

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.C5/65/22

DIANA DABLAH ----- PETITIONER

VRS.

DIVINE KWAKU ODONKOR ----- RESPONDENT

PARTIES

PRESENT

RITA CASSANDRA APPIAH, ESQ. HOLDING THE BRIEF OF PAUL
KWAKU DANSO AMOAKO, ESQ. FOR THE PETITIONER **PRESENT**

JUDGMENT

FACTS:

The petitioner, a Beautician, filed the instant petition for divorce on 4th April, 2022 against the respondent, a Logistics Clerk alleging that an Ordinance Marriage celebrated between the petitioner and the respondent on 13th April, 2016 at the District Court Nsawam in the Eastern Region has broken down beyond reconciliation and prayed the court for the following reliefs;

- a. An order for the dissolution of the marriage celebrated between the parties as the marriage has broken down beyond reconciliation.
- b. Custody of the issues be given to the petitioner with reasonable access to the respondent.
- c. An order for the respondent to maintain the issues of the marriage including but not limited to the payment of school fees and medical bills as and when it falls due.
- d. An order for the respondent to rent a suitable accommodation for the issues of the marriage till they attain the ages of majority.

e. Lump sum financial settlement of GH¢10,000.

The petitioner states that prior to the celebration of the marriage, she was in a relationship with the respondent for seven (7) years during which the first child of the marriage, Joel Deladem Odonkor, aged nine (9) years was born and the second issue of the marriage Jessica Aseye Odonkor, aged four years was born after the celebration of the marriage and they cohabited at Mitchel Camp No. 2, Tema in Greater Accra Region of the Republic. The petitioner avers that the respondent has behaved in such a way that she cannot reasonably be expected to live with him as husband and wife.

The particulars of behaviour alleged are that the respondent does not maintain the issues of the marriage and the petitioner. The respondent, towards the preparation towards the marriage ceremony, asked the petitioner to use her money to finance the wedding with the promise to reimburse her later on. This resulted in an argument whenever the petitioner demanded that the respondent redeems his promise. The petitioner states that the respondent would rain insults on her stating that it was the petitioner who wanted to wear a ring and that he did not ask her for a wedding. Additionally, three months into the marriage, the respondent found out that the petitioner was pregnant with the second child of the marriage and packed out of their bedroom to sleep in the living room after the petitioner asked for the money owed to her by the respondent. The petitioner further states that the respondent did not maintain her during the pregnancy of the second issue and that she had to pay the medical bills when she was discharged.

The petitioner further states that the respondent was unwilling to name the second child but for the intervention of the petitioner's family members and her landlord. The petitioner states that the respondent was in the habit of

constantly issuing death threats to the petitioner. The petitioner avers that the respondent constantly abused her emotionally and physically before the parties got married such that it led to the loss of three pregnancies. That this behaviour of the respondent persisted throughout the entire period that the parties were married.

The petitioner further avers that during the subsistence of the marriage, the respondent did not maintain the issues not even the payment of their school fees and has never been present in the lives of the children nor shown interest in matters concerning the children as a father ought to. The petitioner further states that the respondent was not truthful and has been adulterous whilst parties were still married. The petitioner states that she has given all the items used to perform her customary rites to her family head but he has refused to forward same to the respondent's family because he claims he is a Christian and not in support of divorce. The parties have not lived together as husband and wife since 18th May 2019. Also, several attempts to settle the issues in the marriage have not yielded any results and that the marriage has broken down beyond reconciliation.

The divorce petition, notice to appear were personally served on the respondent who entered appearance but failed to file an answer to the petition for divorce. The matter was set down for trial and the notice of setting down for trial and the notice for trial were served on the respondent by substituted service when personal service on the respondent proved futile. The court therefore proceeded to take evidence from the petitioner to satisfy the court that the marriage between the petitioner and the respondent has indeed broken down beyond reconciliation.

LEGAL ISSUE

Whether or not the Ordinance 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 case of **Donkor v. Donkor** [1982-1983] GLR 1158, the High Court, Accra, per Osei-Hwere J, held that:

“The Matrimonial Causes Act, 1971 (Act 367), does not permit spouses married under the Marriage Ordinance... to come to court and pray for the dissolution of their marriage just for the asking. The petitioner must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act for the purpose of showing that the marriage has broken down beyond reconciliation. Section 2(3), which is pertinent, provides that even if the court finds the existence of one or more of those facts it shall not grant a petition for divorce unless it is satisfied that the marriage has broken down beyond reconciliation...the petitioner is under a duty not only to plead any one or more of those facts in section 2(1) of the Act but he must also prove them. Equally the court is under a statutory and positive duty to inquire so far as it reasonably can, into the charges and counter-charges alleged. In discharging the onus on the petitioner, it is immaterial that the respondent has not contested the petition, she must prove the charges and, flowing from all the evidence before the court, the court must be satisfied that the marriage has irretrievably broken down.”

Therefore, it is incumbent on the petitioner in the instant case to lead sufficient evidence to establish the breakdown of the marriage. The petitioner in the instant petition for divorce relies on unreasonable behaviour on the part of the respondent. The petitioner must prove the conduct of the respondent constituting unreasonable behaviour and the fact that she cannot reasonably be expected to live with him as husband and wife. Thus, in case of **Happee v. Happee & Anor** [1974] 2 GLR 186, the court held that to constitute unreasonable behaviour,

“the conduct of the respondent as disclosed by the evidence fell very far short of that of a reasonable married woman. The respondent had behaved in such a way that the petitioner could not reasonably be expected to live with her. On the evidence the marriage between the petitioner and the respondent had broken down beyond reconciliation”

The petitioner repeated all her averments on oath that the respondent has neglected to maintain her and the issues of the marriage. The petitioner testified that the respondent requested her to finance their wedding with the promise of reimbursing her but failed to honour his promise which resulted in an argument anytime she demanded a refund of the money. The petitioner states that the respondent would rain insults on her stating that it was the petitioner who wanted to wear a ring and that he did not ask her for a wedding. Additionally, three months into the marriage, the respondent found out that the petitioner was pregnant with the second child of the marriage and packed out of their bedroom to sleep in the living room after the petitioner asked for the money owed to her by the respondent. The petitioner testified further that the respondent failed to maintain her during pregnancy

and but for the intervention of her family and her landlord, he would not have named the child.

