

IN THE CIRCUIT COURT HELD AT TARKWA IN THE WESTERN REGION ON  
WEDNESDAY THE 14<sup>TH</sup> DAY OF JUNE, 2023 BEFORE HER HONOUR HATHIA  
AMA MANU, ESQ., CIRCUIT COURT JUDGE

---

SUIT NO. C4/3/23

CATHERINE BEBODU ERZOAH @

MRS. CATHERINE CUDJOE

GPS ADDRESS: WT-0209-3649

.....

PETITIONER

SENYAKROM, TARKWA

AND

JOSEPH CUDJOE

GPS ADDRESS: WT-0209-3649

.....

RESPONDENT

SENYAKROM, TARKWA

---

**JUDGMENT**

---

Petitioner – Present.

Respondent – Present.

No legal representation.

Both parties were joined in Holy Matrimonial on the 23<sup>rd</sup> day of November, 2012 at the District Court, Tarkwa. Both parties co-habited at Senyakrom, Tarkwa. The Petitioner a business woman asserts that their marriage has broken down beyond reconciliation due to the unreasonable behaviour of the Respondent.

*To this end the Petitioner prayed for the following reliefs:*

1. That the marriage celebrated at District Magistrate Court, Tarkwa on 23<sup>rd</sup> November, 2012 be dissolved.
2. An Order directed at the Respondent to maintain the child at GH¢1,000.00 per month.

3. An Order for the Petitioner to take custody of the child with reasonable access to the Respondent.
4. An Order directed at Respondent to give Petitioner's due share of the 6 bedrooms, hall, a store and one private car (Toyota Corolla) with Registration No. WR275-15 acquired during the subsistence of the marriage.
5. An order directed at Respondent to rent two (2) bedroom apartment for the petitioner and the issue of the marriage for a period of 5 years.
6. That a lump sum of GHC100,000.00 being alimony or compensation to the Petitioner.

The Respondent on the other hand denied the Petitioner claims and stated that he has not exhibited acts which can be classified as unreasonable in the cause of their marriage. The Respondent asserted the Petitioner is registered at Goldfields Hospital by virtue of his work so he has no knowledge of Petitioner's claim of admission at Pentecost Hospital.

Respondent intimated to the Court that he has never insulted the Petitioner with her private part or her mouth before that it was the Petitioner who accused him of sleeping with a tenant.

Respondent further responded to Petitioner's claim of attack by his son as a mere misunderstanding between the parties which resulted in the Petitioner's left hand being injured by the door spring. In his averments the Respondent described himself as a hypertensive patient whose sexual performance is low having been operated upon twice. In the words of the Respondent, "Petitioner intentionally planned to kill Respondent by way of poisoning Lawson De-ray Man Bitters". Thus Respondent

averred that Petitioner tempered with his alcoholic beverage which he shared with his friend on 25<sup>th</sup> August, 2022 and upon drinking same they fell into a 15 hour nap.

Amidst admitting to have offered to pay alimony of GH¢5,000.00 to the Respondent averred that both parties' family met in an attempt to resolve their issues to no avail and that it was during that meeting that he made the monetary proposal.

Respondent in his response to the Petition stated that during the period of their marriage they acquired 3 bedroom house out of 2 bedrooms which have not been completed yet.

*The Respondent on his part prayed the Court for the following reliefs:*

1. The Ordinance Marriage registered at the District Court, Tarkwa on 23<sup>rd</sup> November, 2012 between the parties be dissolved.
2. An Order directed at petitioner to take custody of the child (Prince Boampong Cudjoe – 9 years old) with reasonable access to me (Respondent).

In a bid to determine all issues in controversy the Court will address these issues:

- Whether or not the Respondent/Petitioner acted unreasonably in the course of the marriage.
- Whether or not the marriage between the parties has broken down beyond reconciliation.
- Whether or not the Plaintiff is entitled to the relief sought.

***Section 1(1) of the Matrimonial Causes Act, 1971*** provides that, “the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”, thus the Court has a duty to ensure that a divorce is only declared after satisfying itself of irreconcilable differences between the parties that makes it

impossible for them to stay together. This suit like all civil action requires that he who avers must prove same and the said proof must be on a balance of probabilities.

As both parties are alleging unreasonable behaviour on each other, it was expected that the acts or omissions constituting the said behaviour is presented for the Court to ascertain if a reasonable person could live with such attitude and also whether the other sides act/omission more probable than not can be said to be unreasonable.

Rayden in defining behaviour in a legal sense in his book Rayden on Divorce (14<sup>th</sup> Edition 1983) emphasized that, "Any conduct, active or passive constitute behaviour. The behaviour is not confined to 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 and 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 ... it is 'behaviour' to which the Court must have regard not 'intentional behaviour'. Intent may aggravate the effect of the behaviour of which the Petitioner complains and intent may make behaviour unreasonable that without such intent would not have been unreasonable.

