

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 15TH DECEMBER, 2022

SUIT NO. C5/18/22

MAUREEN ABLORDEPPEY

-

PETITIONER

VRS

MATHIAS ABLORDEPPEY

-

RESPONDENT

JUDGMENT

On the 27th day of October, 2021, the petitioner herein being of the conviction that her marriage with the respondent had broken down beyond reconciliation, presented this petition for the dissolution of their marriage on the grounds that the respondent has behaved in such an unreasonable manner that she cannot continue to live with him as husband and wife.

She contends that they celebrated their union on the 28th of March, 2009 at the New Apostolic Church, Darkuman. There are no issues of the marriage. They lived in Sakaman for seven (7) years after their marriage before relocating to their matrimonial home in Prampram.

That the respondent does not maintain the home and has constructively driven her out of the matrimonial home for the past five (5) months. That respondent has made it clear that he does not love her and is no longer interested in the marriage by making derogatory remarks indicating that he does not know why he married her and also indicating this when a meeting was held between their families.

Further that she sometimes had to beg the respondent for intimacy. That all attempts by family, friends and church elders to reconcile them have failed. That she has returned the traditional drinks signaling the end of their marriage but the respondent has refused to accept same.

She sought the relief of;

- (a) An order for the dissolution of the marriage celebrated between the parties on the 29th day of March, 2009
- (b) That each party shall bear their respective costs
- (c) Any further orders that this Court may deem fit.

The respondent filed an answer and admitted that their marriage has broken down beyond reconciliation. He however contends that the breakdown is due to the fact that petitioner had little marital values. That she does not pay heed to his counsel, shows utter disregard for him as her husband both within and outside the home and she does not support his plans towards the well being of their marriage.

Respondent averred that he had always maintained the home. He contended that the claim that he denied the petitioner sexual intimacy is untrue. That several attempts by elders of their church have been rebuffed by the petitioner. That petitioner left the matrimonial home due to her own questionable conduct.

Further that whilst they were undergoing counselling, petitioner placed an envelope containing a drink in a chair in their matrimonial home. That he presented it to their counsellors for them to seek clarification from the petitioner. That petitioner has since then abandoned the counselling sessions. He finally contended that he is in favour of the reliefs being sought by the petitioner from the Court.

At the close of pleadings, the only issue for the court to determine is whether or not the marriage between the parties has broken down beyond reconciliation.

THE CASE OF THE PETITIONER

Petitioner repeated the averments in her petition as her evidence in chief and added that the respondent has caused her much anxiety and distress. That on countless occasions, he made derogatory statements about her such as "I do not know why I married you, I have never been interested in plus size women".

That this caused her to have low self esteem and she suffered emotional stress, depression and anxiety as a result of respondent's actions. That respondent by his actions constructively drove her out of the matrimonial home.

That even though she moved out of the matrimonial home six (6) months ago and has been living with her parents, the respondent has not made any attempt to resume cohabitation. Further that the respondent with the support of his family, has made it crystal clear to her that he is no more interested in the marriage.

Also that she has returned the customary drinks for her bride price to the respondent with an intention of bringing co habitation to an end. That the respondent refused to accept same and insisted that she strip herself of his high esteemed family name which she has been carrying for the past thirteen (13) years.

THE CASE OF THE RESPONDENT

Respondent also repeated the contentions in his answer as his evidence in chief. That the petitioner by her conduct and words has shown gross disrespect to him as her husband on several occasions. That he has provided financially for the petitioner.

CONSIDERATION BY COURT

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, (8th edition, 2004 p. 1449).*

Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. *Thus although the respondent in his answer admits that the marriage has broken down beyond reconciliation, the Court through evidence must satisfy itself that the marriage has broken down beyond reconciliation. 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; 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 for arriving at the conclusion that their marriage has broken down beyond reconciliation is unreasonable behavior. Thus the petitioner who is asserting the positive bears the burden of establishing her case on a balance of probabilities. The burden on her is akin to a double edged sword. Akamba JA (As he then was) in the case of *Kwaku Mensah Gyan & 1 Or. v. Madam Mary Armah Amangala Buzuma & 4 Ors. (Unreported) Suit No. LS: 794/92 dated 11th March, 2005* explained: "What is required is credible evidence which must satisfy the two fold burdens stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section.

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 fact that the petitioner has little marital values.

