

**IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 10<sup>TH</sup>  
MARCH 2023, BEFORE HER HONOUR AFIA OWUSUAA APPIAH  
(MRS), CIRCUIT COURT JUDGE**

**SUIT NO: C5/317/2022**

**ANASTASIA ANTWI DUAH  
H/NO GPS GA-567-6338  
DANSOMAN ACCRA**

**PETITIONER**

**V**

**FRANCIS OSEI-WIREDU  
S/SGT 64/MARRIED BLOCK  
GONDAR BARRACKS BURMA  
CAMP -ACCRA**

**RESPONDENT**

**JUDGEMENT**

On the 13<sup>th</sup> of April, 2013 at the Pentecost Church New Tafo, Kumasi in the Ashanti Region, parties herein tied the knot as married couple under the Ordinance. Thereafter, they moved to Burma Camp Accra and Teshie to cohabit. The marriage has no issues and no previous proceedings. Petition herein on 20/6/2022 caused the present petition to be issued by her counsel praying the court for the following reliefs;

- a. that the marriage celebrated between the petitioner and the Respondent be dissolved.
- b. Any other orders as the honourable court may seem fit.
- c. Costs including solicitors fee.

Petitioner's reason for seeking these relief from the court is that the marriage celebrated between the parties have broken down beyond reconciliation due to the unreasonable behaviour and adultery committed by Respondent. According to particulars of unreasonable behaviour in the petition, Petitioner avers that Respondent abuses her emotionally and psychologically. She

further averred that Respondent has refused to make himself available for any medical treatment to enable them have children, refused to have sexual intercourse with her since September 2021 without justifiable reason, physically abuse her when she confronts him about his adulterous lifestyle, does not provide house keeping money knowing Petitioner is unemployed and does not have any form of communication with her. In respect of the adultery, Petitioner particularized that Respondent on several occasions bring his girlfriends to the matrimonial home to have sexual intercourse with them on the matrimonial bed and always leaves traces of his sexual condoms, sperms escapes for her to see and has sent and received various text messages from other women professing love for them and vice versa.

Respondent in his answer to the petition denied Petitioner's allegations of unreasonable behavior and adultery. He averred that all their issues started in December 2021 after Petitioner rained insults on him to the extent that he felt useless before her taking away all his feelings and urge to have sex with her. He contended that Petitioner would go through his phone, call and any number on his phone and sometimes insult the person if she hears a female voice. He further alleged that Petitioner does not show him respect and talks to him harshly. He contended therefore that it was the unreasonable behaviour of Petitioner rather that has caused the breakdown of the marriage.

At the close of pleadings the following issues became outstanding for determination by the court;

- i. Whether or not Respondent or Petitioner has behaved unreasonably in a manner that Petitioner cannot reasonably be expected to live together with him as husband and wife.
- ii. Whether or not Respondent has committed adultery.
- iii. Whether or not the marriage between the parties has broken down beyond reconciliation as alleged by both parties.
- iv. Any other issue raised by the pleadings.

There is only one ground for dissolution of a marriage under the laws of Ghana. Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 states "The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation." Section 2(3) of Act 367 provides "Although 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 court is therefore mandated to satisfy itself by evidence that indeed the marriage between the parties has broken down beyond reconciliation before a grant of dissolution. Section 2(1) of Act 367, has outlined several instances which suffice as proof of break down of a marriage. A petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation. See the case of **KOTEI V KOTEI [1974] 2 GLR 172.**

### **Issue 1-whether or not Respondent committed adultery.**

Section 2(1 a) of Act 367 stipulates that where the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent same suffice as proof of break down of marriage. Adultery is a ground for dissolution of marriage but it cannot be based on a mere suspicion without other concrete evidence. In the case of **QUARTEY v. QUARTEY AND ANOTHER [1972] 1 GLR 6-21** at holding one it was held that "the burden of proving adultery lies upon the person who alleges it, and it cannot be shrugged off by evidence that is tainted, indifferent, suspicious or uncertain. The standard of proof required is proof beyond reasonable doubt, that is, it must be proved with the same degree of strictness as is required for the proof of a criminal offence."

Likewise in the case of **ADJETEY & ANOR V ADJETEY [1973] 1GLR 216**, at holding one it was held that "adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability. Direct evidence of adultery was rare. In nearly every case the fact of adultery was inferred from circumstances which by fair and necessary inference would lead to that conclusion. There must be proof of disposition and opportunity for committing adultery, but the conjunction of strong inclination with evidence of opportunity would not lead to an irrebuttable presumption that adultery had been committed, and likewise the court was not bound to infer adultery from evidence of opportunity alone." There must be compelling evidence that leads to the irresistible and or irrebuttable presumption of adultery.

