CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA

ON THURSDAY, 13TH OCTOBER, 2022

SUIT NO. C5/87/20

JAMES SUBREH - PETITIONER

VRS

JUDITH SUBREH - RESPONDENT

JUDGMENT

In her amended answer and cross petition filed on the 20th of December, 2020, the then respondent agreed with the then petitioner for the dissolution of their marriage and sought further reliefs of custody and maintenance pending suit, custody of the children with reasonable access to the petitioner, petitioner to provide accommodation for the respondent and the children and pay alimony/financial provision to the respondent. The petitioner in the course of the suit withdrew his petition. The respondent elected to pursue her cross petition and so naturally, she became the petitioner and the petitioner became the respondent.

According to her, their marriage has broken down beyond reconciliation due to the unreasonable behavior of the respondent and further that all diligent attempts made at reconciling them have failed. That the respondent has been flirting with many women in the church. That he has currently set up home with one of his girlfriend's by name Magdalene. That the respondent has behaved in so many ways unbecoming of a pastor and when the church took a decision to suspend him, he rather resigned.

She further averred that the respondent denied responsibility for her last pregnancy which resulted in their son and it was not until the child was two years old that he began to take responsibility for him. That the petitioner twice locked her and the children out of the home and their marriage was just a sham as they could stay in the same house for seven months without speaking to each other. Also that he showed little concern for her and the children as he left the children unattended and their son swallowed a coin and also dumped refuse on her bed. Again that the respondent has treated her with too much contempt and it is obvious that he has lost interest in the marriage.

The respondent in his answer to the petition contended that the petitioner was not entitled to her petition. According to him, they converted their traditional marriage into ordinance on the 25th day of May, 2008 at the Glory Assemblies of God, Church, Sakumono Estates. There are three issues of the marriage aged between ten and four years. That they have irreconcilable differences and several attempts to reconcile them have failed.

He contended that the petitioner has behaved unreasonably by consistently sleeping outside the matrimonial home whenever they had a misunderstanding, leaving the matrimonial home unannounced and spreading lies and falsehood about him. Also that she has unguarded anger, threatens to disgrace him and pack off, deserting the matrimonial home for weeks, occasionally returning to the matrimonial home and leaving in the evening and intentionally quarrelling with him to distract him from performing his duties as a man of God.

He also contended that on the 26th day of June, 2020, the petitioner reported him to DOVVSU and demanded that he be made to look for a place for her as she is no more

interested in the marriage. Also that on the 6th day of July, 2020, petitioner peddled falsehood against him on Angel FM, a private radio station with the intention of embarrassing him.

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 custody of the children should be granted to the petitioner with reasonable access to the respondent.
3. Whether or not petitioner should be ordered to provide accommodation for the respondent and the issues of the marriage
4. Whether or not the respondent should be ordered to provide maintenance for the issues of the marriage.
5. Whether or not the petitioner is entitled to Ghs 50,000 as financial settlement.

CONSIDERATION BY COURT

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

Blacks' law dictionary, (8th 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 the unreasonable behavior of the respondent. It is he who asserts who bears the burden of proof and so the burden of persuasion lies on her to lead cogent and positive evidence to establish the existence of her claim in the mind of the court. See the case of ***Takoradi Flour Mills v. Samir Paris [2005-6] SCGLR 882*** *and* ***Ackah v. Pergah Transport Ltd (2010) SCGLR 728.***

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, 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 basis of petitioner's case for dissolution of their marriage is unreasonable behavior and adultery by the respondent. It is trite that a claim of adultery must be proven with positive evidence and not mere speculations. The law recognizes that it is in the nature of a married couple to be protective of each other's attention especially to the opposite sex. It also recognizes that the nature of that protective character may lead one to be suspicious and anxious about the spouse's relationship with the opposite sex.

In order that a multitude of suspicions is not accepted as proof of adultery, the law requires that for conduct to amount to adultery, the spouse must have been found inflagrante delicto in the throes of passion with another or in such circumstances that the only inference that can be made is that they were about to or have just ended a passionate embrace involving their sexual orifices.

The respondent denies this. With regards to the adultery, the evidence of petitioner is that respondent is in a relationship with one Magdalene who is a member of their church. That he has rented premises where he lives with the said Magdalene and she arrived at this evidence by speaking to the landlord of the said lady. Petitioner did not call the said landlord as a witness in this case and so her evidence on this remains hearsay.

She testified further as to how the said Magdalene came to their home to call the respondent away and also that the respondent sometimes takes their children to her. However, under cross examination by learned counsel for the respondent, she admits that her husband was friends with the said Magdalene even before they celebrated their union save that she was not aware of the said friendship.

Petitioner also testified that she found hotel receipts in respondent's pockets and that is evidence that he was visiting hotels with his ex girlfriend. She failed to tender those receipts in evidence. I agree with learned counsel for the respondent when he put it to petitioner during cross examination that her evidence on adultery is based on her own suspicions and hearsay.

The respondent is not able to provide conclusive evidence; either direct evidence or pieces of evidence from which the court could make an inference to convince the court

on a balance of probabilities that the petitioner is committing adultery with the said Magdalene or his ex girlfriend. If at all, her evidence falls into a multitude of suspicions and that does not constitute evidence.

