

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 1<sup>ST</sup> DECEMBER, 2022

SUIT NO. C5/90/21

MARTHA NARTEY

- PETITIONER

VRS

DANIEL KWAME BOADI

- RESPONDENT

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**JUDGMENT**  
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On the 17<sup>th</sup> day of June, 2021, the petitioner herein presented this petition for the dissolution of her marriage to the respondent. According to her, they celebrated their marriage under the ordinance on the 24<sup>th</sup> day of October, 2012 at the offices of the Tema Metropolitan Assembly and have two issues, a boy and a girl aged seven (7) and five (5) years as at the date of the presentation of the petition.

She averred that the marriage has broken down beyond reconciliation due to the unreasonable behavior of the respondent. She prayed the court to:

- a) Dissolve their marriage
- b) Grant her custody of the two issues of the marriage
- c) Order the respondent to pay an amount of one thousand Ghana cedis (Ghs 1,000) per month as maintenance as well as the payment of school fees, medical bills as at when they fall due
- d) An order directed at the respondent to pay to her the sum of one hundred thousand Ghana cedis (Ghs 100,000) as financial provision.

The respondent in his answer indicated that for the past four (4) years, the petitioner has indicated to him that she is no longer interested in the marriage and even though he tried to persuade her to change her mind, it proved futile. That about one (1) year ago, he had to rent an apartment for the petitioner and the children and also provide for their upkeep because even though they were staying together, there was no relationship between them.

That he has also lost interest in the marriage because of petitioner's conduct and has thus given his consent for the dissolution of the marriage. That he further consents that custody of the issues of the marriage be granted to the petitioner with reasonable access to him. Further that he can pay four hundred Ghana cedis (Ghs 400) a month as maintenance for the children as he has been solely responsible for all their bills when they fall due. That relief 'd' of the petitioner should be dismissed.

#### **THE CASE OF THE PETITIONER**

Petitioner tendered in evidence their marriage certificate as EXHIBIT A. Her contention is that the respondent has refused to show her love and affection and also physically assaulted her by slapping her. That the respondent has indicated that he is no longer interested in the marriage and they should go their separate ways.

Further that the respondent does not offer her the necessary respect and is rude to her. That all efforts made by their families to resolve their dispute has failed. That the respondent earns more than she does and is in a financial position to offer her one hundred thousand Ghana cedis (Ghs 100,000) as financial provision.

#### **THE CASE OF THE RESPONDENT**

According to the respondent, he is a technician whilst the petitioner is a seamstress. He testified that their marriage has broken down beyond reconciliation due to the unreasonable behavior of the petitioner.

That about four (4) years ago, the petitioner informed him that she no longer loved him and had lost interest in their marriage. That she wanted a separation and was unwilling to have sex with him again. Further that if he wanted to have sex, he could do so with another woman. That he tried to persuade her to change her mind but she did not.

He continued that he had reported her conduct to her family on several occasions. That the petitioner slapped him over an issue and he did same but he later regretted and they resolved their issues. Also that for more than a year, there was no relationship between them and so he reported to their families.

At a family meeting, the petitioner was set against reconciliation. It was at a further date when the marriage was to be dissolved that she changed her mind and decided to continue with the marriage. However, her attitude was not good enough but he managed it until she demanded that he rent a place for her to move to. He did so and has continued to provide for her and the children.

He continued that the behavior demonstrated by the petitioner over the years depicts that she is not interested in the marriage. That after the presentation of this petition, he had a discussion with the petitioner wherein she informed him that her relief c and d were not part of her claims. He thus prayed the court to dismiss same.

From the pleadings, the respondent agrees that custody of the two issues of the marriage be granted to the petitioner with reasonable access to him. He also has no

issues with paying for the school fees and medical needs of the children. His issue is with the quantum of maintenance. His contention is that he can afford only six hundred Ghana cedis (Ghs 600) out of the one thousand Ghana cedis (Ghs 1,000) being demanded by the petitioner.

The issues for the court to determine are;

1. Whether or not the marriage between the parties has broken down beyond reconciliation
2. Whether or not the respondent should be ordered to pay Ghs 600 o Ghs 1,000 per month as maintenance for the issues of the marriage.
3. Whether or not the petitioner is entitled to a lump sum payment of Ghs 100,000 as alimony.

#### **CONSIDERATION BY COURT**

In divorce just like in all civil cases, the degree of proof required by law is that of a balance or preponderance of probabilities. See *section 12 (1) and (2) of the Evidence Act, 1975 (Act 323)*. In the case of *Adwubeng V. Domfeh [1996-97] SCGLR 660, the Supreme Court held that 'sections 11 (4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by a preponderance of probabilities – no exceptions were made''*. It is he who asserts who bears the burden of proof and so the burden of persuasion lies on him/her to lead cogent and positive evidence to establish the existence of his/her claim in the mind of the court. See the case of *Takoradi Flour Mills v. Samir Paris [ 2005-6] SCGLR 882*.

