

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 27<sup>TH</sup> DAY  
OF JANUARY, 2023 BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE

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SUIT NO.C5/32/21

FREDRICK AGYAPONG ----- PETITIONER

VRS.

MIRIAM ANNANG ----- RESPONDENT

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PARTIES

PRESENT

NO LEGAL REPRESENTATION

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JUDGMENT

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**FACTS:**

The petitioner and the respondent lawfully got married at the Marriage Registry of the Tema Metropolitan Assembly, under **Part III of the Marriages Act (1884-1985)** in August 2012. After the marriage, the parties cohabited at Zenu. There are two children to the marriage namely; Andrea Ohemaa Agyapong aged 7 years, Juliana Brako Agyapong, aged 4 years at the time of filing the petition for divorce. On 17<sup>th</sup> February, 2021, the petitioner filed the instant petition for divorce alleging that the marriage between himself and the respondent has broken down beyond reconciliation and prayed for the sole relief of the dissolution of the marriage.

The respondent entered appearance, filed an answer to the petition and cross-petitioned for the following reliefs;

- a. Dissolution of the marriage contracted between the respondent and the petitioner in August 2012.

- b. Custody of the two children of the marriage be granted to the respondent.
- c. An Order of the Court to settle an uncompleted house at Zenu near Ashaiman on the respondent and the children of the marriage.
- d. Monthly maintenance of One Thousand Ghana Cedis for the upkeep of the children and be responsible for their educational and medical bills when they arise.
- e. Alimony of GHC50,000.
- f. Accommodation for the respondent and the children until they attain majority.
- g. Refund of GHC2,350 being money owed the respondent.
- h. Costs.

The petitioner avers that the respondent has behaved in such a way that he cannot reasonably be expected to live with her as man and wife. According to the petitioner, the parties are generally incompatible. Also, the respondent attempted to poison herself on three occasions by mixing some concoctions to drink just to put the petitioner into trouble. The respondent deserts the matrimonial home to stay with her mother for a number of days and comes back when she pleases. Additionally, the petitioner avers that the respondent rain curses on him anytime there is misunderstanding or when he is travelling and wished that he would be involved in an accident. The petitioner further avers that the respondent has been stealing from him to the extent of withdrawing money from his bank account without his knowledge.

Again, the respondent on one occasion attempted to pour urine on him claiming that he wanted to leave the house because of a phone call he had allegedly received from another woman. The respondent also made

derogatory tribal remarks when she told him that Akyem men are stingy and if she knew the petitioner was an Akyem, she would not have married him. Again, for two years preceding the presentation of the petition for divorce, there has been no sexual intercourse between them since the respondent has moved out of the matrimonial home. Consequently, for one year preceding the presentation of the petition for divorce, the parties had not lived under the same roof as man and wife. The petitioner states that all efforts by pastors, family members and friends to resolve their differences have proved futile and that he is of firm belief that the marriage between them has broken down beyond reconciliation.

The respondent denies the allegation of unreasonable behaviour levelled against her by the petitioner and states that it is rather the petitioner who insults and assaults her. The respondent further alleges that she informed her brother about the assault and he suggested that she reports the matter to the police but she failed to do so. According to her, she attempted to poison herself on three occasions because of the treatment meted out to her by the petitioner. She says that the petitioner has denied her sex and for three years now and there has not been any sexual intimacies between them. The respondent also avers that the petitioner does not eat food prepared by her and stopped sharing the matrimonial room with her. The petitioner assaults her with the least provocation.

Additionally, the respondent states that she only goes to her mother's house when their eldest daughter who lives with her mother is sick with the permission of the petitioner. She admitted taking the money of the respondent without his consent but explains that she does that when the petitioner refuses to give her money to cook for the children and she uses the

money to buy foodstuff. For three years, they have not lived as husband and wife because the respondent drove her out of the matrimonial home and warned her not to come to the matrimonial home again to prevent dire consequences. The respondent states that there are problems in the marriage and their marital issue is before pastors and family members for amicable settlement but the petitioner surreptitiously rushed to court for the dissolution of the marriage.

Based on the pleadings and the evidence led, the court set down the following issues for determination.

### **LEGAL ISSUES**

1. Whether or not the marriage between the petitioner and the respondent has broken down beyond reconciliation.
2. Whether the respondent is entitled to an award of an amount of GHC1,000 as monthly maintenance allowance for the two children and their educational and medical expenses.
3. Whether not the respondent is entitled to an amount of GHC50,000 as financial provision from the petitioner.
4. Whether or not the petitioner is indebted to the respondent in the sum of GHC2,350.

