

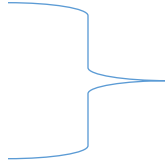
IN THE CIRCUIT COURT HELD IN ACCRA ON 10<sup>TH</sup> DAY OF MARCH, 2023  
BEFORE HIS HONOUR SAMUEL BRIGHT ACQUAH, CIRCUIT COURT JUDGE

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SUIT NO. C5/229/2022

GRACE ANTWI  
H/NO. GSMA 233  
WIABOMAN PANBROS  
ACCRA



PETITIONER

VRS

ERIC ANTWI  
H/NO. GS-0583-5020  
PANBROS - ACCRA



RESPONDENT

COUNSEL FOR PETITIONER – KWABENA K. YIADOM ESQ.

COUNSEL FOR RESPONDENT – YVONNE AMEGASHIE ESQ.

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**FINAL JUDGMENT**

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**WHEREFORE** the petitioner prays that

- i. The marriage celebrated in 2003 be dissolved.
- ii. The petitioner should be ordered to have custody of the children namely:  
RICHARD DWAMENA ANTWI – 17 YEARS, FRANCIS DEBRAH ANTWI – 12  
YEARS, ABENA KWWAKYEWAA ANTWI – 9 YEARS AND NANA YAW  
ANTWI – 6 YEARS.
- iii. The respondent be ordered to pay lump sum financial provision and  
maintenance based on the respondent's financial standing

- iv. The under listed properties acquired during the subsistence of the marriage be equitably shared 50% namely:
  - a. A chamber and hall residential property at Wiabo, Panbros.
  - b. A plot of land at Amasaman
  - c. A plot of land at Kwahu Bepong
  - d. Land at Panbros be settled on the petitioner
  - e. Cost, including lawyer's fee.

This petition when served on the respondent also cross petitioned that'

An order for the parties to be directed to Court Connected ADR to attempt amicable resolution of their differences. parties were referred to ADR, but the settlement broke down, even though both parties agreed that respondent should pay a monthly maintenance allowance of Gh¢1200 which respondent failed to pay. Counsel for petitioner moved the matter again in court for maintenance allowance and the court confirmed same Gh¢1200 to be paid by the respondent, but on record he is not paying, even the Gh¢400 he agreed to pay, he is not paying.

The matter was then referred back to court for final determination.

The court ordered parties to file witness statement, petitioner complied but the respondent never filed his and elected to give viva voce evidence.

#### **WITNESS STATEMENT OF PETITIONER, GRACE ANTWI**

That there are four (4) children of the marriage and the matter was referred to ADR where an order was made for respondent to pay GH¢1200 monthly allowance to the respondent but did not comply.

That the respondent has behaved in such a way that she the petitioner cannot reasonably be expected to live with respondent whose conduct was unbecoming of a judicial staff, hence the marriage has broken down beyond reconciliation.

It is on record that petitioner was subjected to domestic violence, both physical, mental emotional pain and suffering to the extent of throwing the petitioner out of the matrimonial home.

Respondent has consistently failed to maintain the home and the matter was reported at the family and Juvenile Court, Accra. Petitioner was forced by circumstances to vacate the matrimonial home since February, 2022.

That respondent leads an adulterous life with another woman through which he has a child out of that, within the same community that we live.

Several attempts had been made to reconcile our differences, even a letter from the counsel for the petitioner never yielded any positive results, hence the petition.

The case for the respondent is that the marriage between them has not broken down beyond reconciliation. That petitioner left the matrimonial home on her own volition without any prior notice to the respondent.

It is also the case of the respondent that, even though the petitioner has been so unreasonable towards the marriage as a whole, he still loves the petitioner and don't agree to the divorce.

That he took a loan for petitioner to set up a shop but Petitioner doesn't render an account. But for his adulterous life, respondent further explained that petitioner denied him sex and he found comfort in a certain lady which he has a child with. Respondent also confirmed some attempts were made at reconciling their differences but petitioner failed to cooperate.

Respondent also claim the matrimonial home was solely put up by himself without any help from the petitioner. That petitioner is not entitled to any of her reliefs.

The issue for the court to settle is whether or not the marriage has broken down beyond reconciliation as stated in section 1(2) of Matrimonial; Cause Act, 1971 (Act 367)

- The sole ground for granting a petition for divorce is that, the marriage has broken down beyond reconciliation.

Section 2(1) of the same Act 367 also gives the grounds that the court could satisfy itself that the marriage has broken down beyond reconciliation.

Section 2(1) (a) – That respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; - This was confirmed by the respondent himself to the effect that he has a baby out of that adulterous life

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent the adulterous life, the unreasonable behaviors enumerated by the petitioner etc.

(f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences – This was stated by the petitioner and confirmed by the respondent.