On the grounds of unreasonable behavior, the respondent denied the claims of the petitioner and sought to put across his own case of the petitioner's unreasonable behavior. What is evident from their evidence and which they both agree to is that the parties cannot resolve their differences and diligent efforts made by others have failed to place their union back on the path of the straight and narrow

At page 23 of the record of proceedings during the petitioner's evidence in chief, her learned counsel had asked;

Q: *You have been married for twelve (12) years, can you tell the court what effort at reconciliation both of you made before coming to this court for dissolution.*

A: *Several attempts were made. The District pastor, senior pastor in all three (3) pastors have made an attempt towards reconciliation.*

At page 14 of the record of proceedings, in petitioner's evidence in chief, she said '' *I reported at DOVVSU and I was issued a form to attend hospital.*

Again at page 16 of the record of proceedings;

I lodged a complaint at DOVVSU and he was invited. The policewoman advised me to continue living in the premises and that if the time to move out was up and he still left me in the house, they would refer the case to the tribunal court. When the time was up and he had not relocated me, I went back to DOVVSU and they asked me to find out his new place of abode.

Then at page 21 of the record of proceedings, still in her evidence in chief, she had said '' *It is true that I went to Angel F.M''*.

On his part, the respondent admitted that all diligent efforts to reconcile them have failed. He testified about how their issues began during their honeymoon and how attempts have been made by their church right from then to resolve their numerous issues all to no avail until he finally packed out of the matrimonial home.

From their evidence, the boat of their marriage began to toss on the seas of marriage right from their honeymoon stage and their issues have ended up before their pastors, neighbours, DOVVSU and finally a radio station. The boat of their marriage appeared all to have sunk to the bottom of the sea for more than one year prior to the presentation of this petition. It appears that nothing is left to be salvaged of their union but for the issues and the certificate which signifies their union.

In the circumstances, it is appropriate to free them of the legal yoke that continues to bind them on paper. 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)*** ʻʼ 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."

That is why ***section 2 (1) (f) of the Matrimonial Causes Act, 1971 (Act 367) provides that;***

ʻʼFor 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 differencesʼʼ.

On that basis, I hereby find that the marriage celebrated between the parties at the Glory Assemblies of God Church, Sakumono on the25th day of May, 2008 has broken down beyond reconciliation due to the inability of the parties to reconcile their differences after diligent effort. I hereby pronounce a decree of dissolution to dissolve their marriage and accordingly cancel their marriage certificate. Notice of the cancellation is to be served on the administrator of the church for their records to be amended accordingly.

2. ***Whether or not custody of the children should be granted to the petitioner with reasonable access to the respondent***

On the issue of custody, according to **AZU CRABBE CJ** in the case of ***Braun v. Mallet [1975] 1 GLR 81-95*** "in questions of custody it was well-settled that the welfare and happiness of the infant was the paramount consideration. In considering matters affecting the welfare of the infant, the court must look at the facts from every angle and give due weight to every relevant material''. See also the case of ***Gray v Gray [1971] 1 GLR 422;***

This provision is referred to as the welfare principle and it has been concretized by Statute in ***section 2 of the Children's Act, 2008 (Act 560).***

Section 2—Welfare Principle.

(1) The best interest of the child shall be paramount in any matter concerning a child.

(2) The best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child.

A court in arriving at decisions as to custody and access of a child is bound to consider the best interest of the child and the importance of a young child being with his mother. The court must also consider the age of the child; that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents; the views of the child if the views have been independently given; that it is desirable to keep siblings together and the the need for continuity in the care and control of the child.

In the case of ***Barake v. Barake [1993-94] 1 GLR 635 Brobbey J*** (as he then was) held that "the welfare of the child was the primary consideration for the determination of the custody of a child. The welfare of the child however had to be considered in its largest sense. Although some of the factors taken into account in deciding on the welfare of the child were the positions of the parents, the position of the child and the happiness of the child, the first consideration should be who his parents were and whether they were ready to do their duty.

The children are between the ages of eleven and five. The elder two are female and the youngest is a boy. In the course of proceedings, I interviewed the children and made an interlocutory order granting custody to the petitioner. My ruling was based upon the age of the children, the fact that it is desirable to have young children be with their mother, the fact that the respondent per his own submission has started his own church and spends more time including all night services away from the children and also my interview with the children.

No evidence was offered in the course of the trial to prove that the petitioner has not acted in the best interest of the children during this period. Again, the respondent has exercised his right of access and the children see and spend time with him. I find no

reason to disturb the current situation. Accordingly, custody of the issues is granted to the petitioner with reasonable access to the respondent until the children turn eighteen (18) years. The children may visit with respondent during weekends, holidays and school vacations provided that same would not interfere with their education.

3. ***Whether or not petitioner should be ordered to provide accommodation for the respondent and the issues of the marriage***
4. ***Whether or not the respondent should be ordered to provide maintenance for the issues of the marriage.***

I would treat issues 3 and 4 together as they both fall into the category of maintenance. Provision for children includes the necessaries of health and life; with shelter, food, clothing, education and medical care being the basic needs of every child.