### **ANALYSIS**

**ISSUE 1: Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.**

Under **section 1** of the Matrimonial Causes Act, 1971(Act 367), the sole ground for granting a petition for divorce is that the marriage has broken

down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, **section 2(1)** imposes an obligation on the party alleging the breakdown of the marriage to prove one of the six facts stipulated in the Act, namely; adultery, behaviour, desertion, failure to live as husband and wife for at least two years, failure to live as man and wife for five years and irreconcilable differences. The court is also enjoined to enquire into the circumstances alleged, and shall refuse to grant a petition for divorce if there is a reasonable possibility for reconciliation. In the case of **Danquah v. Danquah** [1979] GLR 371, the court held in its holding 2 that:

*“The Matrimonial Causes Act, 1971 (Act 367), imposed on the court a species of restriction which was unique. For having established by section 1 (2) that the sole ground for granting a petition should be that the marriage had broken down beyond reconciliation and having by section 2 (1) laid down those facts the proof of which should, prima facie, show that the marriage has so broken down, section 2 (3) authorised the court to grant a petition for divorce only when the court was satisfied, on all the evidence, that there has been an irreconcilable breakdown of the marriage.”*

The petitioner in the instant petition set out to prove **fact 2(1) (b)** namely; that the respondent has behaved in such a way that he cannot reasonably be expected to live with her. To succeed under **section 2(1) (b)**, the petitioner must prove the conduct constituting the unreasonable behavior, and the fact that they cannot reasonably be expected to live together as man and wife as a result of the behaviour complained of. Thus, in the case of **Hughes v. Hughes** [1973] 2 GLR 342 @ 345 **Sarkodee J** held that;

*“to succeed, the petitioner must show that the respondent’s conduct reached a certain degree of severity. Her conduct must be such that no reasonable person would tolerate or consider that the complainant should be called on to endure”.*

The Matrimonial Causes Act, 1971 (Act 367), does not define unreasonable behaviour neither does the Act enumerate the conducts that constitute unreasonable behaviour that entitle a party to a grant of dissolution of the marriage. Rayden on Divorce (14<sup>th</sup> ed., 1983) defines behaviour as follows;

*“Any conduct, active or passive, constitutes behaviour. The behaviour is not confined to the behaviour of the respondent. The behaviour may have reference to the marriage although it is to other members of the family or to outsiders. Any or all behaviour may be taken into account: The court must have regard to the whole history of the matrimonial relationship. But behaviour is something more than a mere state of affairs or a state of mind: behaviour in this context is action or conduct by the one, which affects the other: It may be an act or omission or course of conduct; but it must have reference to the marriage...”*

From case law, conducts such as assault of a partner, threat of death, writing damaging letters to a spouse’s employers, causing the arrest of a spouse without just cause, denial of sex to a partner, failing to cooperate in finding solution to the couple’s inability to have children and verbal abuse have all been held to constitute unreasonable behaviour which, coupled with the inability of the parties to reconcile can lead to a dissolution of the marriage. See the case of **Happee v. Happee & Anor** [1974] 2 GLR 186.

To prove that the marriage has broken down beyond reconciliation, the petitioner testified that after the celebration of the marriage, he realized that the respondent does not know how to appreciate monetary matters. At times, she would call him on phone to enquire how much to give a person as change after selling to a customer. According to him the respondent is an illiterate and also does not want to work since she does not appreciate financial matters. This has made him apprehensive to set her up in business for fear that the business would collapse. According to him, since the respondent is not working, he is solely responsible for the upkeep of the children and the

maintenance of the home. According to him, he acquired the land before marrying the respondent and developed it up to the footing level but due to financial constraints, the construction of the project has stalled. Also, when the building is completed, it will be in the name of the children. According to him, the respondent's brother remitted her an amount of GHC2,000 which she asked him to save same in his bank account since she does not own an account but the respondent has taken the money in bits and squandered it. The amount he owes the respondent is GHC400 which he personally took from her. According to him, the respondent has behaved unreasonably that he cannot be expected to live with her. The petitioner under cross-examination by the respondent testified that they have made various attempts to attempt settlement which all proved futile. The petitioner denied that he had extra-marital affair with any other person.