Sections 10, 11, 12, 13 and 14 puts the burden on the petitioner to prove that the marriage has broken down beyond reconciliation, since the respondent denied that they are not there yet – **ZABRAMA V SEGBEDZI (1991) 2 GLR 221** – “ A person who makes an averment or assertion which is denied by his opponent was under the burden to establish that his averment or assertion is true.

And he does not discharge their burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly be and safely inferred”

**CHARLES AKPENE AMEKU V SAPHIRA KYEREMA AGBENU (2015) 99 GMJ 202**

– “The combine effect of sections 1 & 2 of the Matrimonial Causes Act 1971 (Act 367) is that for a court to dissolve the 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.

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

In order to succeed in a petition for a divorce, a petitioner has the burden in 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 (1982) 1 WLR 1246**

**ASH V ASH (1972) 1 ALLER 582& 586**

Even though the respondent claims he likes his marriage and that the stage of the marriage is nowhere near that of breaking down beyond reconciliation, the court is satisfied and thinks it is true that the respondent likes his marriage then he doesn’t protect his marriage from breakdown beyond reconciliation. On record and per the conducts of the parties especially that of the respondent, the marriage has broken down beyond reconciliation, hence the marriage is dissolved effective today 10<sup>th</sup> Much 2023, marriage certificate cancelled and issue Divorce Certificate to the parties.

Then the issue of custody which both parties are praying the court to grant to each of them, the court took into consideration the welfare principle of the three (3) children.

**THE CHILDREN’S ACT 1998 (ACT 568)**

Section 2 – The best interest of the child shall be paramount in any matter concerning a child, and shall be the primary consideration by any court, institution or other body in any matter concerned with the child.

Section 45 – Subject to section 45(1) a Family Tribunal shall also consider

- (a) the age of the child
- (b) that it is preferable for a child to be with parents except where his rights are persistently being abused by his parents.
- (c) the views of the child if the views has been independently given
- (d) that it is desirable to keep siblings together
- (e) the need for continuity in the care and control of the child and
- (f) any other matter that the Family Tribunal may consider relevant.

**ANTWI V ANTWI (1962) IGLR 321 -324**

Per APALOO J as he then was; - “In considering custody, I conceive that I must bear in mind the welfare of the children and consider where their interest will be served”

**NYAKOA V MANSU (1987) GLR523-535 ARCHER J** as he then was – “The cardinal principle formulated by the High Court in such cases was that the welfare of the child of in facts the paramount consideration ---But the next question one would ask is whether wealth and affluence are criteria for granting custody to parents, I think not. There must be other consideration. The parent must not only be capable and responsible but must also satisfy the court that his habits and mode of life will be in the interest of the children”

From the above authorities, the petitioner has been with the three children all around and there is no need to change their environment, the need to keep the children together, she has what it takes to take care of the children and therefore grants the three children to the custody of the petitioner with reasonable access to the respondent.

With the issue of payment of lump sum that petitioner is praying this court to order the respondent to pay to the petitioner, on record respondent's attitude towards court orders very poor and shows signs of disrespect to the court as a whole. Family Tribunal ordered respondent to pay in the interim Gh¢1200 for the maintenance of the three children but blatantly refused to pay. He himself stated in his statement of case filed in court that he can only pay Gh¢400 maintenance allowance for the maintenance of the three kids but that one too he has refused to pay. In the presence of the court he boldly said he can't pay and not paying too. The court does not want to give any order that it is not sure of its execution. Hence will refuse ordering for a physical cash payment but will rather opt for transfer of property in lieu. So that the petitioner can single handedly take care of the three kids in case respondent refuses to perform his fatherly duties.

During the trial it came up that the parties during the subsistence of the marriage, they built a shop which the petitioner was operating, which the respondent was consistently tormenting her, the court issued instructions to the respondent to abate that conduct, he disobeyed the court's order petitioner was harassed by Respondent to vacate the shop and she moved from the store and rented it out to a third party and used the fund to take care of the children school, but respondent still chased them out, and the court was called upon by the counsel or petitioner to issue an order to restrict the respondent to give the tenants peaceable enjoyment of same. This the court did. The court finally orders that the store and the adjoining land be conveyed to the petitioner for her use to take care of the three children.

However, the property at Amasaman and Kwahu Benpong also be settled on the respondent.

The Family Tribunal ordered the respondent to pay monthly maintenance allowance of Gh¢1200 which was confirmed by this court but respondent in his statement of case

filed in this court said he will pay Gh¢400, but still is not paying. The court orders payment of Gh¢400 for the three children as maintenance allowance. No order as to cost.

DECISION:

MARRIAGE DISSOLVED.

H/H. SAMUEL BRIGHT ACQUAH

CIRCUIT COURT JUDGE