

IN THE CIRCUIT COURT HELD AT AGONA SWEDRU
ON THURSDAY THE 31ST DAY OF MAY, 2023 BEFORE
HIS HON. JONATHAN D. NUNOO CIRCUIT JUDGE

SUIT NO: A4 /06/2023

REBECCA KUMI PETITIONER

VS.

NICHOLAS AMOWI RESPONDENT

Parties Present

J U D G M E N T

The petitioner issued this petition from this court seeking for an order for dissolution the marriage

Petitioner states in her petition as follows:-

1. That they got married to the respondent in November 2019 at church of Pentecost, Breman Kuntunanse under the Ordinance Marriage –Cap 127.
2. The petitioner avers that she was a nurse by profession (though unemployed) and the respondent was a NABCO employee before the said marriage was celebrated.
3. That there was no cohabitation before the marriage.
4. That the petitioner but the respondent is unemployed at the time of the time of the issue of the petition.
5. That there is no child in the marriage.

6. That the consent of the petitioner to the marriage was obtained by **deceit**. The respondent and his Pastor, who negotiated the marriage, **convinced** me to understand that the respondent is his brother and had gained admission into the Church of Pentecost Pastoral School, the following month, to become a pastor in the church of which he (respondent) will lose such an opportunity if the marriage is not celebrated within a short period the petitioner met him. Therefore, the petitioner's decision to make time to study the respondent was ignored by the respondent and his Pastor. Because of that the Pastor in question had not been able to call to say anything meaningful about our issue since it started shortly after the marriage. And as at now, after three (3) good years of the marriage, the petitioner can say that the respondent is still at home without any sign of going anywhere.

7. That the only relief sought in this petition is for the **dissolution** of the marriage.

8. That the marriage has broken down beyond reconciliation. This is because several attempts had been made to reconcile the parties but all had proved futile.

9. That the parties herein cohabited at Agona Swedru in the central region, in a rented house but the petitioner had left due to the behaviour of the respondent

The respondent had behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

The respondent is a dictator who does not involve the petitioner in any decision making concerning the family. He does not have trust for the petitioner as a wife. He relates to me like master –servant and not as husband-wife. He had abused me on many occasions, either verbally or

emotionally. He called me a childless woman on six different occasions, "You do not know how our neighbours tease or make mockery of you for not having a child" "You would have left the house or the neighbourhood if you were aware of what others say about you? These are some of the utterances from the respondent to the petitioner, just to mention a few.

Meanwhile the greater part of the household financial expenses is the responsibility of the petitioner,

10. That there is no other issue pending in any court of law. (Sic)

The Respondent filed an answer to the petition and he avers as follows:-

- (1) Save as herein after expressly admitted or not admitted the Respondent denies each and every allegation of fact contained in the Petition for divorce as though the same were herein set out in extensor and traversed seriatim.
- (2) Paragraph 1 of the Petition is admitted
- (3) Paragraph 2 of the petition is admitted.
- (4) In answer to paragraph 3 of the petition the Respondent says that the petitioner has relocated the matrimonial home for the past 4 months ago, leaving her personal items therein.
- (5) Paragraph 4 of the Petition is denied
- (6) Paragraph 6 of the Petition is denied.
- (7) Paragraph 6 of the Petition is denied. In further denial the Respondent says that he went for Pentecost interview and through the interview the Petitioner was made a Deaconess (Attached is a copy of the Pastoral interview letter,
- (8) In answer to paragraph 7 of the Petition the Respondent says that he is not in a position to dissolve the marriage between the parties

- (9) Paragraph 8 of the Petition is denied and Respondent will put Petitioner to strict prove of same.
- (10) In Response to paragraph 9 of the Petition, the Respondent states that it was rather the petitioner who has left and rented house that parties are living.
- (11) Respondent contends that all the averments contained in paragraph 9 of the petition are vehemently denied and Respondent will put Petitioner in strict prove of same.
- (12) Paragraph 10 of the Petition is admitted.
- (13) **WHEREFORE,** Respondent prays to this Honourable Court that the marriage between the parties must not be dissolved, hence Petitioner's petition for divorce must be dismissed.

The petitioner filed a reply to the answer in which she joins issues with the Respondent and denies all to the averments made against her seriatim.

1. That Petitioner vehemently denies paragraph 7 and avers that the letter attached to his answer 2021 and he forced to marry me in 2019 which implies that at the time he forced me he did not have any invitation
2. In further denial contends that the marriage had broken down beyond reconciliation and for the past five months we live in our separate ways.
3. That paragraph 10 (ten) is true. I left the house as a result of his rude brhaviour which had render me a laughing stock in the house, his autocratic in nature and very disrespectful etc.
4. Petitioner contends that the marriage between the parties be dissolved because the respondent does not provide housekeeping money and above all always invokes curses on Petitioner as a result any reasonable person cannot be expected to live with such a person above all for the past five months he had denied consort.

