IN THE CIRCUIT COURT OF JUSTICE HELD IN HO, VOLTA REGION ON TUESDAY, THE 1ST DAY OF AUGUST, 2023 BEFORE HIS HONOUR

MR. FELIX DATSOMOR, ESQUIRE, CIRCUIT COURT JUDGE

SUIT NO. C5/2/2022

BETWEEN

GRACE NAA DEI ASHIE
[REGINA AMEYE'S HOUSE
BEHIND HO TECHNICAL UNIVERSITY
HO] ***…PETITIONER***

AND

EDWARD KWAME YAMOAH ***……. RESPONDENT***
[UNITED STATES OF AMERICA]

J U D G M E N T

Grace Naa Dei Ashie (hereinafter referred to as the petitioner) approached the civil altar of this court with a petition on 12 May 2022 seeking an order of the court dissolving the marriage between her and Edward Kwame Yamoah (hereinafter referred to as the respondent). Apart from this relief, the petitioner sought for an order granting custody of the only child of the marriage to her with reasonable access to the respondent. The petitioner also sought for an order directing the respondent to maintain the only issue of the marriage till she reaches the age of majority.

The petitioner got lawfully married under the Marriage Ordinance (Cap 127) to the respondent on 20 April 2013 at St. Bartholomew Anglican Church, Teshie, Accra. After the marriage ceremony, the parties lived separately for a while due to the nature of work each of them was doing at the time but later cohabited briefly in Ho. Though both parties are citizens of Ghana, the respondent is currently resident in the United States of America whereas the petitioner is domiciled in Ghana. There is one issue of the marriage aged 9 years.

It is the case of the petitioner that the marriage has irretrievably broken down beyond reconciliation because the respondent had left for the United States of America for the past 4 years and whiles there, he requested that the petitioner sends their marriage certificate to someone in Accra for purposes of divorce. The petitioner said she refused to send the marriage certificate to the third party in Accra as directed by the respondent and due to her refusal so to do, the respondent has neglected her and the only issue of the marriage. According to the petitioner, the respondent even told her that he has met a Nigerian woman who was willing to help him facilitate the processing of his documents. Flowing from this, the petitioner alleged that the respondent has behaved in such a way that she cannot reasonably be expected to live with him and that the insensitive conduct of the respondent has caused her much anxiety, distress and emotional pain. She further testified that she and the respondent are no longer cohabiting as husband and wife for four years since the respondent left for the United States of America and that the matrimonial relationship between them has completely ceased. This, according to her, is due to the fact that communication between them has ceased and they no longer interact on any level. The petitioner accused the respondent of not communicating or responding to any text or WhatsApp messages that she sent to him since the time she refused to honour his request of sending their marriage certificate to someone in Accra. To substantiate that allegation, the petitioner tendered in evidence copies of WhatsApp

messages she sent to the respondent which the respondent refused to acknowledge and or reply thereto as Exhibit "B". She lamented that though there were indications that the said WhatsApp messages were read by the respondent, the respondent did not reply to them. The petitioner also accused the respondent of not maintaining her and the only issue of the marriage regularly and that that conduct of the respondent has subjected her to a heavy financial burden. The petitioner therefore hinged her petition for divorce on the ground that the respondent has deserted her and the only issue of the marriage for four years now. By this, the petitioner accentuated the fact that the marriage between her and the respondent has broken down beyond reconciliation as they cannot reasonably live as husband and wife and that all attempts to reconcile their differences between them yielded no positive result.

The respondent testified through his lawful attorney known as Albert Robertson who happens to be the younger brother of the respondent. He confirmed that the respondent is currently ordinarily resident in the United States of America.

It is the case of the respondent that though he has been away in the United States of America for four years now, there has not been break in communication between the parties contrary to the position taken by the petitioner. He also exhibited some documents hereinafter described as Exhibit "2" series to buttress his stance. The respondent alleged that he is battling with his documentation up until now and that it is that state of affairs which has affected his opportunities for work in the United States of America but not that he has neglected his parental responsibilities towards their child. Further, it is the case of the respondent that he remitted the petitioner on monthly basis until January 2022 when he lost the work he was doing in the United States of America. According to the respondent, he informed the petitioner about his predicament yet the petitioner is feigning ignorance to his surprise and shock. He however stated that he has never engaged in any form of behaviour which could be termed as unreasonable and that

