

IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 21ST OF OCTOBER 2022, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS) CIRCUIT COURT JUDGE

C5/203/2022

IN THE MATTER OF MATRIMONIAL CAUSES ACT 1971,(ACT 367)

AND

IN THE MATTER OF A PETITION FOR DIVOURCE BETWEEN

**CHRISTIANA NAADU OKO
ASOKWA KUMASI
AK 187-5462**

PETITIONER

VRS

**JERRY KOFI AVENOR
KWASHIEMAN, ACCRA**

RESPONDENT

JUDGEMENT

Petitioner, a spinster got married to Respondent a bachelor on the 18th of January 2018 in Accra under the ordinance marriage CAP 127. Parties however stayed apart after the marriage with Petitioner living in Kumasi and Respondent living in Accra. The marriage is blessed with two children aged 3 years and 1 year respectively. There has been no previous proceeding before any court in respect of this marriage. Petitioner contends that the marriage celebrated between the parties has broken down beyond reconciliation due to Respondent having committed adultery and unreasonable behaviour. Petitioner further stated that during the course of the marriage, parties acquired two plots of land at Amasaman and lying and erected thereon is an uncompleted two (2) bedroom house.

Petitioner there prayed the court for the following reliefs,

- i. that the ordinance marriage contracted between the parties be dissolved.
- ii. That the Petitioner be granted custody of the two children of the marriage with reasonable access to the Respondent.

- iii. A declaration that all properties acquired in the course of the marriage is a joint property of the parties and equitable distribution of same.
- iv. That the Respondent be ordered to maintain the two children of the marriage at a monthly sum of Two Thousand Ghana Cedis (GHc2000)
- v. An order for the Respondent to pay the school fees and health bills of the children of the marriage.
- vi. Alimony
- vii. Any further or other orders as the Honourable Court may deem fit or just.

Respondent denies all of Petitioner's allegations of committing adultery and unreasonable behaviour. He however admitted and also contended that the marriage has broken down beyond reconciliation but attributed it to Petitioner's unreasonable behaviour. Respondent also cross-petitioned the court for the following reliefs

- a. The ordinance marriage celebrated between the parties be dissolved.
- b. That the petitioner should be granted custody of the children of the marriage and the Respondent should be granted access to the children of the children.
- c. That the Respondent be made to bear the cost of the educational fees and expenses of the two (2) issues of the marriage whilst Petitioner bears the medical bills and expenses of the two (2) issues of the marriage.
- d. That the Respondent will provide monthly the sum of GHC1000 (one thousand Ghana Cedis) as maintenance.
- e. A declaration that the Petitioner has no interest in law or equity in the two (2) plots of land at Amasaman with uncompleted two (2) bedroom house situated thereon as it was acquired by the Respondent long
- f. before the commencement of the marriage

Both Petitioner and Respondent therefore assume the onus to lead sufficient evidence in support of their assertions and their relief(s). Before the hearing of the case however, parties entered into an agreement and subsequently filed terms of agreement in which they both agreed that the marriage celebrated between them has broken down beyond reconciliation. Parties in the said terms of settlement d further agreed on all other ancillaries issues. Despite this express consent to the dissolution of the marriage by the parties, there is only one ground for dissolution of a marriage under the laws of Ghana. Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 states “The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.” Section 2(3) of Act 367 provides “Although the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation.” The court is therefore mandated to satisfy itself by evidence that indeed the marriage between the parties has broken down beyond reconciliation before a grant of dissolution. Section 2(1) of Act 367, has outlined several instance which suffice as proof of break down of a marriage. A petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation.

In the case of **KOTEI V KOTEI [1974] 2 GLR 172, Sarkodee J** held as follows, “the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. But the petitioner is also obliged to comply with section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that section... proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation...It is accepted that proof of one or more of the facts set out in section 2 (1) is essential and that proof of one of them shows the marriage has broken down beyond reconciliation. It is also conceded that notwithstanding proof the court can refuse to grant the

decree of dissolution on the ground that the marriage has not broken down beyond reconciliation. It will be noted that the discretion given to the court is not a discretion to grant but to refuse a decree of dissolution. This means that once facts are proved bringing the case within any of the facts set out in section 2 (1) of Act 367 a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that special grounds exist justifying the exercise of the Court's power."

Petitioner's case per her evidence on oath is that Respondent had behaved in a manner that she cannot reasonable be expected to live with him as husband and wife. According to Petitioner, Respondent had extra marital affairs at his residence at Kwashieman with several women including one Gifty and Bernice and had reduced her to a stranger. Respondent per Petition She stated that Respondent never calls to communicate with her and the children and does not visit them also. She stated further that Respondent gives her cold shoulder for weeks and months at the least provocation and failed to be present during the birth of the second child of he marriage. According to her, Respondent shares flirty messages, illicit photographs and sexual videos of other women on social media platforms. She further stated that Respondent was emotionally and financially unsupportive and for over two years Respondent had parties have not had sex and have not lived as husband and wife. She contended that it is just recently that Respondent maintains the children with GHC800 a month. She stated that for the past four months [arties have failed to live under the same roof for the past four years. Attempts by families and friends to reconcile them had failed and she had agreed on terms with Respondent in resect of ancillary reliefs. A copy of the marriage certificate was admitted inn evidence as exhibit A.