The law is that to enable a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to the prescribed standard as provided by statute.

This position is buttressed by various provisions of the evidence Act 1975 (NRCD 323).

Section 14 of the Act provides that “Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting”

The burden of providing evidence as well as burden of persuasion is on both parties and the standard required to discharge the burden of persuasion is “preponderance of probabilities” see Section 12 (1) of the Act.

Section 12 (2) of the same Act defines “preponderance of probabilities” to mean degree of certainty of belief in mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence”.

Section 11 (4) of evidence Act (NRCD323) provides that a burden of providing evidence is discharge when a party provides sufficient evidence, so that on all the evidence a reasonable mind could conclude that the existence of a fact is more probable than its non-existence.

In the case of *Ababio V Akwan III* (1994-95) GBR 774 the Supreme Court per Akins JSC at page 777, delivered the lead opinion of the court on this principle of law thus;

The general principle of law is that it is the duty of the plaintiff to prove his case he must prove what he alleges, in other words, it is a party who raises in his pleadings an issue essential to his case who assumes the burden of proving it. The burden only shift to the defence to lead sufficient evidence to tip the scale in his favour when on particular issue

the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this he wins, if not he loses on that particular issue.

The position of the Defendant had been more appropriately described by Brobbey JSC in the case of IN RE ASHALLEY BOTWE LANDS: ADJETEY AGBOSU & ORS. VRS. KOTEY & ORS. [2003 – 2004] SCGLR 420. In his supporting opinion Brobbey JSC stated of a Defendant at a trial in Holding 5 as follows:

“The effect of Sections 11(1) and 14 and similar Sections in the Evidence Decree 1975 may be described as follows:

A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to court has to prove what he claims he is entitled to from the Defendant. At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on evaluation of facts and evidence, the Defendant must realize that the determination cannot be made on nothing. If the Defendant desires the determination to be made in his favour then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court, which may turn out to be only the evidence of the Plaintiff. If the court chooses to believe the only evidence on record, the Plaintiff may win and the Defendant may lose...”

The parties testified without calling any witness

The case of the Petitioner is that she met the Respondent in 2019 through a Pentecost pastor and within two and a half months the Respondent said he want to marry her. She said she was not working by then and he was a NABCO teacher training so she told him to wait for them t know each other a bit before they marry but he did not agree and all that he told her was that he has gained admission in Pentecost College to train as pastor so they should marry because it is mandatory for him to go with his wife if he has to enroll so due to that they got married in November 2019 and the Respondent was to go to the school the next month which Is December 2019. The petitioner submitted that after the marriage she was expecting the Respondent to report to the school but he was not so she started asking questions about the school and he kept giving excuses and he started exhibiting certain conduct that made her to believe that that was why he used force to marry her. According to her the Respondent does not provide housekeeping money and whenever they have issues he invokes curses on her and also have sex with her only when she is bleeding and the only sex style the Respondent prefers is what is called “Doggy style” and that makes her to bleed profusely when he does that. She told the court that the Respondent has turned her into his slave due to that what she says does not matter in the relationship and it only what he says that prevails. The petitioner went on to say that the Respondent stole one dollar from the church when he was a presiding elder and she was a deaconess so they were transferred from Nyamedan where they were to Mecedonia Assembly because of that some members of the church mocked her by calling her Elder dollar’s wife and as a result of the disgrace she stopped fellowshipping with the church of Pentecost and now attending Presbyterian Church. It is her case that whenever the Respondent sees her with a child then he will use her inability to give birth to cast insinuation at her and that the respondent tells how the co-tenants and neighbours mocks her with her childlessness and that she would have vacated from the area if she knew how she is being mocked so she have moved out of the area to another area. The

petitioner concluded that the Respondent married her by deceit and prays the court to dissolve the marriage.

