

IN THE CIRCUIT COURT HELD AT TARKWA IN THE WESTERN REGION ON WEDNESDAY THE 26TH DAY OF APRIL, 2023 BEFORE HER HONOUR HATHIA AMA MANU, ESQ., CIRCUIT COURT JUDGE

SUIT NO. C4/02/2023

THEOPHILIA DAMPTEY-BUADU

H/NO. AS2/B364

ASANKRANGWA

.....

PETITIONER

AND

AKWASI FRIMPONG

UNKNOWN HOUSE NUMBER

MANSO AMENFI

.....

RESPONDENT

JUDGMENT

Petitioner – Present.

Respondent – Present.

The petitioner prayed the Court to grant a dissolution of the marriage celebrated with the Respondent on 17th December, 2016 at Aldersgate Methodist Church, Asankragwa. The Petitioner's prayer is being sought against the background that the Respondent had gone for another girlfriend and also moved out of their matrimonial home. The Petitioner asserts that subsequently the Respondent has shirked his responsibilities and every attempt to even visit the Respondent with the issue of the marriage has been objected to by the Respondent.

The Petitioner is therefore praying the Court for the following reliefs:

1. The marriage celebrated between parties should be dissolved.
2. An order directed at the Respondent to pay GHC450.00 monthly to be calculated from September, 2020 until date.
3. An order directed at Respondent to maintain the issue with GHC600.00 monthly.
4. An order for custody of the issue to the Petitioner and reasonable access to the Respondent.

5. An order directed at Respondent to give Petitioner a due share of a Kia Rhino Truck bought from their wedding proceeds (GHC7,000.00) and also accumulated amount of GHC12,000.00 being proceeds from the truck.
6. Recovery of GHC4,000.00 that Petitioner gave to Respondent as financial assistance.
7. Recovery of GHC9,900.00 being accumulated maintenance arrears and GHC2,000.00 being admission fees and school fees of the child for the terms.
8. Lump sum of GHC35,000.00 to Petitioner as alimony.

The issues to be determined by the Court are:

- Whether or not the marriage has broken down beyond reconciliation.
- Whether or not Petitioner is entitled to custody with reasonable access to the Respondent.
- Whether or not the Petitioner is entitled to the various amounts claimed in paragraphs 5, 7 and 8 of the reliefs attached to the petition.

It is trite learning that a Court must satisfy itself that a marriage has broken down beyond reconciliation before dissolving same. The learned authors of *Halsbury's laws of England (Vol. 29(3)) 4th edition Reissue* wrote that, "on a petition for divorce it is the duty of the Court to inquire so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the Respondent. If the Court is satisfied on all the evidence that the marriage has broken down irretrievable, it must grant a decree of divorce"?

In resolving the first issue the Petitioner informed the Court through her evidence that the Respondent had entered into a relationship with one Esi Sarah Appiah and was staying with her pending the dissolution of their marriage. The Petitioner attached photographs of the Respondent's girlfriend and in one of the photographs the Respondent can be seen carrying the said lady mentioned. The Petitioner claimed that

the Respondent stopped having sex with her and despite all her effort to win back the Respondent he was not responsive. The Petitioner further asserted that Respondent's mother took the initiative to try and resolve the misunderstandings between them but same was no avail. That after this attempt the Petitioner gave evidence that she tried on two occasions to visit the Respondent but she ended up lodging at a hotel instead.

The Respondent during cross-examination questioned the Petitioner only on the reliefs sought. He puts it to her that although he was not consistent by paying maintenance for their child on the same date every month it is not possible that he refused to maintain the issue for even two months. The Petitioner disagreed with him and insisted that he owed maintenance arrears for the issue. It is Petitioner's case that the Respondent has acted unreasonably in the cause of their marriage. She claims that the Respondent subjected her to various acts which caused her anxiety, distress and trauma for instance Respondent pending the filing of this action had packed all her belongings from their matrimonial house and kept same in checked bags in the house. The Petitioner exhibited pictures to prove these parked items.

The Respondent also put it to the Petitioner that she was not entitled to the amount sought as alimony but she answered in the affirmative that due to how he has treated her she deserves even more than she asked for.

The Petitioner did not call any witness so the court directed the Respondent to open his case. Respondent gave evidence to justify his attitude towards the Petitioner. According to this Respondent due to the Petitioner refusal to cook, wash and have sex with him, he decided to find another woman to take care of him. The Respondent asserted that he earns less than GHC900.00 and therefore the Petitioner's financial claims were too much for him. However, the document he attached was just evidence of an alert received through his mobile phone prompt.

However, during cross-examination by the Petitioner the Respondent confirmed that the amount for which he attached the exhibits is minus benefits that he receives from his company. The Respondent in his evidence-in-chief also confirmed that he took a loan from the Respondent, used the proceeds of their union to buy the Kia Truck and also accumulated GH¢12,000.00 from using the KIA TRUCK during the course of their marriage.

Having considered the happenings in the parties' marriage I find that the Respondent has been unreasonable and his act of adultery which he was still persisting in during the pendency of this suit is cogent and sufficient reason to consider that this marriage has broken down. The Respondent's mother tried to resolve their difference to no avail, before the trial commenced the court gave parties an opportunity to try and reconcile but all was to no end.

In *Adjetey Vrs. Adjetey (1973) 1 GLR 216* the Court held that, "On the proper construction of this subsection of the Act, the Court can still refuse to grant a decree even when one or more of the facts set out in *Section 2(1)* have been established. It is therefore incumbent upon a Court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough".

See the case of *Ash Vrs. Ash (1972) 1 ALL ER 582*.

I hereby hold in respect of the first issue that the marriage has broken down beyond reconciliation.

The second issue is on custody of the child, as both parties are not contesting on who should have custody I hereby hold that custody of the issue is given to the Petitioner with reasonable access to the Respondent.

The third issue bother on all the financial requests made by the Petitioner to this Court. I hereby direct that pursuant to the dissolution of this marriage the Respondent is directed as follows:

After taking the evidence of parties and evaluating same, I hereby dissolve the marriage celebrated between the parties on 17th December, 2016 at Aldersgate Methodist Church. I find that the Respondent's behaviour has been unreasonable in the course of the marriage. The Respondent is to maintain the issue of the marriage with GHC600.00 a month, he is also to pay an amount of GHC10,000.00 as her share in the Kia Rhino which they used their wedding proceeds to buy. The Petitioner did not prove the maintenance arrears owed neither did she prove the admission fees and school fees owed. I will therefore make no order to that effect. I hereby award compensation of GHC40,000.00 to be paid to the Petitioner in four (4) months instalment. Respondent is directed to pay the school fees of the issue as well as the health issues.

(SGD.)

H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)