

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 3<sup>RD</sup> NOVEMBER, 2022

SUIT NO. C5/78/21

EDINAM TUTUWAA ADJEI

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PETITIONER

VRS

COURAGE KWABLA ADJEI

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RESPONDENT

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**JUDGMENT**

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The parties to this action celebrated their marriage on the 27<sup>th</sup> day of April, 2019 at the Presbyterian Evangelical Church, Teshie. There are no issues of the marriage and whereas the petitioner is a caterer, the respondent is an engineer. The petitioner prays this court to dissolve their marriage on the basis that same has broken down beyond reconciliation.

According to the petitioner, the respondent virtually has no love and respect for her and is very irresponsible. That he only communicates with her on a need basis. That the respondent has abused her emotionally and this has caused her emotional trauma such that she had no other alternative than to park out of the matrimonial home.

She further contends that all attempts at reconciliation by their respective families, friends and well wishers have failed due to the recalcitrant and very belligerent attitude of the respondent and his resolve to maltreat her so that she would advise herself. That during their courtship, she suffered from an ectopic pregnancy and had to undergo surgery. That the respondent only paid for a minute fraction of the cost of surgery. That

she has developed some complications as a result of this surgery but the respondent refused to foot the medical bills.

She thus prayed the court to dissolve their marriage on the grounds that same has broken down beyond reconciliation due to the unreasonable behavior of the respondent. She further prayed for the respondent to be made to pay a lump sum by way of alimony to her and also be made to bear the legal cost of this action.

The respondent in his answer denied the claims of petitioner. His contention is that he was at work when the petitioner and her mother packed out of the house. Also that it is the petitioner who has by her actions prevented reconciliation as she openly informed him in the presence of her father that she is no longer interested in the marriage.

He cross petitioned for a dissolution of the marriage on the grounds that same has broken down beyond reconciliation due to the unreasonable behavior of the petitioner. He particularized the unreasonable behavior to be that the petitioner has been overly demanding of him, and that she has no respect for him. Respondent averred that the petitioner is not entitled to her 2<sup>nd</sup> and 3<sup>rd</sup> reliefs.

Petitioner filed a reply and answer to the cross petition of the respondent. The battle lines having been drawn, 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 petitioner is entitled to a lump sum payment as alimony.*

**THE CASE OF THE PETITIONER**

Petitioner in her written evidence in chief tendered in evidence EXHIBIT A; a copy of their marriage certificate. She repeated all the averments in her pleadings. According to her, the respondent only communicates with her when he wanted to have sexual intercourse with her or needed something which she alone could provide for him. That the respondent's attitude became unbearable as he distanced himself completely from her and isolated her and that led her to pack out of the matrimonial home.

Further that during the pendency of this case, she was admitted at the Shai Osudoku hospital for some days and that buttresses her point about the medical challenges she has been suffering since she underwent surgery for the ectopic pregnancy. She tendered in evidence EXHIBIT B as an excuse duty. She emphasized that their marriage has broken down beyond reconciliation and prayed the court to grant her reliefs.

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

Respondent also repeated the averments in his answer in his evidence in chief.

#### **CONSIDERATION BY COURT**

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

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.

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 to lead cogent and positive evidence to establish the existence of his claim in the mind of the court. See the case of *Abbey & Ors. v. Antwi [2010] SCGLR*.

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*.

Both parties allege unreasonable behavior on the part of the other as the basis for the breakdown of their marriage. They both also agree that attempts at reconciling them have failed and there is no possibility of reconciliation. They averred in their pleadings and evidence that all attempts to reconcile them have failed.

In this Court, in order to promote reconciliation, I sought to find out from the parties if they would welcome an attempt at salvaging their marriage. They were not willing. They both petitioned the court to dissolve their marriage and appear clear in their minds that their marriage is long past the hour of reconciliation. There is also no dispute that they had lived apart for almost eighteen (18) months prior to the filing of this petition.

Furthermore, under cross examination by counsel for the respondent, at page 24 of the record of proceedings, the petitioner answered;

Q: *So you would admit that you by packing out of your husband's house, it was the last signal of your intention to have this marriage dissolved.*

A: *Your Honor, please yes.*

The respondent at page 39 of the record of proceedings, under cross examination by learned counsel for the petitioner, had also answered;

Q: *Are you telling the court that it is possible to salvage this marriage in spite of the fact that you do not care about her?*

A: *My Lord, no.*

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 for over one year. 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 reasonably be expected to live with each other.