- 1. Whether or not the marriage between the parties has broken down beyond reconciliation*

In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. Divorce is defined as *“the legal dissolution of a*

*marriage by a Court."* See *Blacks' law dictionary, (8<sup>th</sup> edition, 2004 p. 1449)*. The court must enquire as far as is reasonable into the reasons for the divorce and may either grant or refuse to decree a divorce after hearing. See the case of *Ameko v. Agbenu [2015] 91 G.M.J.*

The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*. In *section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery which the offended party finds intolerable to live with; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner's basis of presenting this petition is that the respondent has behaved in such an unreasonable manner that she cannot be expected to live with him. The respondent denied this and said although the marriage has broken down beyond reconciliation, it is due to the behavior of the petitioner.

Although the respondent challenges the claim of unreasonable behavior and the petitioner insists on same, what they both do not challenge is the fact that they ceased cohabitation for more than one year prior to the presentation of this petition and at her own insistence, the petitioner and issues of the marriage have been living in rented premises paid for by the respondent. They also are ad idem that for years before the

ceasing of co habitation, they had not been living together as husband and wife. Further that attempts made by their families to reconcile them have failed.

As one of the basis for arriving at a conclusion that a marriage has broken down beyond reconciliation is inability to reconcile after diligent efforts, I would first deal with the available evidence on that ground. *Section 2 (1) (f) of the Matrimonial Causes Act, 1971, (Act 367) provides that;*

2. (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:

(F) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

At page 9 of the record of proceedings, the petitioner under cross examination by the respondent, answered;

Q: *At what time did you realize that our marriage has broken down beyond reconciliation?*

A: *About 5 to 6 years ago.*

Learned counsel for the petitioner, in cross examining the respondent at page 12 of the record of proceedings, has asked;

Q: *Now you do not live with the petitioner as we speak. Is that correct?*

A: *Yes please*

Q: *For how long have you not lived together as husband and wife?*

A: *Almost 2 years.*

Further at page 16 of the record of proceedings, still under cross examination, the respondent had answered;

Q: You have indicated in your evidence in chief paragraph 8 that the petitioner told you that she would not have sex with you again is not true.

A: My Lord, she said so. It was in the morning when I had returned from the bathroom. I saw her crying and asked her why, she did not answer. I sat her on the bed and coaxed her. She then told me that she cannot give herself to me again as there is no love between us, so if I want to have sex with a woman, I should go outside to find a woman.

According to the respondent in his answer to the petition, this incident happened (4) four years prior to the presentation of the petition and the petitioner told him that she was no longer interested in the marriage. Evidence of the parties was taken over a year after the presentation of the petition. Thus marrying the evidence of the respondent to the answer of petitioner that she realized the marriage has broken down beyond reconciliation about five (5) to six (6) years ago, I find that I believe the respondent.

That means that for at least (5) five years prior to the presentation of this petition, the petitioner was convinced that their marriage had broken down beyond reconciliation and had communicated same to the respondent. It appears that since then, the respondent had made efforts at reconciliation. This included their families coming into the matter and it was only at the point of dissolution that the petitioner changed her mind.

Their relationship could not survive the turmoil and the respondent says he has accepted that their marriage has broken down beyond reconciliation. At page 18 of the record of proceedings, the respondent had answered under cross examination;

Q: *I also suggest to you that you yourself indicated that you were no longer interested in the marriage and that both of you could go your separate ways.*

A: *My Lord, when the quarrel came, she told me that she does not love me and that I am the one who keeps begging her and so why do I not leave her to go. I told her that I was now tired and so she could go if she wanted to.*

At present, although they both live in the same place i.e Kpone, they live in separate places and lead separate lives. They married in 2012 and have two issues of the marriage. It is my opinion that when parties have been married for a reasonably lengthy period and have issues of the marriage, when they seek to go their separate ways, a court of competent jurisdiction in making enquiries as to the breakdown of the marriage, must seek to promote cordiality and civility between the parties during and after the court proceedings. That is healthy not only to the parties and their future relationship as co parents but to society as a whole.

To borrow the words of *Sarkodee J (as he then was)* in the case of *Addo v. Addo [1973] 2 GLR 103*, which he himself quoted from *The Law Commission Report; Reform of the Grounds of Divorce. The Field of Choice, para. 15. (Cmd. 3123)* "For it is better: "When regrettably, a marriage has irretrievably broken down to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation."

On the basis of the evidence, I hereby find after my enquiry that the marriage between the parties has broken down beyond reconciliation on the grounds that all diligent efforts to reconcile them have failed. I duly issue a decree of dissolution to dissolve the marriage celebrated between them on the 12<sup>th</sup> day of October, 2012. Their marriage



certificate is accordingly cancelled. The Registrar is to notify the Registrar of Marriages at the Tema Metropolitan Assembly of the cancellation to enable them amend their records accordingly.

*2. Whether or not the respondent should be ordered to pay six hundred Ghana cedis (Ghs 600) instead of the one thousand Ghana cedis (Ghs 1,000) per month as maintenance for the issues of the marriage.*

On the claim of maintenance, the duty to maintain a child according to *Section 47 of the Children's Act, 1998 (Act 560)* falls on the parents of that child. It is settled that it is the duty of parents, where they each earn an income to provide for their children. See *Section 49 of Act 560* and the decision of *Dotse JA (as he then was) in the case of Donkor v. Ankrah [2003-2005] GLR 125* where he stated "where both parents of a child are earning an income, it must be the joint responsibility of both parents to maintain the child. The tendency for women to look up to only men for the upkeep of children is gone".