despite the hardships that he was going through, he never shirked his responsibilities but was committed to continuing to remit money on monthly basis for the upkeep or maintenance of the child. The respondent also accused the petitioner of having threatened to divorce him way before he even left for the United States of America and that she saw his leaving for America as a golden opportunity to divorce him. In his view, the respondent believes that by travelling to the United States of America was for the good of all of them as parties and their child and so the petitioner should have exercised a little patience. He also emphasized the fact that he has been in constant communication with the petitioner and hence the petitioner knew about his current situation. Though, according to the respondent's case, he is not keen on the divorce, he cannot force the petitioner to continue to be his wife against her wishes and therefore prayed the court to grant her the divorce she has longed for all these while. He alleges that the marriage under siege has broken down beyond reconciliation due solely to the behaviour of the petitioner. Based on the foregoing, the respondent cross-petitioned for the dissolution of the ordinance marriage between the parties and further prayed for access to the child in issue as well as an order directed at him to maintain the child on monthly basis with an amount of GH¢500.

Considering the nature of the evidence led in this case, I deem it inappropriate to constipate the parties with so much diction in coming to a conclusion on the matter. The matter is a simple one and ought to be treated and/or dealt with as such.

This matter is an action inter parties and thus the duty of the court is limited to defining the rights and obligations of only the adverse parties in the light of the claim, evidence presented and the existing law. *See:* ***Grumah v. Iddrisu [2013-2014] 1 SCGLR 413 at 427*** *per Georgina Wood, CJ.*

In attempting to resolve the main issue(s) identified in these proceedings, I will endeavor, as best as I can, to advert my mind to any collateral or ancillary issue(s) which may rear its head in this delivery before drawing down the curtains on this matter.

Before proceeding any further with this judgment, I wish to state that the law governing the dissolution of monogamous marriage in Ghana is the Matrimonial Causes Act, 1971 (Act 367). According to section 1 of the said law, the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation and in determining whether a marriage has broken down beyond reconciliation, the Petitioner must be able to bring himself/herself within that omnibus ground provided by the law. Section 2(1) of the Act 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:

> *(a) that the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent;*
>
> *(b) that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;*
>
> *(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;*
>
> *(d) that the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce, provided that the consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the*

Court may grant a petition for divorce under this paragraph despite the refusal;

(e) that the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or

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

What I gather from a cursory perusal of the instant petition is simply that the respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. This finding accords with the Petitioner's pleading in paragraph 10 of the petition when he averred that "the respondent has behaved unreasonably to the effect that the Petitioner cannot reasonably live with the respondent as a husband and wife." In my view, this assertion by the Petitioner finds expression in section 2(1)(b) of Act 367 as his ground for seeking the dissolution of his marriage with the respondent.

I recall that the respondent, in his response to the petition, also took a stance that shows, inferentially, that he is not opposed to the dissolution of the marriage but I must hasten to state that the fact that the respondent seems unopposed to the dissolution of the marriage must not, and in fact, cannot lead to the conclusion that the Petitioner must automatically be granted the dissolution of the marriage she is seeking for. By law, even if the parties are *ad idem* on the dissolution of their marriage, the court is duty bound to make the required enquiry to satisfy itself that the marriage had indeed broken down beyond reconciliation. See: ***Ameko v. Agbenu (2015) 91 G.M.J*** at page 211. In that case, the Court of Appeal held at page 209 as follows:

"The combined effect of Sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a Court to dissolve a marriage, the court shall satisfy itself that it has been proved on the 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 have been proved. The Court is further mandated to inquire into the facts alleged by the parties to the suit. Section 2(2) and (3) of the Matrimonial Causes Act provides as follows:

> *"(2) On a petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the Petitioner and the respondent.*
>
> *(3) 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 satisfied, on all the evidence, that the marriage has broken down beyond reconciliation."*

Moreover, in a decision given by the Court of Appeal on 23 January 2018 in the case of ***Baffour v. Anaman [2018-2019] 1 GLR 473,*** the Court held per holding 2 of the report that:

"A petitioner was under a duty not only to plead any one of those facts in section 2(1) of the Matrimonial Causes Act, 1971 (Act 367), but must also prove them. It was flowing from the evidence that the court could determine whether the marriage had broken down beyond reconciliation or not. The trial court therefore erred when upon mere statements by the parties that they were no longer interested in the marriage, the court proceeded to make a finding that the marriage had broken down beyond reconciliation, and purported to dissolve same. The marriage contracted between the parties had therefore not been properly dissolved. Consequently, the

instant court ordered the trial court to take evidence and make a proper determination as to whether or not the marriage had broken down beyond reconciliation."