Additionally, the petitioner testified that the respondent was in the habit of constantly issuing death threats to the petitioner and constantly abused her emotionally and physically before the parties got married such that it led to the loss of three pregnancies. That this behaviour of the respondent persisted throughout the entire period that the parties were married. According to the petitioner, the respondent was not truthful and has been adulterous whilst parties were still married. The petitioner states that she has given all the items used to perform her customary rites to her family head but he has refused to forward same to the respondent's family because he claims he is a Christian and not in support of divorce. The parties have not lived together as husband and wife since 18th May 2019. Also, several attempts to settle the issues in the marriage have not yielded any results and that the marriage has broken down beyond reconciliation.

The respondent appeared at the trial but failed to lead evidence and only cross-examined the petitioner on the accommodation issue but not the issue of the dissolution of the marriage. In the case of the **Republic v. High Court (Fast Track Division), Accra Ex-parte State Housing Company Limited (No. 2)** [2009] SCGLR 185 at 190, the Supreme Court per Georgina Wood, C.J held that "*A party who disenables himself or herself from being heard in any proceeding cannot turn round and accuse an adjudicator of having breached the rules of natural justice*".

Thus, the respondent having failed to cross-examine the petitioner on the issue of the dissolution of the marriage, the evidence of the petitioner regarding the treatment meted out to her and the children of the marriage

remains unchallenged. The matters testified to by the petitioner are grave and serious enough to justify a finding that the respondent has behaved in an unreasonable manner. The refusal of the respondent to appear in court to participate in the proceedings is indicative of the fact that the marriage has indeed broken down beyond reconciliation and that the marriage cannot be salvaged. I therefore hold that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him as husband and wife. I therefore declare that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation and decree for the dissolution of the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

Again, the petitioner prays for custody of the two children of the marriage, maintenance and shelter for the children but these are not contested by the respondent. Having regard to the respective ages of the children, the fact that there is no bond between the respondent and the children since they have been in the custody and care of the petitioner and to ensure that there is continuity in the care of the two children, I will award custody of the two children of the marriage to the petitioner with reasonable access to the respondent. The children shall spend half of their vacation period with the respondent. The respondent is hereby ordered to maintain the two children of the marriage with a monthly maintenance allowance of GH¢1,000. The respondent shall be responsible for the educational and medical needs of the two children of the marriage.

On the issue of accommodation, the respondent in cross-examining the petitioner states that he is not in a position to rent accommodation since he has lost his job. However, he did not lead any evidence as to any impairment in his earning capacity for the court to come to the conclusion that he is not in

a position to perform his legal obligation to provide shelter for his children. Accordingly, the respondent is ordered to rent a two-bedroom accommodation for the petitioner and the two children of the marriage within one month from the date of this judgment.

Additionally, the petitioner claims an amount of GH¢10,000 as financial provision from the respondent. In the case of **Aikins v. Aikins** (1979) GLR 233, Sarkodee J (as he then was) held in holding 4 that:

“In considering the amount payable as lump sum, the court should not take into account the conduct of either the husband or the wife but it must look at the realities and take into account the standard of living to which the wife was accustomed during the marriage...”

The court further stated that the advantage of lump sum payment is to enable the payee to invest it and live on the income. It also has the purpose of enabling the wife to recoup expenses already incurred in maintaining herself or any child of the marriage and to remove bitterness associated with periodical payments. Again, this amount is not contested by the respondent. On record, the petitioner is a Beautician and the respondent is a Logistics Clerk with Servaco PPs but there is no evidence of the respective incomes of the parties. From the marriage certificate tendered in evidence, at the time of the marriage on 13th April, 2016, the petitioner was 46 years old and the respondent was aged 31 years. There are two children to the marriage which the unchallenged evidence on record shows that the petitioner has been solely responsible for maintaining herself and the children since the respondent has refused to maintain them. I therefore deem it just and equitable to award an amount of GH¢10,000 as financial provision against the respondent to compensate the petitioner for any amounts spent in maintaining herself and the children.

CONCLUSION

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

1. I hereby grant a decree for the dissolution of the marriage celebrated between the petitioner and the respondent on 13th April, 2016 at the District Court, Nsawam in the Eastern Region of the Republic of Ghana.
2. The petitioner shall present the original copy of the marriage certificate **number 31/16** for cancellation by the Registrar of the court.
3. Custody of the issues of the marriage namely; Joel Deladem Odonkor aged nine years and Jessica Aseye Odonkor, aged four years be granted to the petitioner with reasonable access to the respondent.
4. The respondent shall maintain the two issues of the marriage with an amount of GH¢1,000 as monthly maintenance allowance. The respondent shall pay school fees and medicals as and when it falls due. The petitioner shall be responsible for the clothing needs of the two children.
5. The respondent shall rent a two-bedroom accommodation for the two children and the petitioner within one month from the date of this judgment and the order to rent accommodation for the petitioner and the two children terminates upon the remarriage of the petitioner or until the children attain the ages of majority, whichever occurs first.
6. I hereby award an amount of GH¢10,000 as lump sum financial settlement to the petitioner against the respondent.
7. No order as to costs.

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