The respondent in her defence testified that she got married to the respondent on 11<sup>th</sup> August, 2012. According to her testimony before the court, she used the petitioner's ATM card to withdraw an amount of GHC300 for a friend as a loan which she promised to pay back but she did not honour the promise. Based on that the petitioner went to the family members with schnapps to dissolve the marriage after her friend refused to refund the money to him. According to her, the petitioner has refused to have sexual intercourse with her for about three years now. She states that she still loves the petitioner and plead for forgiveness to stay in the marriage. According to her, she wants the children to live together under the care of both parents. In the circumstances, she believes that the marriage has not broken down beyond reconciliation.

The respondent under cross-examination by the petitioner, the respondent admitted that she took poison but she did not intend to kill herself. The

respondent also admitted that she took the ATM card of the petitioner to withdraw money from his account without notice to him because she was trying to help. According to the respondent, she rained curses on the petitioner because of the frustrations he puts her through but she regrets raining curses on him. She also threatened to pour urine on him because he attended his sister's graduation with his girlfriend instead of going with her.

From the evidence led by the petitioner and the respondent, the allegations made by the petitioner against the respondent have not been disproved by the respondent. On the issue of the attempted suicide on three occasions, the court ordered for a psychiatric assessment and an impression of Malingering with suicidal gestures were made which according to the expert "*is the intentional production of psychological problems for particular gain.*" Based on that the report states that she is mentally stable and was undergoing psychotherapy to explore the motives for her behaviour and explain the divorce process to her and that she was fit to go through the court proceedings. The behaviour of the respondent in also cursing the petitioner, withdrawing money from his bank account without his consent and attempting to pour urine on him are demeaning and no reasonable person should be called upon to endure.

Additionally, from the evidence led by the parties, for three years now they have not lived as husband and wife and the respondent lives with her mother. When the petition was pending, the court referred the parties to the Court Connected Alternative Dispute Resolution Center where they decided to observe themselves for three months but could not reconcile their differences within the period. The petition has been pending since 2<sup>nd</sup> February, 2021 but the parties have not been able to reconcile their differences.



I therefore hold that the marriage between the petitioner and the respondent has broken down beyond reconciliation. I therefore grant the petition and the cross-petition for divorce and decree for the dissolution of the marriage celebrated between the petitioner and the respondent.

**ISSUE 2: Whether the respondent is entitled to an award of an amount of GHC1,000 as monthly maintenance allowance for the two children and their educational and medical expenses.**

The petitioner did not contest custody of the two children of the marriage. I therefore grant custody of the two children of the marriage to the respondent with reasonable access to the petitioner. The children shall spend weekends every fortnight and half of their vacations with the petitioner.

A person entitled to custody of children is also entitled to an award of maintenance for the upkeep of the children. It is trite learning that it is the responsibility of both parents to cater for their infant children. **Section 22(3)(c)** of Act 367, which grants the courts power to award maintenance and provide for the education of a child out of the income or property of either or both parties, does not enumerate the factors the court must take into consideration. **Section 49** of the Children's Act, 1996 (Act 560), provides some useful guidance on the factors to consider when making an order for maintenance of a child. The primary consideration is the welfare of the child and the following factors; the income and wealth of both parents, any impairment in the earning capacity, responsibility towards the maintenance, the cost of living in the area where the child lives and the rights of the child under the Act 560.

Here, the parties did not lead evidence on their income but from the evidence, the petitioner is a Fire Service Personnel and the respondent is unemployed. The respondent testified under cross-examination that the petitioner maintains her and the children and is responsible for their educational and medical expenses but states that the amount given to them is woefully inadequate since he gives them GH¢500 as monthly maintenance for herself and the two children. She further states that out of this amount, GH¢300 is meant for her upkeep and GH¢200 is for the maintenance of the children and when she calls the petitioner that the money for the children is finished, he sends them money but when her money is finished the petitioner does not care about her. Having regard to the cost of living in the Tema Metropolis where the children reside and the general high inflationary rate, the ages of the children and the best interest of the children, I will award an amount of GH¢800 as monthly maintenance allowance for the two children. The petitioner shall bear the educational and medical expenses of the two children. The respondent shall be responsible for the clothing needs of the two children.

The petitioner shall rent a chamber and a hall accommodation for the respondent and the two children of the marriage. The order to rent accommodation for the two children terminates upon the remarriage of the respondent or until the children attain majority whichever occurs first.

