

**IN THE CIRCUIT COURT 3 OF GHANA HELD IN ACCRA ON FRIDAY THE 4TH
DAY OF NOVEMBER, 2022 A. D. BEFORE HER HONOUR SUSANA EDUFUL
(MRS.) CIRCUIT COURT JUDGE**

SUIT NO. C5/276/2022

CECILIA ASARE BLAY-NYANZU

PETITIONER

VS.

PATRICK BLAY-NYANZU

RESPONDENT

PETITIONER PRESENT AND RESPONDENT ABSENT

JUDGMENT

The Parties to this suit got married in under the Marriages Ordinance (CAP 127) on July 16, 2006, at the St. Matthew Catholic Church, Takwa in the Western Region of the Republic of Ghana where the parties resided. The parties lived at Nsein before moving to Town Counsel Line Laterbiokoshie Accra. The parties have three children from this marriage. They are Benedicta Blay-Nyanzu aged 14, Gabielle Kezzy Blay-Nyanzu who is 11 and Jessica Joelle Blay-Nyanzu aged 8. The Petitioner is seeking the dissolution of the ordinance marriage celebrated between the parties on grounds of unreasonable behaviour in addition to the following ancillary reliefs;

1. That Petitioner be granted custody of the child of the marriage with reasonable access to the Respondent from Friday to Sunday every other weekend.
2. That the Respondent be made to pay for the medical bills and cost of education of the child.
3. The Respondent be ordered to maintain the children with periodic payment as it may be just.

Under **order 36 rule 2(a) and (b) of the High Court (Civil Procedure rules), 2004 (C.I. 47)**, “Where an action is called for trial and a party fails to attend, the trial Judge may (a) where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim; (b) where the defendant attends and the plaintiff fails to attend, dismiss the action and allow the defendant to prove the counterclaim, if any;...”

In the case of **Ankumah V City Investment Co Ltd. [2007-2008]**

SCGLR 1064 it was held, “The defendant after several attempts was finally served but failed to appear in court. The trial court therefore rightly adjourned the case for judgment. A court is entitled to give a default judgment, as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard.”

That party is deemed to have deliberately failed to take advantage of the opportunity to be heard. In such a situation, the *audi alteram partem* rule cannot be said to have been breached.

The Respondent was served by substituted service and same was proved but the Respondent did not enter appearance. He also did not appear in court to defend the suit. The Petitioner was therefore called upon to prove her claim. Petitioner file a witness statement to prove her claim.

Section 1(2) of the Matrimonial Cause Act, 1971 (Act 367)

states that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In addition, the court before which such a petition is presented is required by law to determine as a fact that the marriage, has indeed broken down beyond reconciliation. In Support of this, **Section 2(3) of Act 367** provides as follows:

Notwithstanding that the court finds the existence of one or more of the facts specified in subsection (1) the court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation.

Section 2(1) of Act 367 stipulates the facts which a petitioner or a cross-petitioner may rely on to prove that the marriage which is sought to be dissolved has broken down beyond reconciliation as follows,

- a) That the Respondent has committed adultery and by the 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 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 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 notwithstanding the refusal; or
- e) That the Parties to the marriage have not live as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f) That the parties have after diligent effort been unable to reconcile their differences.

The parties subsequently filed terms of settlement with respect to the ancillary reliefs and prayed that the court adopts it as Consent Judgment.

Unreasonable behaviour is a conduct that gives rise to injury to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger. In **Ansah v Ansah [1982-1983] GLR 1127-1133, Owusu-Addo J** held that:

“The test under the section, was whether the petitioner could reasonably be expected to live with the respondent in spite of the latter's behaviour. The test was therefore objective. But the answer obviously had to be related to the circumstances of the petition in question. That had to be a question of fact in each case. It followed that the conduct complained of must be sufficiently serious - since mere trivialities would not suffice.”

In the case of **MENSAH V. MENSAH (1972) GLR** the Court held that ‘the conduct complained of must be sufficiently grave and weighty enough to justify the finding that the Petitioner cannot reasonably be expected to live with the Respondent. Mere trivialities will not suffice. The parties must be expected to put up with what has been described as reasonable wear and tear of married life”

In **Mensah v Mensah [Supra]**, Hayfron-Benjamin defined what amounts to unreasonable behaviour when he held as follows,

“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 weighty and mere trivialities will not suffice for Act 367 is not a Casanova's Charter. The test is objective.”

In considering whether one party has good cause for leaving the other much depends on whether the conduct of the other is of a grave or weighty character as to amount, in law, to cruelty: see **Gollins v. Gollins [1963] 2 All E.R. 966, H.L.** Conduct which is

of a grave or weighty nature may sometimes fall short of cruelty if it lacks the element of injury to health as in **Edwards v. Edwards [1950] P. 8, C.A.**

ISSUE

The **main issue** for determination is;

Whether or not the marriage celebrated between the Petitioner Cecilia Asare Blay – Nyanzu and the Respondent Patrick Blay-Nyanzu on July 16, 2006, at the St. Matthew Catholic Church, Takwa in the Western Region of the Republic of Ghana has broken down beyond reconciliation?