On her part, the Petitioner gave evidence for herself and stated that the Respondent had a misunderstanding with her because she questioned his daughter on finding her kitchen disorganized. She then gave evidence on oath that the Respondent beat and wounded her and then reported himself to the Tarkwa Police Station to be arrested. That he was directed to rather take her to the hospital. The Petitioner attached Exhibit A as proof of her admission. Assessing this evidence, I find that same cannot possible be of her existing claim.

First of all if the Respondent had reported the case as claimed he would have been issued with a police medical form to send her to the hospital or better still arrested. Again the Exhibit A can at best be considered as a picture of Petitioner lie down with bandaged hand. Same does not depict/evident her admission at any hospital neither does it depict the reason any alleged admission. In Petitioner paragraph 13 she claimed the Respondent said her mouth and vagina have odour to the hearing of others however in her paragraph 15 she claimed Respondent was a sex addict who could have sex with her even during her menses. The Court is left to ponder, why the Respondent who allegedly claim petitioner's vagina smells would always demand sex and the Petitioner will comply.

The Petitioner present Exhibit B which she described as a photograph of AK47 aphrodisiac medicines. The Petitioner claimed that the Respondent take in these medications and have sex with her until she cried in pain.

The popular meaning of the word behaviour as stated in the oxford dictionary provides that "behaviour includes deportment, manner, way of conduction oneself, moral conduct, treatment shown to or towards others in response to stimulus".

One of the medication in Exhibit B had the name Redsun on it and AK 47. A simple search on Google will indicate that Resun is used to treat erectile dysfunction and premature ejaculation. In effect the medication keeps ones muscles relaxed and rigid during sex. Again, the AK47 medications is medication that enhances sexual orgasms.

During cross-examination, the Respondent did not ask the Petitioner any question to dispute the claim of using these medications. I find on this issue that Petitioner's claim of taking aphrodisiac is more probable than not.

Petitioner claimed Respondent forced her to abort 2 months 2 weeks pregnancy and even asked the doctor to remove her womb. This alleged criminal offence perpetrated by the parties was just presented without further and any evidence to establish same. As the Court was not satisfied on the truth of same I will not probe further although the Court would not have hesitated to direct the parties to be charged criminal. In the Petitioner's paragraph 19, she presented the Court with another act of the Respondent which is at the height of unreasonable behaviour but in her paragraph 20 -22 she presented evidence that makes the existence of paragraph 19 questionable.

Thus she claimed that he refused to rent a room for her after saying he had enjoyed marriage with her for 10 years. Paragraph 21 creates the impression that the Respondent although customarily divorcing Petitioner was content with the life they had shared but Petitioner refused his offering of compensation. If Petitioner refused same then why was she blaming him for not renting a room for her?

During cross-examination of the Petitioner, it came to light that, there was a misunderstanding when Petitioner tempered with the Respondent's drink. Although the Respondent's action as presented by the Petitioner may have seemed unreasonable. She was economical with the truth and as such Respondent act was a reaction to the Petitioner's action. While the trial was ongoing the Court directed the Respondent to rent a single room self-contain house for the Petitioner as the issue of the marriage was to be returned to Petitioner with immediate effect. It is based on this evidence that the Petitioner claims the Respondent is unreasonable but I am not minded to agree with the Petitioner.

Petitioner presented a witness on the issue of the drink that she tempered with. According to this witness in her witness statement, Respondent and his friend approached her with a bottle of alcoholic drink which he asked her to smell. According to this witness in her evidence she told him it smelt of different drinks.

That she went with her husband to plead on behalf of the Petitioner but the Respondent kicked their legs. The witness claims Respondent's friend said the drink was not poisoned and that they did not understand why they overslept.

*During cross-examination the following occurred:*

Q: Do you remember you smelled and said there was hospital medication in it.

A: No I did not say that but I smelled it.

Q: Did you smell it.

A: No.

Q: Do you remember you said in your witness statement that the drink smelt of different drinks.

A: Yes I remember.

Q: If you did not smell it then how do you know it smelt like different drinks.

A: I smelt it but I did not say anything.

Q: I want to know how you accessed that it was different drinks.

A: I drink so I can perceive the smell.

Q: Can you tell the different drinks added.

A: I cannot tell but I know it is different drinks.

Q: When you and your husband came did I do or say something to you.

A: You asked us to go out.

Q: Are you saying I just sacked you and pushed you out.

A: We begged on behalf of the petitioner then you started pushing us out of your house.

This witness even refused her own claim in the witness statement. I find that her responses during cross-examination were evasive and impracticable. It is more probable than not that a discussion ensued between the witness, her husband and the Respondent which may have led to him driving them out of his house.