**ISSUE 3: Whether or not the respondent is entitled to an amount of GH¢50,000 as financial provision from the petitioner.**

**Section 20(1)** of the Matrimonial Causes Act 1971 (Act 367) states that:

*"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.”*

The award of lump sum financial payment under Act 367 is therefore need based and it is not intended to enrich one spouse at the expense of the other. It is also not intended to punish a party who caused the breakdown of the marriage since it is not based on fault. In the case of **Barake v. Barake** [1993-1994] I GLR 635 at page 666, Brobbey J (as he then was) held that:

*“On such an application, the court examines the needs of the parties and makes reasonable provision for their satisfaction out of the money, goods or immovable property of his or her spouse.”*

In determining what is “*just and equitable*”, a court is enjoined to consider the income, earning capacity, property, and other financial resources which each of the parties has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the breakdown of the marriage; the age of each party to the marriage and the duration of the marriage. See the case of **Obeng v. Obeng** [2013] 63 GMJ 158, CA.

Here, the respondent prays the court to award an amount of GHC50,000 as financial provision. On the evidence led, it is not in dispute that the respondent is unemployed and the petitioner works as a Fire Service Personnel but did not lead evidence on his income. The parties also did not lead evidence on their respective ages. There are two children to the marriage which both parties are legally liable to maintain. In terms of resources which each party is entitled to, the respondent avers that the petitioner has an uncompleted building located at Zenu which she prays the court to settle on her as part of property settlement. The respondent in her evidence in-chief

did not lead any evidence on the acquisition of this property. Under cross-examination by the petitioner, the following ensued;

*Q: You talked about an uncompleted building. Can you tell me about it.*

*A: I do not know about it.*

*Q: You stated that you and I have an uncompleted building.*

*A: That is not correct. I have not stated anything about property. I did not say we built the house together. You built it but I said if you are divorcing me then give me part of the house, compensate me and the children.*

*Q: I put it to you that I do not have a building. I only have an uncompleted building at footing level which I have not been able to complete due to finances.*

*A: I do not know that.*

From the evidence led by the parties, the petitioner has been responsible for the maintenance of the respondent albeit she claims it is not adequate. In my considered opinion, with the breakdown of the marriage, the respondent will be deprived of the benefit of maintenance from the petitioner. The court is in no way encouraging indolence on the part of a party who is not prepared to find employment. The award of lump sum in the circumstances of this case will enable the respondent to invest for her upkeep and to contribute to the maintenance of the children which is the joint responsibility of the parties. I will therefore award an amount of Ten Thousand Ghana Cedis (GH¢10,000) in favour of the respondent against the petitioner as lump sum financial provision. This amount shall be paid in two equal monthly instalments from the date of judgment.

**ISSUE 4: Whether or not the respondent is indebted to the petitioner in the sum of GH¢2,350.**

The respondent states that the petitioner is indebted to her in the sum of GHC2,350 but did not lead any evidence in support of the debt. The petitioner in response to the allegation of debt stated the respondent's brother sent her an amount of GHC2,000 which at her request he deposited in a bank account for her. However, the respondent took the money in bits and spent all and as such he does not owe the respondent. The respondent did not challenge the petitioner on this averment that she has received the money deposited on her behalf. The respondent therefore failed to prove the allegation of the petitioner's indebtedness to her on a balance of probabilities.

### **Conclusion**

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition and the cross-petition for divorce and enter judgment in the following terms;

1. I hereby grant a decree for the dissolution of the Ordinance Marriage celebrated between the petitioner and the respondent on 11<sup>th</sup> August 2012.
2. The parties shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. I hereby grant custody of the two children of the marriage namely; Andrea Ohemaa Agyapong aged 7 years, Juliana Brako Agyapong, aged 4 years to the respondent with reasonable access to the petitioner. The children shall spend weekend every fortnight with the petitioner and half of their vacations with the petitioner.
4. The petitioner shall pay a monthly maintenance allowance of Eight Hundred Ghana Cedis (GHC800) to be paid by the 5<sup>th</sup> day of each month effective 5<sup>th</sup> February, 2023, for the upkeep of the two children. Additionally, the petitioner shall be responsible for the educational and

medical needs of the two children. The respondent shall provide clothing for the two children.

5. The petitioner shall rent a chamber and hall accommodation for the respondent and the two children within two months from the date of this judgment. The order to rent accommodation for the respondent and the two children terminates upon the remarriage of the respondent or until the children attain majority whichever occurs first.
6. The petitioner shall pay to the respondent an amount of Ten Thousand Ghana Cedis (GH¢10,000) as financial provision to the respondent. This amount shall be paid in two equal monthly instalments within two months from the date of judgment.
7. No order as to costs.

**H/H AGNES OPOKU-BARNIEH  
(CIRCUIT COURT JUDGE)**