In ***Adjetey & Another v. Adjetey [1973] 1 GLR 216,*** Sarkodee J held per holding 2 of the report thus:

"On a proper construction of section 2(3) of the Matrimonial Causes Act, 1971 (Act 367), the court could still refuse to grant a decree even where one or more of the facts set out in section 2 (1) had been established. It was therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage had broken down beyond reconciliation would not be enough."

To show fidelity to the law as recounted in the authoritative judicial pronouncements cited *supra,* and in my quest to ascertain whether the marriage between the parties has indeed broken down beyond reconciliation, I have taken pains to comb the entire evidence on record and also carefully and anxiously examined all the exhibits that the parties have tendered in evidence. I find as a fact that the marriage between the parties herein has indeed broken down beyond reconciliation. My reasons for taking this view are not far-fetched and I hereby proceed to articulate them for the benefit of the parties.

It is observed that there were a lot of instances where the petitioner sent the respondent WhatsApp messages which the respondent indeed read but failed to and/or refused to respond to them. It appears anytime that the petitioner sent any WhatsApp message to the respondent in the month of September 2020, the respondent never responded to them even though there is clear indications that he read them. Aside that, there were other dates on which the petitioner sent WhatsApp messages to the respondent but received

no response even though the respondents had read them. These straddled several dates from September 2020 to December 2021. Even when what purported to be bills of school fees in respect of the child of the marriage were sent to the respondent through WhatsApp, there were no response received thereto from the respondent. Ordinarily, it is a man who has lost interest in his marriage that is likely to behave in that manner such as ignoring messages sent to him by his wife. I find from the exhibit tendered in evidence by the respondent that there were some remittances made to the petitioner by the respondent but the transactions contained in the said record were undated. I was therefore denied the opportunity of ascertaining with specificity the particular time or duration in which those remittances were made, whether they were made before or during the pendency of the instant petition. But be that as it may, there is no doubt that at least the respondent has remitted the petitioner before. The frequency of the remittances is what I am unable to ascertain no matter how hard I try. The exhibits of the respondent did not help the court in that regard. I am therefore constrained to agree with the petitioner when she said under cross-examination that the respondent was sending money for maintenance for some time till he stopped for a whole year and continued till sometime December 2022 when he paid the child's school fees for the first time. Owing to that, I can only resolve the maintenance issue by making a firm order to that effect before drawing down the curtains on this matter.

I am equally compelled to accept the testimony of the petitioner under cross-examination that the respondent used to communicate with her through various means including WhatsApp but there was a break in communication for a year till she approached the court with the instant petition that the communication started all over again. The petitioner was quite candid with the court when she said that the respondent made her aware that because his documentations were not in order he was hiding before doing some menial jobs. Of course, I can conveniently take judicial notice of the fact that once

the respondent's documentations are not regularised, he cannot have permit to work in the United States and perhaps if he should leave the United States prior to regularising his stay there, he cannot re-enter the United States with ease. This is perhaps why he has not been to Ghana ever since he left for the United States. But even in the eyes of these stark realities, the respondent cannot reasonably be understood when he broke communication with his wife whom he is expected to share his burdens with. It is *communis opinio* that marriage thrives essentially on communication as one of the bedrocks of marriage. Therefore whenever there is no frequent communication between married couple, the party at whose behest communication had broken down would be seen or deemed as having lost interest in the marriage. And when all efforts made to resuscitate communication in the marriage fails, then the marriage would be deemed as having broken down irretrievably beyond reconciliation.

Regarding the child of the marriage, the record shows that she is currently a class 4 pupil. This fact was conceded by the respondent's lawful attorney. However, when counsel for the petitioner suggested to the respondent's lawful attorney that the respondent has neglected his duty of paying school fees for the child, he gave a very dismissive answer which left much to be desired. He said *"I believe there was a communication between the parties"*. And when he was further asked by counsel for the petitioner that the neglect of the respondent to pay the child's fees had put undue financial burden on the petitioner, the respondent's attorney simply admitted that fact by responding in the affirmative. Counsel for the petitioner then put to respondent's attorney that the said financial burden had caused the petitioner so much pain, distress and anxiety and the respondent's lawful attorney answered in the affirmative and added that there was a communication between the parties in that regard. He even admitted that the petitioner communicated to the respondent her pain due to the respondent's inability to pay the child's school fees but there was no response thereto. The record is replete with facts that the petitioner took

steps to talk to the relations of the respondent and friends and asked them to talk to the respondent ostensibly in respect of their marital differences but there was obviously no headway made. The lawful attorney of the respondent told the court that the petitioner behaves well and responsibly towards the respondent but when pushed regarding his testimony that the marriage between the parties have broken down beyond reconciliation due solely to the conduct and behaviour of the petitioner when he knows that the petitioner had never behaved or conducted herself in a manner that could lead to the breakdown of the marriage beyond reconciliation, he only answered and said that fact was more of a personal issue to both parties and that such issues were not communicated to him.

