

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
THURSDAY THE 29TH DAY OF JUNE, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO. C4/13/2021

BETWEEN:

DORIS OSEI BOATEMAA
KOTOKU
GPS: 1034-4607
PETITIONER

...

AND

JOSHUA ADDAE
NEW ACHIMOTA
ACCRA
RESPONDENT

...

PARTIES: PETITIONER PRESENT
RESPONDENT ABSENT

COUNSEL: EMMANUEL OPOKU SOMUAH ESQ. FOR PETITIONER
ABSENT

JUDGMENT

By a Petition filed on 20th October, 2020, Petitioner claims against Respondent the following reliefs:

- a. “An order of dissolution of the marriage celebrated between the parties.
- b. Custody of the issues to be granted to the Petitioner with reasonable access to the Respondent.
- c. An order for the Respondent to maintain the issues of the marriage with a monthly allowance of Six Hundred Ghana Cedis (GH¢600.00).
- d. An order for the Respondent to pay the issues school fees, feeding fees and bills as and when they may fall due.

- e. Equitable distribution of the land at Kotoku, Accra.
- f. That the court orders the Respondent to make a lump sum payment of Twenty Thousand Ghana Cedis (GHS20,000.00) to the Petitioner.
- g. Any other order(s) that the Honourable Court may deem fit.”

Petitioner says that the Parties got married under customary law on 4th December, 2010 and on 19th February, 2011, same was converted into a monogamous marriage under CAP 127 at the Church of Pentecost, Ankrahman Assembly, Accra. She says that they cohabited at Petroleum, New Achimota, Accra after the marriage and there are two issues to the marriage aged 8 and 5 years as of the time the Petition was filed. According to her, the Respondent has behaved in a way that she cannot be reasonably expected to live with Respondent. Petitioner says that the marriage between the parties has broken down beyond reconciliation and after diligent efforts by the family, they have been unable to reconcile.

Respondent entered Appearance on 5th January, 2021 and filed an Answer and Cross Petition on the same date. He admits that the marriage has broken down beyond reconciliation. He denies allegations of his unreasonable behaviour. He says that the Parties have not lived together as man and wife for a continuous period of at least two years and therefore cross petitions as follows:

- (a) “The marriage between the parties be dissolved.
- (b) Custody of the issues to be granted to the Respondent with reasonable access to the Petitioner.
- (c) That Petitioner is not entitled to reliefs (e & f) of the Petition.
- (d) Any other order(s) that the Honourable Court may deem fit.”

The sole ground for divorce under Ghanaian law is found in Section 1(2) of the **Matrimonial Causes Act, 1971 (Act 367)**. It states as follows:

“The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.”

In proving the breakdown of marriage, the Petitioner has a burden of proving one or more of the factors listed under Section 2(1)(a) - (f) of Act 367. In this case Petitioner bases her claim on the ground of behaviour. Section 2(1)(b) of the **Matrimonial Causes Act, 1971 (Act 367)** provides as follows:

“2. Proof of breakdown of marriage

(1) 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:

(b) that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;”

From the evidence, it is not in dispute that Petitioner moved out of the matrimonial home with the issues on 20th December, 2018. The reasons given were that the Respondent was not having sexual intercourse with her, and she had to plead for him to do so once every six months. She also testified that Respondent had impregnated his paramour and put her in an apartment and usually spent days with her. Petitioner testified that she used to have nightmares and felt beaten whenever she woke up. As such the Respondent had constructively deserted her. Respondent on the other hand testified that he was not aware Petitioner was packing out until a neighbour called him to inform him. He denied having extra marital affairs or denying Petitioner sex.

In the case of **ARKU v. ARKU AND ABRAHAM [1965] GLR 269**, the court held that:

“H. was guilty of constructive desertion as he was guilty of conduct equivalent to driving W. away. W. therefore did not desert H. without just cause or without his consent.”

Under cross examination, Petitioner admitted that her basis for saying Respondent was having affairs was because she had heard so and seen sperms in his boxers, so she was suspicious. I am unable to find credible evidence of the allegations made against Respondent or that Respondent gave his consent to Petitioner to move out of the matrimonial home. I am thus unable to find that Respondent constructively deserted Petitioner.

