from their partner including companionship, cooperation, affection, financial aid, support and sexual relations.

Finally, Petitioner said that numerous attempts by family and friends to reconcile them has proved unsuccessful.

After a careful study of the evidence and facts in this present case it is quite evident by the court that the Petitioner has been able to establish unreasonable behavior by the Respondent the fact that he and his wife have not lived together for more than two years preceding the petition for divorce and again that all attempts at reconciliation have proved futile all of which are necessary grounds for the grant of a divorce.

## **RESPONDENT'S CASE**

Having cross petitioned for the dissolution of her marriage to the Petitioner, Respondent bears the same burden as Petitioner, which is to introduce sufficient evidence to avoid a ruling against her on this issue.

The case of **Majolagbe v. Larbi & Ors** (1959) GLR 190 held that proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true.

## **ANALYSIS OF EVIDENCE LED**

Respondent also raises unreasonable behavior of Petitioner. At page 380 of the record book the attorney of the Respondent put the following question to the Petitioner?

- Q. Mr. Kojo Amakye you have come to court to represent the Respondent is that so?
- A. Yes
- Q. In what capacity do you do so?
- A. The Respondent gave me power of Attorney.
- Q. Does the Respondent want the divorce to be granted?
- A. Yes.

As I earlier stated the reasons the respondent gave for Petitioner's unreasonable behavior are almost identical to the Petitioner's.

Respondent also said she was verbally abused by the Petitioner, that it had caused her trauma and given her a bad reputation in her community, that there was no sex between them for the past two years, they live apart and also that the Petitioner prior to their separation used to leave the marital home as and when he liked without recourse to her.

At Paragraph 16 of her witness statement she stated the following *"That the Respondent states that she is no longer interested in the marriage because she cannot*

*contain herself in a distance relationship even though they are all within the jurisdiction and therefore needs her peace of mind."*

See the cases of **Rex v. Creamer** (1919) K.B. 564 at 569 (supra)  
**Knusden v. Knusden** (1976) 1 GLR 204 CA (supra)

**Hughes v. Hughes** (1973) 2 GLR 342 (supra). The first case is in support of what consortium between a married couples should be and the last two are in support of the test of unreasonable behaviour.

From the evidence and facts presented by the respondent I find that the she has also been able to establish unreasonable behavior on the part of the Petitioner, and the fact that preceding this petition she and the petitioner have not lived together as man and wife for a period of more than two years.

As I stated at the beginning a man shall leave his mother and father and cleave to his wife. In this case not much cleaving was achieved by the couple when they embarked upon their marriage journey on the 5<sup>th</sup> of November 2016, through their own actions and inactions. Giving unto Ceasar what is Caesar's and to God what is God's, this earthly court finds that the marriage between the parties has broken down beyond reconciliation.

### **DECISION**

Having heard the parties and considered the evidence, it is clear that both parties have come to the conclusion that the marriage be dissolved.

It is hereby decreed that the ordinance marriage celebrated by the parties on the 5th day of November 2016, at the Action Faith Ministries be dissolved. The Marriage Certificate No. CAFM 289/2016 is cancelled this 11th day of May 2023.

- a. Parties are to bear their own costs.

(SGD)  
**H/H KIZITA NAA KOOWA QUARSHIE**  
**CIRCUIT COURT JUDGE**