Clearly, from the findings made so far in this delivery, I am constrained to prefer perilous certainty to cautious cowardice in holding that the marriage under siege has indeed broken down beyond reconciliation and that it is the unreasonable behaviour of the respondent in ignoring the petitioner, his own wife, that has contributed greatly to the cracks that have developed in the marriage. I do not think that under the circumstances the petitioner would be reasonably expected to live with the respondent as husband and wife. In ***Knudsen v Knudsen (1976) 1 GLR 204,*** it was held that the test to be applied in determining whether a particular petitioner could or could not reasonably be expected to live with the particular respondent was an objective one, and not a subjective assessment of the conduct and the reaction of the petitioner. It was further held that in assessing such conduct, the court had to take into account the character, personality, disposition and behaviour of the petitioner as well as the behaviour of the respondent as alleged and established in the evidence. According to Amissah, JA speaking for the Court of Appeal in that case, the conduct might consist of one act if of sufficient gravity or of a persistent course of conduct or series of acts of differing kinds, none of which by itself might be sufficient but the cumulative effect of all taken together would be so. In my view, the

Petitioner did not refer to only one isolated act and pointed to it as grave and unreasonable. There were several of them as recounted in her testimony. The position of the law is that it is not enough merely to refer to an isolated act which infuriated one spouse and point to it as grave and unreasonable and that to succeed, a petitioner had to show that the respondent's conduct had reached a certain degree of severity, and must be such that no reasonable person would tolerate or consider that the complainant should be called on to endure. See: ***Hughes v. Hughes (1973) 2 GLR 342.***

Before I rest this delivery, I recall that Counsel for the Petitioner made a prayer for cost including solicitor's fees to be awarded against the Respondent in favour of his client. This prayer aroused my curiosity since I could not find anywhere in the evidence the basis for asking for cost inclusive of legal fees when the Petitioner failed to provide proof of the quantum of legal fees she incurred as a result of this suit. The decision of the Supreme Court in the case of ***Owuo v. Owuo [2017-2018] 1 SCLRG 730*** comes in handy. In holding 5 of the report, it was posited as follows:

> *"There was no basis for the award of costs including the payment of solicitor's fees to the respondent. The respondent made no attempt at the High Court, to demonstrate, by way of invoices or receipts etc, how much costs the respondent incurred in payments to her lawyer. Furthermore, the Court of Appeal, in making the order for the award, failed to state specific sums in relation to both the costs and the legal fees, and left the issue at large, a situation which was far from satisfactory. The order is therefore set aside."*

Taking inspiration from the above quote, I cannot but to rehash the view that the Petitioner made no attempt to demonstrate before this court, by way of cogent evidence in the form of invoices or receipts or any other legally acceptable means etc, how much costs she incurred in payments to her legal counsel. For this reason, I am only inclined to award what is fair and reasonable, judging from the circumstances of this case and taking

into account the fact that the award of costs is at the discretion of the court pursuant Order 74 rule 1 of CI 47.

In the nutshell, the petition succeeds in its entirety, and without much ado, I hereby grant the reliefs sought by the petitioner in the following terms:

a) *The Ordinance Marriage between the parties which was celebrated on 20th April 2013 at St. Bartholomew Church, Teshie, Accra is hereby dissolved.*

b) *Custody of the child of the marriage is hereby granted to the petitioner with reasonable access to the respondent.*

c) *The respondent is hereby ordered to pay an amount of GH¢1,000.00 on the first day of every month effective 1st September 2023 as maintenance for the upkeep of the child in question.*

d) *Cost of ¢2,000.00 is hereby awarded against the respondent.*

[SGD] H/H FELIX DATSOMOR
(CIRCUIT COURT JUDGE)
01-08-2023

LEGAL REPRESENTATION:

SENANU AFAGBE, ESQUIRE, APPEARS FOR PETITIONER

GODWIN KPOBLE, ESQUIRE, APPEARS FOR RESPONDENT