

IN THE CIRCUIT COURT HELD IN ACCRA ON 10TH DAY OF MARCH, 2023
BEFORE HIS HONOUR SAMUEL BRIGHT ACQUAH, CIRCUIT COURT JUDGE

SUIT NO. C5/290/2022

GLORIA AKABOKA
H/NO. NA/TT/047
AMANFROM

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PETITIONER

VRS

PATRICK AJAAB AKAN-YIBI
H/NO. HE 36
SPENCER STREET
AMASAMAN-DOBLO-GONO

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RESPONDENT

COUNSEL FOR PETITIONER = PAUL DEKYI ESQ.
COUNSEL FOR RESPONDENT = JOSEPH AWAKPAKSA

FINAL JUDGMENT

WHEREFORE the petitioner prays as follows:

- (a) That the marriage between the parties herein be dissolved.
- (b) An order for custody of the minor child to the petitioner with reasonable access to the respondent.
- (c) An order that the respondent pays eight Hundred Cedis (Gh¢800) per month as maintenance and pay school fees and medical bills as and when they fall due.
- (d) Any further orders(s) as to this Honourable Court may deem fit.

Respondent was served and he cross petitioned thus;

- (a) Dissolution of the marriage between the parties
- (b) Custody of the issue of the marriage.

(c) Each party should bear his/her own cost of the litigation.

The court ordered for witness statement of both parties be filed and served, and both parties complied with the court order.

In petitioner's witness statement she stated a whole lot of unreasonable behaviour on the part of the respondent which includes; not taking care or maintaining the home, both physical and verbal abuses, doesn't stay at home, very autocratic, slow to respond to issues which even led to the loss of a baby and also being adulterous.

These allegations were denied by the respondent and went further to state that it is the petitioner who has those characters even seeing a man behind her husband.

The only issue for determination is whether or not the marriage has broken down beyond reconciliation as stated in section 1(2) of the Matrimonial Cause Act, 1971 (ACT 367) – The sole ground to grant a petition for a divorce is that the marriage has broken down beyond reconciliation.

Petitioner was called into the witness box to adduce evidence to support her allegations and was put under cross-examination and responded same. She was able to deal with all or most of the allegations made, and the burden of proof was shifted unto the respondent, but when he was called to defend same, he denied the opportunity, he told the court to use the evidence available to rule on the matter.

This means his witness statement was not sworn in to be admitted in evidence, no cross examination to confirm or deny any of the allegations.

Section 14 of EVIDENCE DECREE 1975 NRCD 323 - except as otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact, the existing or non-existence of which is essential to the claim or defence he is asserting.

SARFO V DOMFEH (1977) 1 GLR 282 at 295

"The standard of proof in a civil trial is by preponderance of probabilities"

This standard being discharged by Petitioner and when Respondent was called upon to deny failed to do so. The burden of proof had shifted unto the respondent and he failed to avail himself under cross examination as petitioner did. Witness statement not sworn in and cross examined on, it can't be considered by the court with the same weight as when he has gone through all the requirements of the law, hence the evidence of the petitioner will be more preferable to that of the respondent.

SECTION 2 of Act 367 partly states;

2(1) - (a) that respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with respondent – with this, petitioner alleges the respondent is a “sexual scavenger, but respondent when he was called upon to deny or confirmed, he refused the opportunity.

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent – verbal and physical abuses alleged to be meted out to petitioner by the respondent cannot be whittled down.

(f) that the parties to the marriage have, after diligent efforts, been unable to reconcile their differences.

The petitioner having been able to prove sections 2 (1) (a), (b) and (f) is able to satisfy the court that this marriage has broken down beyond reconciliation.

CHARLES AKPENE AMEKU V SAPHIRA KYEREMA AGBENU (215) 99 GMJ 202 –
“The combined effect of sections 1&2 of the Matrimonial Causes Act (Act 367) is that for a court to dissolve a marriage, the court shall satisfy itself that it has been proven on preponderance of probabilities that the marriage has broken down beyond reconciliation. That could be achieved after one or more, of the grounds in section 2 of the Act has been proved”

ASH V ASH (1972) 1 ALL ER 582 & 586 – “In the instant case, petitioner is required to adduce sufficient evidence in proof of section 2 of Act 367 to satisfy the court to rule that the marriage between the parties has broken down beyond reconciliation.

KOTEI V KOTEI (1974) 2 GLR 172 per SARKODIE J

-“In order to succeed in a petition for a divorce, petitioner has the burden on proving facts of the breakdown of the marriage. There must be in existence of at least one of the above mentioned conditions justifying the exercise of a court’s discretion to dissolve the marriage.

ALSO see HALL V HALL (1962) 1 GLR 1246 –

“First the conduct must be such that a reasonable spouse in the circumstances and environment of these spouses could not be expected to continue to endure.”

The court thereby is satisfied that the marriage between the parties has broken down beyond reconciliation by proving section 2(1) (a) (b) and (f). the marriage is therefore dissolved, marriage certificate issued to the parties on the day of the marriage is then cancelled and divorce certificate issued to the parties.

Then on the custody issue, the welfare principles is considered here. Petitioner has been able to convince the court that she is capable of handling the kids for their welfare.

“The cardinal principle formulated by the High Court in such cases was that the welfare of infants was paramount consideration”- NYAMOA V MANSU (1967) GLR 523 – 535 per ARYE J – But the next question we would like to ask is whether wealth and affluence are criteria for granting custody to parents? I think not. There must be other considerations. The parent must not only be capable and responsible but must satisfy the court that his habits and mode of life will be in the best interest of the children”

This characteristic the respondent was not able to prove since he didn’t allow himself to be cross-examined to bring some facts out, but the petitioner was able to satisfy the court that she can handle them in so far as their welfare is concerned.

There are children within the marriage and the respondent is ordered to pay Eight Hundred cedis (Gh¢800) monthly for the child’s maintenance, and also pays school fees and medical bills. The petitioner is also to assist in a small way – Gh¢600 a month maintenance is thereby ordered to be paid by respondent to petitioner for the maintenance of the children.

In the area of cost, petitioner prayed for the court to compel respondent to pay Gh¢8,000.00 , but upon taking some things into consideration, there is a child between the parties, much depends on the respondent to pay one thing or the other, the court don’t want to award anything that might cause the welfare principle of the child, they still have things in common. The court therefore dismisses the issue of cost.

DECISION:

MARRIAGE DISSOLVED.

(SGD)

**H/H. SAMUEL BRIGHT ACQUAH
CIRCUIT COURT JUDGE**