

**IN THE CIRCUIT COURT 3 OF GHANA HELD IN ACCRA ON FRIDAY THE 21ST
DAY OF OCTOBER, 2022 A. D. BEFORE HER HONOUR SUSANA EDUFUL
(MRS.) CIRCUIT COURT JUDGE**

SUIT NO. C5/99/2022

AGNES YAA OPPONG-AMOAH

PETITIONER

VS.

OPARE KUAMOAHA-BOATENG

RESPONDENT

PARTIES PRESENT AND REPRESENTED

JUDGMENT

The Parties to this suit got married in under the Marriages Ordinance (CAP 127) on November 4, 2019, at the Registrar General's Department. The parties co-habited at Kasoa and Ablekuma after the marriage. The parties have no child of the said marriage. The Petitioner is seeking the dissolution of the ordinance marriage celebrated between the parties on grounds of adultery and unreasonable behaviour. Petitioner abandoned the ancillary reliefs filed. The Respondent in his response did not contest the dissolution of the marriage.

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.

Under **Section 2(1)(a) of the Matrimonial Causes Act,**

1971(Act 367), "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:

that the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent;

What constitutes adultery has been stated in **Section 43 of the Matrimonial Causes Act, 1971 (Act 367)** as "the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse". It has been decided that the type of intercourse required to prove adultery is evidence of some penetration of the female organ by the male organ. In **Adjetey v. Adjetey [1973] 1 GLR 216** it was decided that "Adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability."

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, Agnes Yaa Oppong Amoah and the Respondent Opare Yaw Akuamoah –Boateng celebrated on November 4, 2019, at the Registrar General’s Department Accra has broken down beyond reconciliation?

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

The Petitioner in her oral evidence told the court that at the time the parties got married she was living both in Accra and Takoradi. According to the Petitioner the Respondent did not show care and compassion to her when she became ill. The Petitioner further stated that during this period she was in Accra for 2 months and did not know where Respondent was living the Respondent did not visits during that period. When Petitioner got to their matrimonial home the wedding pictures of the two were not in the house. When Petitioner queried Respondent, he indicated the pictures were with a friend only to realise the pictures were in an empty Television box in the house.

On the issue of adultery, the Petitioner stated that a day before their marriage she got to know the Respondent had impregnated another lady and the Respondent mother knew about it. Again, one day the Respondent came to Accra and went with Respondent mother to their matrimonial home only to meet the Respondent with another woman in their matrimonial home. Also, one neighbour informed Petitioner that the Respondent got her pregnant but went with her to abort the baby. The Petitioner prayed that the court grants her divorce as she finds the behaviour of the Respondent intolerable.

The Respondent in his evidence told the court that prior to their marriage he and the Petitioner had a lot of fun. At the time, he did not have the means to settle in a marriage relationship but the Petitioner coerced him to marry her and Petitioner promised to bear the cost of the marriage. Again, the Petitioner promised to take Petitioner to Takoradi to live with her at her duty post and promise to pay Respondent monthly but Respondent declined the proposal. The parties however visited each other in Accra and Tarkordi. Respondent further stated that the Petitioner became disrespectful and Respondent is of the opinion that it is the fact that the Petitioner was more resourceful financially. As a result, the parties stopped visiting each other as they previously did. The Respondent also stated that the Petitioner continues to relationship with her ex- boyfriend who was introduce to him by the Petitioner was unbecoming and raised questions of sincerity, integrity and commitment on the part of the petitioner in the marriage. There were also attempt at settlement by Respondent father but it was to no avail. Respondent also prayed that the court dissolves the marriage as the Petitioner has no interest in their marriage.

From the evidence of the parties, The Court is unable to find from the Petitioner's evidence that there is adultery as petitioner has been unable to prove adultery to the required degree in law. All that Petitioner laid out are mere allegation which lacks substance.

On the issue of unreasonable behaviour on the part of the Respondent. Petitioner establish per her evidence that Respondent has engaged in acts which has disturbed her and therefore no longer interested in continuing the marriage relationship. The Respondent also recounted some acts such as lack of commitment on the part of the Petitioner which has severed the relationship.

Upon weighing the evidence of the parties as a whole the court finds that parties rather have some differences between them which they are unable to resolve which has led to both parties being disinterested in the marriage. The court finds that it is the parties inability to reconcile their difference as provided under **section 2(1)(f) of the Matrimonial Causes Act, 1971 (Act 367)**, is the ground necessitating the situation in which the parties find themselves; and not unreasonable behaviour on the part of either party. This Court, can only conclude that indeed this marriage relationship has broken down beyond reconciliation.

DECISION

1. The marriage celebrated between the Petitioner, Agnes Yaa Oppong– Amoah and the Respondent Opare Yaw Akuamoah-Boateng on November 4, 2019, at the Registrar General's Department has Accra has broken down beyond reconciliation and same is dissolved. A decree of divorce is

accordingly granted. The marriage certificate with registration no.
RGMO1845/2019 is hereby cancelled.

2. I will make no order as to cost.

LEGAL REPRESENTATION

RICHARD ODUM MENSAH FOR THE PETITIONER

PETER ASANTE ACQUAH FOR THE RESPONDENT

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