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”.

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 27<sup>th</sup> day of April, 2019 at the Evangelical Presbyterian Church, Teshie. 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.

2. On the final issue, the petitioner prays for a lump sum payment of Ghs 30,000. Although she did not pray for a specific sum in her petition, in her witness statement and in counsel for respondent's address to the court which was filed on the 8<sup>th</sup> of September, 2022, petitioner prayed for the sum of Ghs 30,000 as financial settlement for the pain, emotional and psychological stress and suffering leading to the final breakdown of the marriage.

A claim of financial settlement is premised under *Section 20(1) of Act 367*. In the case of *Oporebea 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.

The case of *Riberiro v. Ribeiro [1989-1990] 2 GLR 109* provides a good guidance to a court when making decisions on financial provision.

Other 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. See the case of *Aikins v. Aikins [1979] GLR 223*.

Counsel for petitioner referred me to the case of *Gladys Mensah v. Stephen Mensah [1998-99] SCGLR 250* in which Dotse JSC; reading the judgment of the apex court, had this to say "This court would not permit the respondent to use the petitioner as a donkey and after offering useful and valuable services, dump her without any regard for her rights as a human being.....the tendency to consider women (spouses) in particular as appendages to the marriage relationship used and dumped at will by their male spouses must cease".

The petitioner failed to lead any evidence on her needs or any standard of living that she has been accustomed to by virtue of her marriage to the respondent which would be adversely affected.

She appears to be seeking the sum of thirty thousand Ghana cedis (Ghs 30,000) as compensation from the respondent rather than financial settlement. A marriage is a union of equals who are deemed to have entered into the union voluntarily based on love. Thus when it breaks down, unless there is evidence to that effect, it should not be taken that one has caused any damage or injury to the other for which there must be compensation.

This is particularly in circumstances like the parties to this action where the time between the celebration of the marriage and the petition for dissolution was quite short. The parties celebrated their union on the 27<sup>th</sup> of April, 2019 and the petition was filed on the 31<sup>st</sup> of May, 2021. That means the parties were together for two years and one month. From the evidence, they ceased cohabitation by December, 2020. That means, in substance, their marriage lasted all of 20 months.

Although the petitioner contends that she underwent surgery for an ectopic pregnancy during their courtship and this has led her to suffer health challenges, she failed to lead any evidence of these health challenges and the connexion between the surgery and the health challenges. It is the respondent who testified that the petitioner suffered from fibroid. Petitioner herself could have led evidence of how the said fibroid came about as a result of the surgery she had for the ectopic pregnancy. She failed to do this. It is trite in law that a mere assertion without proof does not constitute evidence.

*In the case of Ofori Agyekum v. Madam Akua Bio (Dec'd) substituted by Agarthia Amoah, Civil Appeal No. J4/59/2014, dated 13th April, 2016, (Unreported), Benin JSC speaking for the apex Court explained the principle better when he held: "...Where no evidence is adduced on a fact that has been pleaded, it is treated as having been abandoned by the pleader, the*



*court does not call it into question in its judgment. The court's only duty is to consider the evidence the party has proffered in determining whether or not he has met the right standard of proof".*

The law provides for financial settlement not as a form of compensation but as a way of ensuring equity between the parties after a dissolution of their marriage. In that stead, in this court, the evidence led is that whereas the petitioner is a caterer, the respondent is an engineer who works with the Ghana Railway Authority. The evidence of respondent himself is that the petitioner does not operate her catering business from a shop where she is likely to earn some income on a daily basis, but relies on orders which come in as at when and if.

Clearly, the respondent has a stable source of income whereas the petitioner does not. Now that they are divorced, the petitioner cannot count on the respondent in anyway for sustenance and would have to stand on her own two feet. In order that her lifestyle would not be adversely affected, it is fair that in the interim, before she finds her feet, the respondent be made to pay her a reasonable sum as financial settlement.

Upon that basis, I hereby find that the petitioner is entitled to the sum of twenty thousand Ghana cedis (Ghs 20,000) as financial settlement from the respondent. The respondent is to pay the amount within sixty (60) days from the date of judgment failure of which the amount would attract interest at the prevailing commercial bank rate from the date of judgment till the date of final payment.

Each party is to bear their own cost in suit.

(SGD)

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

(CIRCUIT COURT JUDGE)

CHRISTOPHER KOFI KOKA FOR THE PETITIONER

BERNARD OWIREDU FOR THE RESPONDENT

JUDICIAL SERVICE