The Petitioner prayed that the marriage between the parties be dissolved on the basis of unreasonable behaviour on the part of the Respondent.

The Petitioner told the court that the Respondent abuses her both verbally and physically. The Petitioner narrated that how on 3 different occasion the Respondent assaulted her physically which took the intervention of her parents, Legal Aid Commission and DOVVSU. The Respondent has for the past 2 years left the matrimonial home and has also refused to take care of the children of the marriage. All attempts at reconciling the parties after the two had misunderstanding has proved futile.

The Petitioner did not call any witness.

Having considered the evidence before the Court as a whole, the Court is satisfied that the Petitioner has been able to prove to the satisfaction of the Court that the marriage has broken down beyond reconciliation and on grounds of unreasonable behaviour. The court considers it unreasonable for the Respondent, who is a married man not to want to have any contact with his spouse for more than two years.

Even though it is the Court's desire to maintain the sanctity of the marriage bond, some situations warrant the granting of divorce. In my opinion and on the strength of the evidence before this Court, the Parties should not be compelled to stay in the relationship.

In the circumstances, I hold that the marriage between the parties have broken down beyond reconciliation. A decree of divorce is granted.

Whether or not the Petitioner is entitled to custody of the issue of the marriage.

The Petitioner is praying the court to grant custody of the issues of the marriage to her with reasonable access to the Respondent as the children are already in her custody. The Respondent did not contest this, as the Respondent was not present in court to defend this suit.

In making an order regarding the custody of the children, the court is guided by what is in their best interest. **Section 2(2) of the Children's Act, 1998 (Act 560)** states that the best interest of the child shall be the primary consideration by any court, person,

institution or other body in any matter concerned with a child. In **Braun v Mallet [1975] 1 GLR 81-95**, it was held that in questions of custody it was well-settled that the welfare and happiness of the infant was the paramount consideration.

Under section 45(1) of the Children's Act 1998 (Act 560),

"A Family Tribunal shall consider the best interest of the child and the importance of a young child being with the mother when making an order for custody or access."

Custody of the 3 children of the marriage, Benedicta Blay-Nyanzu aged 14, Gabielle Kezzy Blay-Nyanzu who is 11 and Jessica Joelle Blay-Nyanzu aged 8 are granted to the Petitioner. The Respondent is granted reasonable access to the said children.

Whether or not the petitioner can be compelled to maintain the children in the marriage every month, pay their school fees and all other incidental expenses associated with the child's education as well as medical health of the child?

Section 3 of the Matrimonial Causes Act, 1971 (Act 367) states:

"Without prejudice to the generality of subsection (2), an order under that subsection may;

(c) Provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage"

Section 6 of the Children's Act, 1998 (Act 560) states:

"6(1) No parent shall deprive a child of his welfare whether-

- a) The parents of the child are married or not at the time of the child's birth, or
- b) The parents of the child continue to live together or not.

6(3) Every parent has the rights and responsibilities whether imposed by law or otherwise towards his child which include the duty to –

- a) Provide good guidance, care, assistance and maintenance for the child and assurance of the child's survival and development.
- b) except where the parents has surrendered his rights and responsibilities in accordance with law.

The court upon considering the evidence on record as a whole and in the interest of justice hereby order that the parties share the cost of up keep of the child. The court orders the Respondent to pay the child's school fee including all other incidental with respect to the child's education and pay an amount of GHC1,500.00 a month to the Petitioner for the upkeep of the children. The Petitioner is to bear all other expenses of the children including payment of medical bills of the children.

DECISION

1. The marriage celebrated between the Petitioner herein, Cecilia Asare Blay – Nyanzu and the Respondent Patrick Blay-Nyanzu on July 16, 2006, at the St. Matthew Catholic Church, Takwa in the Western Region of the Republic of Ghana has broken down beyond reconciliation and same is

dissolved. The marriage certificate No. 1035 is hereby cancelled. A Decree of Divorce is hereby granted.

2. The custody of the 3
3. The children of the marriage are granted to the Petitioner the Respondent is to have reasonable access to the Children.
4. The Respondent is further ordered to pay an amount of GHC1,500.00 a month to the Petitioner for the maintenance of the children of the said marriage.
5. The Respondent is further ordered to pay the children's school fees as well as other fees relation to the children's education whilst the Petitioner pays the children's medical bill.
6. I will make no order as to cost.

LEGAL REPRESENTATION

STELLA ADU- DOUDU FOR THE PETITIONER

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT COURT JUDGE)**