

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 24<sup>TH</sup> NOVEMBER, 2022

SUIT NO. C5/31/22

**BERNARD BAAH ACHEAMFOUR** - **PETITIONER**

**VRS**

**MAVIS OPOKU** - **RESPONDENT**

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**JUDGMENT**  
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On the 24<sup>th</sup> day of March, 2007, at the Ebenezer Methodist Church, Techiman in the Bono East Region, in the presence of God, family and friends, the parties to this action, solemnized and celebrated their decision to live the rest of their lives on earth together. They stayed together at Michel Camp thereafter and have two issues of the marriage; a male and female aged ten (10) and (8) eight years.

According to the petitioner, the respondent deserted the matrimonial home in November, 2018 and petitioned the District Court, White House on 5<sup>th</sup> April, 2019 for a dissolution of their marriage. That the respondent later discontinued the matter on 7<sup>th</sup> May, 2021. The petitioner on the 8<sup>th</sup> day of December, 2021 presented the instant petition for dissolution of their marriage on the basis that same has broken down beyond reconciliation despite all efforts from the petitioner, reverend ministers and prominent and respectable people in society to reconcile them. That amongst others, the respondent has denied him sexual intercourse with her since 2017.

He prayed the court for the following reliefs;

1. That the marriage celebrated between the parties on the 24<sup>th</sup> day of March, 2007 at the Ebenezer Methodist Church, Techiman be dissolved
2. That custody of the children be given to the petitioner with reasonable access to the respondent
3. That the parties keep their respective properties acquired prior to the marriage and during the pendency of the marriage
4. That the respondent pays a reasonable sum monthly towards the maintenance of the children
5. Any other reliefs as the court may deem fit.

The respondent on her part filed an answer and cross petition and admitted that their marriage has broken down beyond reconciliation. That she was compelled to move out of their matrimonial home in November, 2018 due to incessant insults, physical attacks and threats from the petitioner. She contended that she stopped having sexual intercourse with the petitioner because she was no longer interested in the marriage. She cross petitioned for;

- a) An order of dissolution of the marriage celebrated between them
- b) An order according custody of the children of the marriage to the respondent with reasonable access to the petitioner
- c) An order directed at the petitioner to pay the school fees of the children of the marriage
- d) An order directed at the petitioner to pay the respondent one thousand Ghana Cedis (Ghs 1,000) a month for the upkeep of the children of the marriage and any other costs as and when for clothing, shoes, utilities and transport expenses

- e) An order directed at the petitioner to pay half monthly rent amounting to Ghs 900.00 for the upkeep of the children of the marriage till they gain maturity, including arrears amounting to Ghs 14,400
- f) A declaration that the Sunyani property, a parcel of land and a container shop acquired during the marriage is joint property to be shared equally by the parties
- g) Each party to bear legal and incidental costs.

In the course of proceedings, the parties settled the ancillary reliefs and filed terms of settlement for adoption as consent judgment by the Court on the 12<sup>th</sup> day of April, 2022. That being the case, the only issue left for determination by means of enquiry by the court is whether or not the marriage celebrated between the the parties on the 24<sup>th</sup> day of March, 2007 at the Ebenezer Methodist Church, Techiman has broken down beyond reconciliation.

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

According to the petitioner, the respondent has admitted that since 2017, they have not had sex. That she has also admitted to bringing a man into their home in his absence without his knowledge and consent. He relied on EXHIBIT A which is the record of proceedings of suit number A4/89/2019.

That the respondent secretly acquired a piece of land on which she built a five bedroom house in her hometown of Techiman without his knowledge and consent. He tendered in EXHIBIT B series as a search from the Techiman Municipal Assembly and pictures of the building. That this conduct and other misconducts of the petitioner have created mistrust for her.

He continued further that on several occasions, the respondent has in the course of the marriage and after she moved out of the matrimonial home, insulted him at the least or

without provocation. He tendered in evidence EXHIBIT C as a copy of an audio recording. That the respondent moved out of the matrimonial home on 28<sup>th</sup> November, 2018 and they have since then not lived together as husband and wife.

Further that they have agreed after consideration, to a dissolution of the marriage and have since filed terms of settlement covering the ancillary reliefs. He prayed the court to adopt same as consent judgment of the court. Finally, that all attempts by family members, friends and respectable members of society to reconcile their differences have proved futile.