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 decisi*on 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 petitioner is a trader in diapers whereas the respondent is a pastor. At page 31 of the record of proceedings, petitioner answered that;

Q: When did you start selling the diapers?

A: Three (3) years ago.

On his part, the respondent at page 47 of the record of proceedings answered;

Q: What do you do for a living?

A: I am a pastor.

Q: Do you belong to any denomination?

A: Currently no-but I have started a new church.

Although both parties clearly have a source of income, none of them disclosed their income to enable the court to arrive at a fair figure as maintenance for the children. I would thus base my decision on the joint duty of both parties to provide for the issues. Accordingly, on the basis that it is the primary duty of parents to provide the necessaries of health and life of their children, it is hereby ordered that the respondent provides accommodation for the children until the youngest turns eighteen (18) years or the petitioner remarries; whichever is earliest in time. As the children are three with two being of the same sex, the accommodation should have at least two bedrooms. The petitioner is to pay for the utility and general maintenance by way of repairs of any broken amenities in the said home in order to keep it in a tenantable condition.

The petitioner is to provide the sum of one thousand Ghana cedis (Ghs 1,000) as monthly maintenance for the issues until they each turn eighteen years or complete their education or training. Petitioner is also to pay for the school fees and all other school related bills of the issues. The respondent is to provide for all the clothing needs of the children. Both parties are to bear in equal terms the medical bills of the issues

5. ***Whether or not the petitioner is entitled to Ghs 50,000 as financial settlement.***

The petitioner in her evidence in chief contended that the respondent be ordered to settle the sum of Ghs 50,000 on her as financial settlement. Her basis for this relief as contained in page 38 of the record of proceedings is that;

Q: You told this court that you want financial settlement of GH₵50,000.

A: That is so my Lord.

Q: And what justifies that GH₵50,000 that you are claiming.

A: I am claiming that because at Glory Assemblies of God, annually the church gives appreciation to the pastors and their wives. Sometimes, we can get up to GH₵15,000 formerly 150 million cedis. Ever since the respondent began taking that money, he has not even given me a penny. Aside that, the money is given to us to buy a piece of land so that when one is 65years and he is to go on retirement, he would have a place for him and his family to lay their heads. I kept advising the respondent that we should acquire a land but he insisted that he would not buy a land but would rather buy a house. I do not know whether he has bought the house or a land. So I need that money to use in establishing something.

The respondent on his part at page 55 of the record of proceedings, answered that;

Q: The petitioner also in her evidence in chief told this court that as a pastor, you have been receiving large sum of money known as pastor's appreciation. What is your response to that?

A: Yes, at every year around December we do have pastor's appreciation day for five (5) pastors including the senior pastor. It is usually on pledges and the amount that comes is shared by percentages. At the last pastor's appreciation, I got GH₵12,000.

Q: And what did you use that money for?

A: I used it for the children's fees, the upkeep of the home because since I married her, she never worked and she never assisted in any financial support.

Then at page 58 of the record of proceedings, under cross examination by learned counsel for the petitioner, respondent had answered;

Q: I put it to you that the GH₵12,000 appreciation you received was not used for payment of school fees.

A: *My lord, I did not say for only school fees.*

Q: *It was not used for school fees, maintenance or whatever. You did not us it for your family.*

A: *My lord, that is not true.*

When taken in context, these questions had been asked after respondent admitted that as a pastor, his accommodation was paid for and so was the utility save for the electricity which he had to top up. Respondent had also answered that he received a salary then and the church paid for the school fees of the children from the age of four years, although there was a cap as to how much was paid.

There is also ample evidence on record, that the respondent established a restaurant which folded up after the petitioner who was then managing it refused to continue doing so after engaging in an altercation with a neghbour.

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.

The case of ***Riberiro v. Ribeiro [1989-1990] 2 GLR 109*** provides a good guidance to a court when making decisions on financial provision. My consideration should not only be based on the need of the respondent but also on the financial strength of the petitioner as well as the standard of living to which the respondent was accustomed to during the marriage.

Any order for financial provision must be based on equitable grounds. Factors to be considered in arriving at an equitable decision include the earning capacities 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 the course of their over fourteen years of marriage, the parties did not acquire any property. Although the respondent obtained a higher education in the course of the marriage which may go a long way towards increasing his value and income, the same cannot be said of the petitioner. The petitioner for the most part of the marriage performed her duties as a wife and mother to the children and that gave the respondent the peace of mind to go about his duties as a pastor and also undertake various courses to better himself.

Now that they are no longer together, it is only fair that the petitioner would be placed financially in a position that would enable her to also do something to add value to her life. Any such sum must however, take into consideration the financial situation of the respondent as a pastor who has just started a new church. Accordingly, the respondent is to pay to petitioner the sum of thirty thousand Ghana cedis (Ghs 30,000) as financial settlement. The amount is to be paid within one hundred and twenty days (120) from the date of judgment. Failure to do so, 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)

VIVIENNE TETTEH FOR THE PETITIONER

FREEMAN K. NDOR FOR THE RESPONDENT