Section 2(1)(f) of Act 367 provides as follows:

“that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.”

I find on the evidence that though meetings were held by the families, the differences between the Parties remained unresolved hence the customary marriage was dissolved by returning the drink to Respondent by Petitioner’s family. Though in law the customary marriage failed to subsist after its conversion to a monogamous marriage, I find by the conduct of the parties that they both recognise the marriage as having ended.

I therefore satisfied under section 2(3) of Act 367 that the marriage between the Parties has broken down beyond reconciliation. I therefore decree that the marriage under the ordinance celebrated between the Parties at the Church of Pentecost, Ankrahman Assembly, Accra in the Greater Accra Region on 19th February, 2011 is hereby dissolved on the ground that the marriage has broken down beyond reconciliation.

I shall now turn to custody of the issues of the marriage. Petitioner prays for custody of the issues. Respondent also prays for the issues of the marriage. From the evidence before the court, the issues are currently in the custody of

Petitioner. Respondent currently lives at Dambai and is unemployed. During cross examination of Respondent by Counsel for Petitioner he stated as follows:

“Q: In your reliefs before this Court you pray for custody of the issues, do you still stand by this?

A: I still stand by this. When the issues are with Petitioner she would demand for upkeep, if I don't get for her she will flare up but if the issues are with me, they will go to school and the standard of living is not as high as Accra and I can take care of them. That is why.”

This answer by Respondent clearly shows that if granted custody, he intends to send the children with him to Dambai. However, very shortly after saying this, he stated as follows:

“Q: Where do you intend to take the children if awarded custody

A: I will come back to Accra”

It is apparent that Respondent was not being truthful by this evidence. This is especially so when he had stated that the cost of living is high in Accra. Respondent's own testimony before this court is that he relocated from Accra to Dambai in the Oti Region to do farm work because he was unable to secure a job in Accra, so he is currently unemployed.

I find that Petitioner has been the primary care giver of the issues and the issues have been accustomed to living in Accra and attending school in Accra, therefore it will not be in the interest of the welfare of the children to grant custody to the Respondent who clearly intends to have them removed from their current environment. Based upon the foregoing, I shall award custody of the issues to Petitioner with reasonable access to the Respondent.

I shall turn to the issue of maintenance and financial provision. The evidence before this court is that Petitioner is a seamstress who has her container on land purchased by Respondent, and it is out of the proceeds of this sewing that Petitioner maintains herself and the issues. The evidence is also that Respondent is unemployed, and this is not refuted. Respondent admits that he ensures that he provides food stuff for the family at every opportunity.

Section 20 of Act 367 provides as follows:

“The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable.”

In **GAMBLE v. GAMBLE [1963] 1 GLR 416** it was held as follows:

“The court will not look with sympathy upon a wife who makes no effort to secure employment but is content to subsist on an award of alimony.”

In the same vein, Respondent must not remain content in doing no work and expecting Petitioner to solely shoulder the responsibility of taking care of the issues. There is however no evidence of capital assets of Respondent to make an order for lump sum payment, aside the land at Kotoku. Respondent testified that the said land was not acquired during the subsistence of the marriage as he acquired same in 2009 and married Petitioner in 2011. He tendered an indenture dated 29th November, 2009 in support of his claim.

In the case of **BARAKE v BARAKE [1993-94] 1 GLR 635** it was held as follows:

“Under section 20 (1) of Act 367, the court had power to grant financial provision where married couples were divorced. The basic consideration was

not based on proof of ownership or contribution towards acquisition of the properties to be awarded but on the needs of the parties.”

Having regard to the fact that Petitioner’s shop is situated on the said land and the proceeds of same are used in the upkeep of the family, I order that Respondent conveys to Petitioner an equal share in the said land.

I do not think it would be right or just for the court to allow Petitioner to maintain the issues while Respondent does no work. Respondent claims he left Accra because he lost his job due to Covid-19 and this was in the year 2020; it has therefore been two years since he became unemployed. Respondent is therefore to take diligent steps to gain employment to assist with the maintenance the issues. Once employed, Respondent is to pay an amount of Three Hundred Cedis (GH¢300.00) a month as maintenance of the issues. I shall make no order as to costs.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**