The Respondent on his part gave evidence to the effect that he has never verbally abused the Petitioner before. The Respondent also denied using the medications for sexual enhancement and claimed it was petitioner who bought them for him. Studying these claims, I find no evidence supporting the Respondent's denial of using sexual enhancement drugs. The Court through research established the purpose of the drinks and the one who bought it does not matter what matter is whether it was used or not and the Respondent does not deny using same. This act has already been determined as unreasonable although the Court did not agree with the Petitioner's claim of insults. On the issue of insults except stating same and the denial none of the parties presented the Court with concrete evidence of either party verbally abusing the other.

Another act of unreasonable behaviour asserted by Respondent against Petitioner was the alleged attempt at poisoning his drink. The Respondent tendered into evidence Exhibit 1 which was the photograph of the drink. The Petitioner in this case admitted during her cross-examination that she tempered with the Respondent drink but claimed it was malt that she added. Based on her admission no further evidence was need except to say that whatever she added was not ascertained during trial. Respondent's Exhibit 2 is not a doctor's report as paragraph 13 of his witness statement states but rather a laboratory request based on a complainant given to the doctor. This behaviour of the Petitioner is quite disturbing, for her to have done this act would have required some thought process thus her actions were premeditated.

The Petitioner act was unreasonable and same broke the circle of trust that existed between the parties. It was due to this act that Respondent said he could not live with her. To follow Respondent's claim that, it was due to this act which caused DOVSU officials to meet family members and a resolution reached for Petitioner to leave the matrimonial home, same seems more probable than not.



Respondent in paragraph 20 of his witness statement which was tendered into evidence mentioned that the petitioner had acquired a land at Mile 1 with digital address WT-0597-4786 and attached Exhibit 3 a picture depicting same. The Petitioner did not refute this claim and did not ask the Respondent any question on same. The court finds that indeed the said property belongs to the petitioner.

Analyzing the evidence of both parties and in considering the various behaviors exhibited by the parties I find the Respondent clearly had sex with the Petitioner with the use of medication and same is not the best of practice and unreasonably the Petitioner could have refused at any point. I find that the petitioner's action of tempering with her husband's drink was dangerous and very unreasonable.

In her reliefs the petitioner has asked for an equal share of the property she views as being matrimonial property. The legal frame work on sharing of property allegedly acquired during marriage has evolved immensely with the Supreme Court re-instating in the case of *Fynn Vrs. Fynn (2013 – 2014) 1 SCGLR 727* that there are situations where within the union parties may acquire property in their individual capacities and that position is envisaged by *Article 18 of the 1992 constitution*. As all evidence in this case were assessed on a balance of probabilities it is crucial to note that *Section 14 of the Evidence Act NRCD 323* stipulates 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 petitioner showed no contribution made towards acquiring the house they stayed in. Likewise the respondent showed no contribution towards the petitioner's land at Mile 1. Both parties were seeking to claim something based on no evidence of contributions or involving being proved to the court. The respondent presented the court with documents covering the car which petitioner prayed for. The evidence on record shows that Sampson Assuah is the owner and not the respondent. That the respondent denied ownership of the car and although the petitioner put it to him

during cross-examination that he was being untruthful. The petitioner just refuted the claim and did not adduce contradictory evidence.

At the end of this trial, the marriage celebrated between the parties on 23<sup>rd</sup> November, 2012 is hereby dissolved due to the unreasonable behaviour of the petitioner. Custody of the issue is given to the Petitioner with reasonable access to the Respondent. The Respondent is to give the Petitioner GH¢500.00 monthly effective July, 2023. The Respondent is to help the Petitioner rent a suitable place until such time that the issue is 18 years or the Petitioner remarries. The rent will be payable in a ratio of 70% to 30% with the Petitioner paying 30%. The shop which is within Respondent premises is to devolve to the petitioner. The Petitioner will however have only a life interest and cannot transfer ownership of same to anyone and upon her demise same reverts back to the Respondent and his family. The Petitioner is not automatically entitled to half or a share of Respondent's property by virtue of marriage she is expected to prove substantial contribution. The Respondent submitted a site plan which covers the land upon which the house in contention was built and same showed that it was allocated to *Mr. Gershon K. Ayerteye*. However on the totality of evidence presented I find that she did not show any financial contribution to the building for which she prayed for a half share, I am therefore unable to grant same. Petitioner prayed for alimony of GH¢100,000.00 but considering the fact that almost her claims were unjustified and by her own actions caused suspicion to creep into here marriage and affect the trust between them I am minded not to adhere to her prayer. Alimony is discretionary and I am minded not to exercise my discretion in favour of the Petitioner in the quantum of alimony sought. Trust is the main foundation of every relationship, her adding an uncertain substance even if it was water to respondent drink without his knowledge was major act leading to this suit pending in court yet she filed this suit amidst many claims which turned out not to be properly founded. I hereby award alimony of GH¢15,000.00 to the petitioner as her settlement. Same should be paid by 31<sup>st</sup> August, 2023.

**(SGD.)**

**H/H. HATHIA AMA MANU, ESQ.**

**(CIRCUIT COURT JUDGE)**