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

The evidence of the respondent is that from the early years of their marriage, the petitioner had constantly exhibited some erratic behavior and extreme arrogance and blatant disrespect towards her. That this always resulted in a myriad of altercations where he would exhibit very belligerent behavior towards her. That the petitioner has behaved in such an unreasonable behaviour that she cannot be expected to live with him as a woman would, harmoniously with her husband.

She continued that they lived in their matrimonial home for eleven (11) years and it was petitioner's constant harassment and unreasonable behavior which caused her to move out of the matrimonial home to protect her mental health. That throughout their marriage, there have been several attempts by members of their respective families as well as other well wishers to assist in settling their problems. That all such attempts have proved futile. That the marriage has broken down beyond any form of reconciliation and same ought to be dissolved by the court.

#### **CONSIDERATION BY THE COURT**

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 her answer admits that the marriage has broken down beyond reconciliation and also alleges unreasonable behavior and adultery on the part of the petitioner, 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.

Blacks' law dictionary, (8<sup>th</sup> edition, 2004 p. 1449) defines divorce as "*the legal dissolution of a marriage by a Court.*" In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. 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. As the respondent had also cross petitioned, the burden of proof and persuasion laid on the each of them to establish their case. The respected *Benin JSC* in the case of *John Tagoe v. Accra Brewery Ltd.* [2016] 93 G.M.J. 103 @ 123 was convicted that: "It is trite law that he who alleges, be he plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when he has

*succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be”.*

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 & I Or. v. Madam Mary Armah Amangala Buzuma & 4 Ors. (Unreported) Suit No. LS: 794/92 dated 11<sup>th</sup> 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. 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.

Although the petitioner asserted, the respondent made a cross petition and so they both bore the burden of proving their respective claims. See the case of *Gregory v. Tandoh IV & Hanson [2010] SCGLR 971*.

The petitioner in his evidence in chief testified that they had not lived as husband and wife for more than three (3) years prior to the presentation of the petition and also that several attempts by family, friends and well wishers to settle their differences over the years have failed. The respondent admitted that they have not lived together since she vacated the matrimonial home in 2018 and admits that even before this, she had stopped having sex with the petitioner because she was no longer interested in the marriage. She also testified that attempts to reconcile them have failed.

Clearly, the parties are ad idem the grounds of not having lived together for more than two (2) years prior to the presentation of the instant petition and the failure of several attempts by family, friends and well wishers to reconcile them. As these two grounds each form the basis for arriving at a conclusion that their marriage has broken down beyond reconciliation, I would consider one of them; failure to reconcile their differences after diligent efforts.

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.”

***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 prior to the instant petition had at the instance of the respondent herein been before the District Court for a dissolution of their marriage. They were before the Court for a little over two years; between April 2019 to May, 2021. When that action was discontinued, the instant petition was filed seven months thereafter in December, 2021.

The petitioner makes allegations of adultery against the respondent, she building on his blindside, she disrespecting him at the least opportunity and generally not performing her duties as a wife and a mother to the children. The respondent on her part makes allegations of both verbal and physical abuse against the petitioner, he not performing his duties as a father and a husband and a general overbearing attitude and also having affairs with house helps.

It is these issues that have plagued their marriage and which they could not resolve even with the intervention of family, friends, well wishers, reverend ministers and prominent and respectable people in society and that has led them to the point where they both would rather be on their own than with each other. They have seized all semblance of a man and wife and have been in Court for a dissolution of their legal union since 2019.

They have both come to this Court with a common purpose; for the court to dissolve the remnants of their marital union which both of them have considered existent only on the paper of their marriage certificate since November, 2018. They have also filed terms of settlement as regards their ancillary reliefs to be adopted by the Court.

To borrow the words of Amisshah 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 reasonably be expected to live with each other.

On that basis, 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 24<sup>th</sup> day of March 2007 at the Ebenezer Methodist Church, Techiman. Their marriage certificate is accordingly cancelled. The Registrar is to notify the administrator of the church of the dissolution to enable them to duly amend their records.

Let the terms of settlement filed on the 12<sup>th</sup> day of April, 2022 at 2:17pm and duly signed by the parties and their lawyers be and same is hereby adopted as consent judgment of the Court. The usual default clause applies.

**(SGD)**

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

**(CIRCUIT COURT JUDGE)**

**JAMES ODARTEY MILLS FOR THE PETITIONER**

**EDWARD METTLE NUNOO FOR THE RESPONDENT**