In the case of Ansah v. Ansah [1982-1983] GLR 1127, 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 behavior. 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'.

Both parties agree that their marriage has broken down after failed attempts by family, friends and church elders to reconcile them. The petitioner says the respondent has the full support of his family in his loss of interest in the marriage and so when her family went to see them after she had left the matrimonial home for sometime to attempt

reconciliation, his family and later respondent himself were clear that the marriage had hit the rocks.

At page 10 and 11 of the record of proceedings, petitioner under cross examination by the respondent had answered;

Q: *I put it to you that contrary to what you have said in your evidence in chief that attempts have been made by our families, friends and church have proved futile is not true.*

A: *Please it is true. After I left home, after six months, my parents asked me to go back home but I said no and when they asked me why, I said it is because the man does not love me anymore. So my father said he would ask the family members to go over to his parent's place with the family head and 2 other representatives to resolve that issue. When they got there, his parents said that they know from day one that the marriage would not work and also that I do not have kids with him and again that I do not respect him. So the family came back and delivered the news and then we asked that they meet him one on one because it is possible his parents are angry. So they invited him and his response was exactly what his mum said that they knew that marriage would not work from day one, we had no kids and I do not respect him. Before that, I had already gone to the pastors to resolve it. I went to one pastor Solomon Ayitey but it did not work. So based on the answers that were given to me by my family, I decided to take the drinks to him after a week and after I took the drinks to him, he responded at mid-night that I should take his name away from my name and the only way I could do that was to bring it to the court and then my family members went ahead to the church to notify them of what had happened.*

Respondent on his part says they were undergoing counselling at the church and their pastors had asked their families to step back so the two of them could resolve their own

issues. That it was in the course of this counselling that the petitioner returned the customary drink signaling the end of their marriage. The petitioner denied this and said it was not a counselling session.

The evidence of the parties clearly manifests that their families cannot resolve their issues and neither can the church. That the church had at a point asked their families to stay away from the parties so they could attempt reconciliation on their own is indicative of the level of discord between the families who are generally considered by tradition as the “go to” for settling marital disputes and reconciliation.

The parties themselves do not even wish to make further attempts at reconciliation. In this court, I had tried to promote reconciliation between them on the first date of mention but both of them were resolute in their answer that their marriage cannot be salvaged.

They both agree that their marriage has broken down beyond reconciliation and same should be dissolved. It appears that their heartstrings have weakened towards each other and their love, particularly that of the respondent has sagged and lost its elasticity.

They have both come to this Court with a common purpose; for the court to dissolve the remnants of their marital union and take off the legal yoke which tied them together and which they now find burdensome.

To borrow the words of Amissah J.A in the case of *Knudsen v. Knudsen* [1976] 1 GLR 204, “if a man comes to court saying that his marriage has reached a stage that he “cannot reasonably be expected to live” with his wife any more, should a court say to

him oh yes you can?'. In the circumstances of this case, both the man and woman are in court saying they cannot continue on the journey of marital eternity and apart from the fact that all diligent attempts to reconcile them have failed, no further attempt can be made to salvage their union.

That is why *section 2 (1) (f) of the Matrimonial Causes Act, 1971 (Act 367) provides that*; "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 parties to the marriage have, after diligent effort, been unable to reconcile their differences".

The parties appear to still be in their youthful stages. I am of the firm conviction that marriage is a lifelong decision and it is not an institution to be taken lightly for one to simply "try" and run out of if it did not fit his or her purposes. However, marriage should also not be a death sentence such that when both parties are unhappy in same and it is causing depression, anxiety and other mental issues, society must insist that they continue staying in it.

It is best when all diligent efforts have been made to sustain the union and same has failed, that the parties be released of the legal union they have entered into so they can lead separate and independent lives. Perhaps, they may each find cause and reason in the future to return to the institution of marriage; this time with some needful experience.

After my enquiry, I hereby find that all diligent attempts to resolve the differences of the parties to this action and enable them continue their marriage have failed and as such their marriage has broken down beyond reconciliation. I hereby issue a decree of

dissolution in respect of the marriage celebrated between them on the 28th day of March, 2009 at the New Apostolic Church, Darkuman. Their marriage certificate is accordingly cancelled. Each party is to bear their own cost in suit.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

BENEDICTA MAWUSI FIANOO FOR THE PETITIONER PRESENT