

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 7TH DAY OF
JULY, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT
COURT JUDGE

SUIT NO.C5/109/21

BOUTROUS YANGLO ----- PETITIONER

VRS.

VIVIAN NUWATI ----- RESPONDENT

PARTIES PRESENT

MARY ANIM -DANSO, ESQ. HOLDING THE BRIEF OF ROBERT AWUKA,
ESQ. FOR THE PETITIONER PRESENT

SOLOMON KOFI ADDO, ESQ. WITH RICHARD CLARKE, ESQ. HOLDING
THE BRIEF OF RICHARD AKPOKAVIE, ESQ. FOR THE RESPONDENT.
PRESENT

JUDGMENT

FACTS:

The petitioner, a businessman, filed the instant petition for divorce on 11th August, 2021 praying this court for an order for the dissolution of the ordinance marriage celebrated between himself and the respondent on 4th November 2017 and a further prayer for the custody of the only issue to the marriage to be granted to him with reasonable access to the respondent.

Upon service of the petition for divorce and the notice to appear on the respondent, she caused her lawyers to enter appearance for and on her behalf on 23rd August,

2021, filed an answer to the petition on 4th November, 2021 and also cross-petitioned for the following reliefs;

- a. That the marriage celebrated between the parties on the 4th of November, 2017 be dissolved.
- b. That custody of the child Ethan Boris Yanglo be granted to the respondent with reasonable access to the petitioner.
- c. That the petitioner be ordered to provide for the educational upkeep including payment of school fees of the child.
- d. That the petitioner provides a monthly maintenance of seven hundred Ghana Cedis (GH¢700) for the child.
- e. That the petitioner be ordered to provide accommodation for the respondent and the child until the child attains the age of majority.
- f. That the petitioner be ordered to provide maintenance for the respondent or in the alternative pay a lump sum of One Hundred Thousand Ghana Cedis (GH¢100,000) to the respondent.
- g. Costs.

The petitioner avers that he got married customarily to the respondent on 2nd November 2017, and the marriage was then registered on 4th November, 2017. After the celebration of the marriage, the parties cohabited at Community 22, Tema in the Greater Accra Region and the marriage is blessed with one child aged 3 and a half years at the time of filing the instant petition for divorce. The petitioner avers that the respondent has behaved in such a way that he cannot reasonably be expected to live with her. The petitioner maintains that the respondent always has an issue when his family members visit and that there is no cordial relationship between the parties. The respondent also stopped wearing her wedding ring and when he enquired from her the whereabouts of the ring, she boldly told the petitioner that she committed adultery. Further to that, the respondent willfully left the matrimonial

home with the only issue of the marriage with the excuse that his family members are causing nuisance and till date her current place of abode is unknown to the petitioner.

The respondent in her answer to the petition for divorce states that prior to the celebration of the marriage, she was a student living with her parents and she moved in to live with the petitioner in his parents' house at Sakumono before they got married and after the celebration of the marriage, they moved to Shai Hills Valley View Estates as their matrimonial home for two years and had the only child of the marriage on 1st April, 2018. The respondent says that when their son was born, they encountered financial challenges and as a supportive wife she came to work for her mum to trade at Tema Community 1 to make some money to support the matrimonial home. When their financial situation improved, they acquired a piece of land and commenced building their own four-bedroom home at New Ablekuma Mateheko Afienya.

The respondent contends that it is rather the petitioner who has behaved in such a way that she cannot reasonably be expected to live with him as her husband. The respondent states that in August 2019, whilst she was away in Togo the petitioner complained that his hand hurts. On return from the trip, she realized that the petitioner was not wearing his wedding ring and when she enquired, the petitioner claimed that the ring was lost and abused her verbally. Additionally, the petitioner informed her once that he was no longer interested in the marriage and would stay away from home sometimes for two days. Also, the petitioner travelled to Benin in the year 2019 to attend his father's funeral and prior to the journey indicated that he was no longer interested in the marriage and asked her to go and live with his aunt at Sakumono. Also, the respondent avers that the petitioner forcefully took away the child from her custody and possession. Again, the respondent states that the petitioner sold their car and a house jointly put up by them without notice to her and

states further that at a family meeting to discuss the marital challenges the parties agreed to separate for three months but during that period, they could not reconcile their differences to live as husband and wife. For two years prior to the commencement of the divorce petition, they had not lived as husband and wife and there has not been any sexual intimacies between them. The respondent maintains that whilst this marriage was subsisting, the petitioner married another woman in August 2019. According to the respondent the marital environment is toxic and abusive and as such she cannot reasonably be expected to live with him.