Respondent on oath denied not being emotionally and financially supportive, eliciting photographs and sexual videos with women on any social media

platform. He contended that Petitioner refused to inform him she was pregnant with their second born let alone communicate her date of delivery and that during the delivery of their first child, he was supportive both through pre- natal and post natal stages of every pregnancy. Respondent admits that parties have not had sex for more than the past 2 years of the marriage. he further contended that Petitioner hardly communicated the welfare issues of the children with him but he has been supporting her with GHC600-GHc1000 every month. He again alleged that Petitioner was verbally abusive, not submissive and does not respect her. He admitted that attempts made by families and friends to reconcile them had proved futile.

The various allegations of unreasonable behaviour leveled against each other by the parties herein are not supported by any other evidence save their oral averment on oath by the parties. Repetition of the alleged unreasonable behaviour against each other in law is not sufficient proof of the said unreasonable behaviour where same is put in contention. Unreasonable behaviour varies and is determined on case-by-case bases. Determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behavior including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova's Charter. The test is objective". Also in the case of **Knudsen v Knudsen [1976] 1GLR 204, Amissah JA** stated that "the question therefore is whether the Petitioner established that the Respondent behaved in such a way that he could not reasonably be expected to live with her. Behaviour of a party that would lead to this conclusion would range over a wide variety of acts. It may consist of one act if of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.

"Petitioner in her evidence made several allegations of conduct of Respondent that was unreasonable for which reason she could no longer live with him and husband and wife. Respondent also made same allegations of unreasonable behaviour against the Petitioner. The allegations are as stated in the summary of their evidence above. Parties both denied the alleged unreasonable behavior complained of by each other. This put their various allegations in dispute and the need for proof of same. **Kpegah, JA.** (as he then was) in the Zabrama vs Segbedzi [1991] 2glr 221 case critically analysed the question of burden of proof in civil suits as stated in Mojalagbe vs Larbi & Others. In Zambrama's case, his Lordship stated that "The correct proposition is that, a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred." "proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true"

Both parties failed to challenge the evidence of the other in respect of the allegations of unreasonable behavior of the other under oath and also save mounting the witness box and repeating their assertions failed to lead any other evidence sufficient in proof of their assertions/respective claims that the other has behave in a manner that they cannot reasonably be expected to live as husband and wife. Petitioner and Respondent both having failed to discharge the burden of persuasion as to the existence of their respective assertions of unreasonable behaviour of the other they have failed to prove

that the marriage between them has broken down beyond reconciliation on grounds of unreasonable behaviour of the other.

The evidence of record however is to the effect that for the past four years, parties have not lived under the same roof, hardly communicates to the point that during the birth of the second child Respondent could not be present to support the Petitioner. There appears to be no trust between the parties as Respondent accused Petitioner of being abusive and no submissive with Petitioner alleging Respondent elicit sexual videos and photographs from other women. No sexual intercourse between the parties for the past two years and parties agreeing to the dissolution of the marriage. Further, both parties testify to the fact that attempts by their respective families and friends to reconcile their differences have proved futile. All these evidence satisfy the court that parties after diligent efforts are unable to reconcile their differences. Under section **2 (1f) of Act 367**, where the parties to the marriage have, after diligent effort, been unable to reconcile their differences, same is proof that the marriage has broken down beyond reconciliation.

Respondent herein does not only consent to the dissolution of the marriage but also cross-petition for dissolution of the marriage. Parties have further executed terms of settlement and filed same at the registry of the court on 17/5/2021. The court therefore is satisfied per the evidence on record that the marriage between parties herein has broken down beyond reconciliation as claimed by both parties in their petition and cross-petition. Accordingly Petition and cross-petition for dissolution of the marriage celebrated between the parties is granted as pray.

The Court hereby finds the said ordinance marriage celebrated between the Parties broken down beyond reconciliation. Petitioner's claim accordingly succeeds. The Court hereby decrees the ordinance marriage celebrated between the Parties on the 18th of January, 2018 in Accra at the Accra

Metropolitan Assembly be and same is dissolved today the 21st day of October, 2022.

As mentioned supra, the parties filed terms of settlement on 1/7/2022 and prayed the court to adopt same as consent judgment during their evidence on oath. Parties per their terms of settlement agreed as follows;

- a) That the Respondent shall be responsible for payment of school fees for the 2 (Two) children of the marriage.
- b) That the Respondent shall pay a monthly sum of GH&1,000.00 (One Thousand Cedis) as maintenance for the 2 (Two) children of the marriage.
- c) That the Respondent shall not settle the Petitioner financially.
- d) That the Petitioner shall be responsible for the medical bills of the 2 (Two) children of the marriage.
- e) That the Petitioner is not entitled to a share of the 2 (Two) plots of land situate at Amasaman with an uncompleted 2 (Two) bedroom house situated thereon as same was acquired by the Respondent before the celebration of the marriage.
- f) That the Petitioner be granted custody of the 2 (Two) children of the marriage while Respondent be granted access to the 2 (Two) children of the marriage.
- g) That the Terms of Settlement contained herein shall constitute the full and final settlement of all the reliefs endorsed in the Petition and Cross Petition, save relief (i) of the Petition and (a) of the Cross Petition of the Respondent.
- h) That the Court shall adopt the duly executed terms of Settlement as the Consent Judgment of the parties.

The court therefore adopts the above terms of agreement as consent judgment consequential to the dissolution of the marriage of the parties.

PARTIES PRESENT

**MR FITZ WILLIAMS H/B FOR MARY OKYERE FOR PETITIONER
PRESENT.**

MR HANS AWUDE FOR RESPONDENT PRESENT

**H/H AFIA OWUSUAA APPIAH (MRS)
(CIRCUIT COURT JUDGE)**