The case of the Respondent they got married on 23rd November 2019 at Breman Kuntunase Pentecost Church. He stated that he did not deceive the Petitioner but to become a pastor in the Pentecost church there is a process which must be followed and he did not make a promise to the petitioner that he will be going to Bible school. He stated that after their marriage a year later they were called to attend an interview and due to a new policy of the church they were told to wait a while and the Petitioner was made a deaconess due to the interview and he did not deceive the Petitioner to marry her. he admitted that when he got married to the Petitioner he was NABCO training and the Petitioner was yet to be posted as a nurse and due to their prayers she posted in 2021 and she started receiving her salary and the Petitioner said she will rent her own apartment though he had by then rented a place where they are living together. he submitted that one day the Petitioner said she was going to visit her auntie at Brakwa and he said he will go with her and when they were on their way and they got to Doben the petitioner took her to her home town Kuntunase instead of Brakwa and that because he was following her so he came back since they were not going to Brakwa and she spend almost a week there. The Respondent stated he called the Petitioner and she said that she will not marry him again because of what he has asked her. He said the Petitioner was on leave at that time and she did not come back to where they were staying again when she resumed from her leave but went to live in Otabilokrom where she has rented a room. He claimed that he informed her family and she was advised to return to the matrimonial home and he asked the Petitioner why she left the matrimonial home and her response was that he should choose between divorce and separation but he made no choice. He stated that he advised the Petitioner that they should have a child so she should not avoid him when it comes to sex but she rather said he has called her barren. According to him the Petitioner

is in the habit of doing what she wants and she makes night calls when he is asleep and he sees her making calls at midnight at the Urban school park whenever he offers an advice it was met with threat of divorce. The Respondent submitted that the Petitioner also travels without informing him and she sometimes says she is attending all night service at Accra at different churches whilst he is sleeping. According to him though he was not working he was providing the basic needs of the Petitioner and now he is gainfully employed. He concluded that at times when he calls the Petitioner she says she does not know why she is behaving like that.

Whether or not the marriage has broken down beyond reconciliation?

Section 1 of Matrimonial Causes Act (Act 371) provides as follows:

A petition for divorce may be presented to the court by either party to a marriage.

Section (2) provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

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 such adultery the petitioner finds it intolerable to live with the respondent; or
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

(d) that the parties to the marriage have not lived as man 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 such 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 notwithstanding the refusal; or

(e) that the parties to the marriage have not lived as man 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.

On a petition for divorce it shall be the duty of the court to inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

Notwithstanding that 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 is satisfied, on all the evidence that the marriage has broken down beyond reconciliation.

The matter was referred to one Reverend Daniel Mireku to attempt settlement but Reverend Mireku's efforts yielded no positive results so the matter took its normal course.

Apart from Reverend Daniel Mireku's efforts to reconcile the differences between the parties it is in evidence that attempts have been made also to save the marriage to no avail.

The Petitioner says the Respondent forced her to marry him by deceiving him that he has gained admission into mission school but if that was the case she has to blame herself because I do not see where the force came from she has every right not to accept to marry the Respondent if she indeed want to but she went ahead and got married to the Respondent only to turn round to say she was forced. In any case did she want to marry a pastor, if not why did she commit herself into a relationship that she was not sure of?

Be That as it may the Respondent did not challenge some disparaging assertions that made against her such as having sex with her only when she is bleeding and the only sex position is "Doggy style". In fact it was the Respondent who called out the name of the style.

If that was what he was doing to the Petitioner that can be said to be cruel and I do not know why the Petitioner allows herself to go through that ordeal but she is finally in court complaining about as a ground to leave the marriage.

The Respondent is said to be the autocratic husband whose words are law and has caused or through his behaviour has made the petitioner a laughing stock. The Petitioner said she is nicknamed Elder dollar's wife because he stole a dollar belonging to the church though the Respondent said he took the money to go and have it changed and returned it I do not see why the Petitioner will make such a demining allegation against her husband.

Since no court of competent jurisdiction has pronounced the Respondent guilty it becomes an allegation but coming from no less a person than his wife and couple with the fact that the Respondent not respond to the her allegation of being ridiculed by church members to the extent of acquiring the a pseudo name Elder dollar's wife, this failure lends credence to the allegation that the Respondent took the dollar as whether

the taking amounts to stealing cannot be pronounce upon in this court. All that this court can say is that his conduct gave the Petitioner a name that she want to remove.

It is imperative to state that the Respondent also said the Petitioner does not take his advice and she make night and midnight calls and travels without recourse to him.

The relationship between the parties has become so toxic that warrants the marriage to be dissolved.

There is evidence to effect that the Petitioner has left the matrimonial home leaving her belongings

The Respondent described the petitioner as a good wife so if she is living the marriage there must be good reason why she is living having decided to marry the Respondent on a short notice. If all is well I do not think she will seek for the divorce. t does not appear to me that the Petitioner does not want to be in the marriage again.

In applying the law to the facts I am of the opinion that the parties after diligent efforts have not been able to reconcile their difference and for that reason I hold that the marriage between the parties have broken down beyond reconciliation and it must be dissolved and it is hereby dissolved

(SGD)

JONATHAN DESMOND NUNOO

CIRCUIT JUDGE