ATTEMPTS AT SETTLEMENT

In the course of the proceedings, the parties and their lawyers attempted settlement and filed terms of settlement on 7th March, 2023 and settled on the ancillary reliefs to be adopted by the court as consent judgment between the parties on the ancillary issues. The parties having settled and filed terms of settlement on the ancillary issues, the court lacks jurisdiction to determine same and the pleadings and the evidence in the case will be restricted to the dissolution of the marriage.

LEGAL ISSUE

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

ANALYSIS

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, the petitioner is required to establish at least one of the facts set out in **section 2(1) of Act 367**, namely; adultery, unreasonable behaviour, desertion, failure to live as man and wife for two years, failure to live as man and wife for five years and irreconcilable differences.

In the instant case, both the petitioner and the respondent made allegations and counter allegations of unreasonable behaviour within the meaning and intendment of **section 2(1)(b)** of Act 367. To succeed under **section 2(1) (b)**, the petitioner must prove the respondent's conduct constituting unreasonable behaviour, and the fact that the petitioner cannot reasonably be expected to live with the respondent as a result of the bad behavior. 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”.

To prove the allegation of unreasonable behaviour levelled against the respondent, the petitioner testified that after the celebration of their marriage, and when she was due to deliver the only child of the marriage, they agreed that she goes to deliver at her mother's place of abode but when she returned to the matrimonial home after having the baby, her attitude towards him changed. According to the petitioner, the respondent refused to submit to him and became disrespectful when he could not give her money she had requested for her mother to invest in her business. According to the petitioner, for the same reason, the respondent's mother is not on good terms with him.

The petitioner further testified that sometime in May 2018, he sponsored the respondent's trip to Togo and when she returned and saw that he was not wearing his ring as a result of rashes he had on his finger, she got infuriated and verbally abused him even when he had already sent pictures of the rashes to her. Also, during an argument, the respondent told him that she was fed up with the marriage and immediately took off her ring and confessed that she had an affair with someone and wanted a divorce.

The petitioner further testified that before the marriage, he had a Hyundai Elantra which he sold to purchase a bigger car for their use and he later had to sell it to buy land at New Ablekuma and started developing to lintel level but he run out of funds and could not complete it. In 2019, he experienced serious financial challenges which the respondent was aware of and they agreed to sell the uncompleted house at Ablekuma to cushion them. After the sale of the property, the respondent requested that he rents an apartment for her and the child which he used part of the proceeds to rent for her and the child and they used part of the money for their daily sustenance and he invested part in businesses which were not successful.

Additionally, the petitioner testified that when the respondent realized that there was no money and that he could not afford the life she wanted, she abused him verbally, complains at the lease opportunity and when he gives money for the upkeep of their son, she complains that the money is not sufficient and she ends up fighting with him. The families invited both of them to reconcile their differences but were unsuccessful so they ended the customary marriage and then proceeded to court for the dissolution of the ordinance marriage.

The petitioner further testified that they agreed that their son will start school and he has been financing his education, providing maintenance, medical expenses and all other expenses she has requested from him so he sometimes borrow money to meet those demands and even though he is financially unstable he puts in a lot of effort. In support he tendered in evidence **Exhibit "A"** series as mobile money transactions for the upkeep of the child. According to the petitioner, the respondent's actions has made it impossible for him to live with her as husband and wife and he therefore prays the court for the dissolution of marriage.