Petitioner's witness statement filed on the 5/11/22 was adopted as her evidence in chief by the court on 24/2/2023. Petitioner's evidence is that Respondent on several occasions brings his girlfriends to the matrimonial home and have sex with them on their matrimonial bed and would leave traces of his semen and condoms on the matrimonial bed. She further stated that Respondent has been sending and receiving various text messages, posting same on his various statuses and professes love and marriage to them. Respondent in his answer to the Petitioner denied these particulars of adultery and contended that Petitioner shall be put to strict prove. **Kpegah, JA. (as he then was) in the case of Zabrama vs Segbedzi [1991] 2 GLR 221** critically analysed the question of burden of proof in civil suits as stated in Mojalagbe vs Larbi & Others [1959] GLR 190. In Zabrama's case, his Lordship stated that "the correct proposition is that, a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred." In Majolagbe v Larbi supra at page 192 it was held that **"proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He**

**proves by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true.”**

Petitioner tender in evidence exhibit B, pendrive containing videos and pictures of ladies and sometime Respondent. A careful perusal of contents on exhibit B reveals videos of some ladies gyrating their waist and shaking their buttocks to a camera, pictures of Respondent and a lady at a sporting event, video of a lady showering her face displayed on the status of a contact save My darling. Content of exhibit B however does not directly and satisfactorily establish adultery as required by law. An inference of sexual intercourse between Respondent and the women in the video without any more evidence cannot reasonable be drawn. The court is therefore unable to find established per the evidence on record that Respondent committed adultery as alleged by Petitioner.

**ISSUE 2-Whether or not Respondent/Petitioner has behaved in a manner that it would be unreasonable to expect Petitioner to live with her as husband and wife.**

Subsection (1 b) of section 2 of Act 367 provides that where the Respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent same also is proof of the break down of the marriage beyond reconciliation.

What constitutes the fact of Unreasonable behavior under section 2(1)(b) of Act 367 has been discussed in the case of **Mensah v Mensah [1972] 2 GLR 198**. The court held per **Hayfron-Benjamin** that "in determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behavior including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova's Charter. The test is objective". Also in the case of **Knudsen v Knudsen [1976] 1GLR 204, Amissah JA** stated that "the question therefore is whether the Petitioner established that the Respondent behaved in such a way that he could not reasonably be expected to live with her. Behaviour of a party, which would lead to this conclusion, would range over a wide variety of acts. It may consist of one act if of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so."

Petitioner in her evidence made several allegations of unreasonable behaviour of Respondent for which reason he could no longer live with her as husband and wife. According to her, Respondent abuse her emotionally and psychologically, have refuse to have sexual intercourse with her, does not provide housekeeping money to her knowing very well she had been

unemployed for the last 3 years and has on numerous occasions Physically abused her when she confronts him over his adulterous behaviour. Respondent admitted to not having sex with Petitioner but contended that he lost all feelings and urge to have sex with Petitioner after the latter insulted him to a point that he felt useless as a man in her presence. Respondent further contended that it was Petitioner who verbally assault him, fail to respect him as husband and talks harshly at him. Petitioner's claims of Physical abuse and Respondent's refusal to seek medical help to enable them have children remain only an averment which has merely been repeated on oath without any evidence whatsoever. Respondent's claim of verbal abuse and disrespect from Petitioner also remains a repetition of his answer without cogent proof. This notwithstanding, the content of exhibit B which is videos and pictures of other women gyrating their waist and buttocks openly displayed by Respondent on his whatsapp status, tagging some of the videos and pictures "save the date", "my family" and openly showing affection to another woman in some of the videos on his whatsApp status viewable by all his contacts including Petitioner is an unreasonable behaviour which naturally would result in emotional and psychological abuse of Petitioner. Respondent has again admitted not feeling any urge to have sexual intercourse with Petitioner. These acts of Respondent cumulatively amount to unreasonable behaviour which Petitioner cannot reasonable be expected to continue living with Respondent as husband and wife.



**ISSUE 3-Whether or not the marriage has broken down beyond reconciliation.**

Section 2 (2) and (3) of Matrimonial Causes Act, Act 367 contains an important provision which brings into focus the general scheme of the Act, which is to encourage reconciliation as far as may be practicable and the court to satisfy itself that the alleged facts of the parties and the breakdown of the marriage beyond reconciliation.

Petitioner testified that attempts at reconciliation of the parties by their family proved futile. Petitioner in three of the videos on exhibit B is heard and seen returning the head drink presented to her family to a relative of Respondent she referred to as "Daa". Parties have intimated to the court their unwillingness to continue with this marriage, and both aver that the marriage has broken down beyond reconciliation and further pray the court to dissolve same. The court having found supra that the Respondent has behaved unreasonable to expect Petitioner to continue living with him as husband and wife and families of Parties having failed to reconcile the parties herein is satisfied that the marriage celebrated between parties herein has broken down beyond reconciliation.

Judgment is accordingly entered in favour of Petitioner against Respondent as prayed.

The Court hereby decrees the said ordinance marriage celebrated between the Parties at the Pentecost Church, New Tafo Kumasi on the 13<sup>th</sup> of April 2013 be and is dissolved today the 10<sup>th</sup> day of March 2023.

Petitioner prays the court for cost including solicitors fee. Cost generally follows events after every civil trial. However, legal or solicitors fee falls in the category of unliquidated claim to succeed in an unliquidated claim action, evidence of the said cost must be established/proved to the court to inform the court of its determination of same and the quantum of the award. Petitioner failed to lead any evidence whatsoever to prove the cost she has incurred as legal fees in instituting this action. Petitioner fails to justify her claim for solicitors cost and same is dismissed.

Considering that Petitioner engaged the services of a lawyer, paid for filing and other fees, court awards GHc5,000 in favour of Petitioner against Respondent as cost.

**PARTIES PRESENT**

**EVELYN AHINASAH HOLDING BRIEF OF RANDY BRAFO FOR  
PETITIONER PRESENT**

**RESPONDENT SELF-REPRESENTED**

**H/H AFIA OWUSUAA APPIAH (MRS)  
(CIRCUIT COURT JUDGE)**