The respondent works as a technician or repairer whilst the petitioner is a seamstress. Both of them work in the informal sector and did not provide any proof of income. The respondent indicates that he provides accommodation for the petitioner and the issues, pays the school fees and all other costs involved with the children as well as maintaining them. He indicates that he would continue to do so but prays the court to order him to pay maintenance of six hundred Ghana cedis (Ghs 600) instead of the one thousand Ghana cedis (Ghs 1,000) demanded by the petitioner.

On the basis that it is the responsibility of both parents to provide for the necessities of health and life of their children, I hereby find that as the petitioner works, it is equitable

that she contributes towards the maintenance of the children. Consequently, I hereby make the following orders;

- a) *The respondent is to continue providing accommodation for the petitioner and the issues of the marriage until the last issue turns twenty one (21) years or completes her education or apprenticeship or until the petitioner remarries; whichever comes earlier*
- b) *The respondent is to provide for the school fees as well as all other school related bills of the children until they complete their education*
- c) *The respondent is to pay the sum of eight hundred Ghana cedis (Ghs 800) each month commencing from the last working day of December, 2022 towards the maintenance of the two issues of the marriage.*
- d) *The respondent is also to pay for the medical costs particularly when it involves hospital visits and/or detentions*
- e) *The petitioner on her part is to contribute whatever is necessary to augment the maintenance provided by the petitioner for the children*
- f) *She is also to provide for the basic medical needs of the children when it does not involve hospital visits and/or hospitalization*
- g) *Save for school clothing which the respondent is to provide as part of all other school related bills, all other clothing needs of the children are to borne equally by the parties.*

**3. *Whether or not the petitioner is entitled to a lump sum payment of Ghs 100,000 as alimony.***

The petitioner prays for financial provision in the sum of one hundred thousand Ghana cedis (Ghs 100,000). In analyzing this, I am mindful of the decision in the case of *Aikins v. Aikins [1979]GLR 223* holding 4 which is that “in considering the amount payable as lump sum, the court should not take into account the conduct of either the husband or

the wife but it must look at the realities and take into account the standard of living to which the wife was accustomed during the marriage”.

In the case of *Oparebea v. Mensah* [1993-94] 1 GLR 61, the court held that in order to determine a claim made under *Section 20 (1) of the Matrimonial Causes Act*, the court must examine the needs of the party making the claim and not the contributions of the parties during the marriage.

Factors to be considered in arriving at an equitable decision include the earning capacity or income of the parties, property or other financial properties which each of the parties has or is likely to have in the foreseeable future, the financial needs, obligations and responsibilities of each of the parties and the standard of living enjoyed by the family before the breakdown of the marriage.

In determining the needs of the petitioner, I must first consider whether she is in a financial position to provide her needs or otherwise. In her evidence in chief to this court, she indicated that she works as a seamstress. The respondent also indicated that she works as such and maintained under cross examination that the petitioner still practices her craft.

Respondent also indicated that the petitioner has a small vehicle popularly known as pragya which works for her and that she told him so. He also insisted that upon the ceasing of their cohabitation, at her instance, he purchased a freezer for her to work with.

I found the respondent to be a generally credible witness and so I have no cause to doubt his evidence. He had come across as a person who was in court to tell the truth and had provided explanations where necessary to explain events and situations and

also in proof of his claim. The petitioner had been found wanting of candour on basic things like the age of her children. Indeed, she herself did not deny that she was working.

Most importantly, the petitioner appears to have put in this claim as a matter of course rather than on a need basis. This is because she had indicated that she was ready to abandon same if need be. Under cross examination by the respondent at page 10 of the record of proceedings, she had answered;

A: *That is not so. You told me that openly.*

Q: *Do you recall that I asked you why you were demanding one hundred thousand Ghana Cedis (GH¢100, 000) from me as financial provision when I have not offended you?*

A: *Yes, my Lord.*

Q: *Can you tell the court your response?*

A: *Yes my Lord. I told you that if that was going to be a problem or an issue, then we could take it out.*

The petitioner does not dispute that it is the respondent who provides for the upkeep of the children alone. Now that the petitioner has to contribute, it is fair that she should be supported by the respondent, to invest into her businesses so as to meet her obligations as a parent to the issues of the marriage.

Upon that consideration, the respondent is hereby ordered to pay the sum of fifteen thousand Ghana cedis (Ghs 15,000) to the petitioner as financial settlement. He is to pay the amount to her within forty five (45) days from the date of judgment failure of which would attract interest at the commercial bank rate from the date of judgment to the date of final payment.

Each party is to bear their own cost in suit.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**

**(CIRCUIT COURT JUDGE)**

EMMANUEL KYEI YANKSON FOR ERIC ASUMAN ADU FOR THE PETITIONER  
PRESENT