The respondent on her part testified that in the early part of the marriage, they encountered financial challenges and she took on the responsibility as a supportive wife to provide for their home and she returned to Community 1, Tema to trade with her mother. When their financial situation improved, they started a building project. Sometime in 2019, she attended a wedding in Togo and the petitioner complained that his finger was hurting. When she returned, she realized that the petitioner was not wearing the ring and when she enquired, he informed her that the ring was missing and added that he did not want to remain married to her since they were not compatible.

The respondent further testified that the challenges in the marriage continued and the petitioner started staying out late and sometimes coming back after two days without telling her about his whereabouts. The petitioner also refused to discuss issues with her and it has been a toxic and abusive environment in which she found herself. Again, the petitioner asked her to move to her parents' house since he was not interested in the marriage and due to the fact that she could not move back to her parent's house, she moved to the house of the Aunty of the petitioner at NTHC Estates Sakumono with the issue of the marriage for about 4-5 months but the respondent failed to join her in his aunt's place. Further to that, on the death of the petitioner's father, her family attended the funeral in Benin but the petitioner did not acknowledge that they were husband and wife. She complained to her mother-in-law about the turn of events and both families met in the year 2020 but the attempts at reconciliation proved futile. According to her, when they were staying at Community 5, Tema, she observed that whenever the petitioner comes over to drop the child, he comes with a lady and she later learned that the petitioner had married the lady customarily and converted the marriage to one under the ordinance sometime in August, 2021. In support, she tendered in evidence **Exhibit "2"** series which are photographs of the petitioner with a lady and some adorned in wedding clothes and with family members.

The parties, in the spirit of their terms of settlement did not conduct rigorous cross-examination from which the court can make concrete findings of fact of unreasonable behaviour. A common thread that runs through the testimony of the parties is that from the onset, their marriage has been bedeviled with challenges resulting in serious differences between the parties which the parties after diligent efforts have been unable to reconcile their differences.

The Matrimonial Causes Act under section 8 further enjoins the parties or their respective lawyers to inform the court about all attempts at reconciliation and a court shall refuse to grant a petition for divorce if there is a reasonable possibility for reconciliation. See **Section 2(3)** of the MCA and the case of **Adjetey & Adjetey** [1973] I GLR 216 at page 219. Regarding attempts at reconciliation, the petitioner and the respondent testified to various attempts made by their families to reconcile them which have all proved futile. The respondent testified to how after deliberations by their families, they agreed to separate for a while in an attempt to calm matters for them to resume cohabitation as husband and wife which did not materialise. For more than two years prior to the presentation of the petition for divorce, the parties had not lived together as husband and wife and there had not been any sexual intimacies between them. Additionally, when the court adjourned proceedings for the parties to attempt settlement with their lawyers, the parties agreed that their marriage has indeed broken down beyond reconciliation and filed terms of settlement to be adopted by the court upon dissolution of the marriage.

On the totality of the evidence led by the petitioner and the respondent in support of the breakdown of the marriage, I am satisfied that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I

accordingly grant the petition for divorce and decree for the dissolution of the marriage celebrated between the parties.

CONCLUSION

In conclusion, I hold that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. Accordingly, I 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 marriage celebrated between the petitioner and the respondent on 4th November, 2017
2. The parties shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. The Terms of Settlement filed by the parties on 7th March 2023 in the Registry of this court and signed by the parties is hereby adopted as consent judgment. Per the parties' own terms of settlement;
 - a. Custody of the child Ethan Boris Yanglo is granted to the respondent with reasonable access to the petitioner.
 - b. The petitioner shall pay an amount of Three Hundred Cedis (GH¢300) per month for the maintenance and upkeep of the child.
 - c. The petitioner shall provide for the educational upkeep of Ethan Boris Yanglo including school fees.
 - d. Lump sum of Forty Thousand Cedis (GH¢40,000) be paid by the petitioner to the respondent as follows;
 - i. Five Thousand Ghana Cedis (GH¢5,000) paid on the 17th of February 2023(which had elapsed on the date of judgment).
 - ii. The remainder of Thirty-Five Thousand Ghana Cedis (¢35,000) to be paid in seven equal instalments of Five Thousand Ghana Cedis (GH¢5,000) every three (3) months starting from 1st day of April 2023 and due by the last day of the month.

e. No order as to costs.

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