

IN CIRCUIT COURT '1' HELD AT TAKORADI, WESTERN REGION ON FRIDAY
3RD MARCH, 2023 BEFORE HIS HONOUR MICHAEL K. AMPADU, CIRCUIT
COURT JUDGE.

SUIT NO. C5/42/2022

BETWEEN

FRANCISCA GLADYS OWUSU ESHUN PETITIONER

AND

ANTHONY ESHUN RESPONDENT

JUDGEMENT

Counsel: Edward Acquaaah Arhin for Respondent

This petition which was filed in this Court on 17/06/22 showed that the marriage between the parties was contracted in Akim Achiase sometime on the 26th day of November, 2011 at the Methodist Church after which the parties cohabited at Takoradi. The Petitioner is a Police Officer while the Respondent is a retired Military Personnel and their marriage is blessed with two (2) children: Queenstar N. Eshun, ten (10) years and Samuel Paapa Yaw Owusu who is five (5) years of age.

It is the claim of the Petitioner that the Respondent's behaviour towards her has become unreasonable and they cannot be expected to live together as husband and wife after their respective families have met on many occasions to settle the issues between them but all have proven futile resulting in the breakdown of the marriage beyond reconciliation.

She states the particulars of the breakdown as follows:

- (a) That the Respondent has never paid school fees for the two children or bought books, paid their transport, snacks or anything since the children were given birth to.
- (b) That the Respondent is irresponsible and does not take care of the Petitioner and the children since the inception of the marriage and he has never given out money for the maintenance of the house.
- (c) That the Respondent deliberately refused to attend the Petitioner's father's funeral even though the family was expecting him as customs demand.
- (d) Respondent did not name their second child even though he did not deny the pregnancy so her father had to name the child after himself.
- (e) That the Petitioner has paid, to several people, debts that the Respondent owes but he has refused to pay back and that he is dishonest, deceitful and a liar.
- (f) That the Respondent has denied her sex for the past five to six years and they do not live together as husband and wife and that due to the above reasons the Petitioner cannot live together with the Respondent as husband and wife and so prays for the following:
 - i) The marriage celebrated at Akim Achiase Methodist church on 26th November, 2011 be dissolved.
 - ii) An Order compelling the Respondent to pay the school fees, medical bills, books and transportation of the two children to and from school.
 - iii) Custody of the children be granted to the Petitioner with reasonable access to the Respondent; and
 - iv) An Order for the payment of a monthly maintenance of One Thousand Five Hundred Ghana Cedis (GH¢1,500.00).

In his reply to the petition, the Respondent alleged he has been taking care of the children by buying provisions, fresh fish, vegetables and others for the Petitioner and the children. He responded also that he was paying the school fees of the children until he was reduced

in rank when he had a case at the Military Barracks but even despite that, he has been trying all the time to make up for the unpaid fees and the Petitioner does not appreciate any money he sends to her.

According to him, he did not attend the funeral of the Petitioner's father because the Petitioner did not use the appropriate channels demanded by custom to inform him and his family members about the funeral.

He replied also that it was true that he was owing some people because of a loan he guaranteed for a friend who refused to pay back the loan but he informed the Petitioner before they got married. The Respondent stated that he did not name their last born because the Petitioner took him to her father's house to name him without telling or informing him and when she came back and he asked her, she insulted him.

It was the further response of the Respondent that they do not live together as husband and wife because the Petitioner packed out from the Military Barracks where they were living together to the Police Barracks where she went to live with her younger sister.

That it is the Petitioner rather who has denied him any sexual intercourse because he became financially unsound after he had some challenges with his employers, the Ghana Armed Forces which later led to the reduction in his rank which afterwards led to his resignation from the Ghana Armed Forces.

He consented to the dissolution of the marriage and prayed that he is allowed to pay Five Hundred Ghana Cedis (GH¢500.00) a month as maintenance to the children instead of the One Thousand, Five Hundred Ghana Cedis (GH¢1,500.00) requested for by the Petitioner.

In her reply to the Respondent's answer, the Petitioner denied all that the Respondent alleged in his answer to the petition and in her evidence-in-chief to the Court, she repeated all that she alleged in her petition and added that the Respondent refused to name his son Samuel Paapa Yaw Owusu upon persistent demand from her and that is why she took the child to her father to name him after himself.

In his evidence-in-chief to Court the Respondent repeated all he stated in his answer to the petition without adding anything new. After filing their respective witness statements, when it was time for the parties to testify, they decided they will not testify so the Court should use processes filed to determine the petition.

Section 2(1)(b)(d) of the Matrimonial Causes Act, Act 367 of 1971 provides that:

- 2(1) "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:
- 1(b) That the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent.
 - 1(d) That the parties to the marriage have not lived as husband 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 the 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 despite the refusal".

The Respondent denied being irresponsible in this relationship. The Petitioner alleged that he failed to name his second child after persistent demand on him to name this child. Because he failed to name the child, the Petitioner was compelled to take the child to her father for him to name the child after himself. The answer to this by the Respondent is

that the Petitioner took the child to her father without his knowledge and when she came and he asked her she insulted him. It is surprising how a man who has a child with his wife and lives responsibly with her will not know when the wife travels away from the matrimonial home with the child. Respondent did not care that the Petitioner had travelled with the child and he waited until she came before asking her where she went with the child. If this is not irresponsibility and unreasonable behaviour, then the Court cannot think of any other act.

Again when the father of the Petitioner died, the reason why the Respondent said he did not attend the funeral was that, the Petitioner failed to inform him properly as customs and tradition demand. This is a woman who has two children with you, one of whom was named for you by your parents-in-law. The Court sees the excuse for not attending the funeral as not only insulting to the Petitioner but also disgraceful and humiliating to her in the face of her family members. This is gross irresponsibility. The Respondent agreed that he owed some monies or loans before they got married.

Petitioner said she paid most of these debts and yet more people continued to come to the matrimonial home which was in the Military Barracks to demand for their monies and that was what compelled her to pack from the Respondent's house. The Respondent did not recognise any of these efforts from the Petitioner. The Court agrees with the Petitioner that Respondent's conduct was unreasonable and irresponsible and that behaviour was intended only to destroy this marriage.

Section 2(1)(e) of Act 367 gives one of the grounds for dissolution of a marriage as when parties to the marriage have not lived together as husband and wife for a continuous period of at least five years immediately preceding the petition of the Petitioner.

At paragraph 7(vi), the Petitioner states that they have not lived together as husband and wife for five to six years and the Respondent has denied her sex. In his reply the Respondent agrees that they have not lived together and that it is the Petitioner who has denied him sex because he lost his job and was financially unsound. If the Petitioner can travel to her father and the Respondent will not care, then it is clear that he did not need the Petitioner for anything not even for sex.

The facts are also clear that the irresponsibility of the Respondent extends to the maintenance of his children. He claimed he paid for their needs until he lost his job. The Petitioner denied the Respondent paying anything at all on the children since they were born. This Court does not believe that a Respondent who did not care whether his child is named or not will care about their basic needs such as will be needed for school, medical or clothing. On preponderance of probabilities, section 10 (2) of the Evidence Act, 1975, Act 323, the Court believes the evidence of the Petitioner more than that of the Respondent.

Both parties agreed that the marriage be dissolved and so the Court hereby:

- i. Dissolve the marriage between the parties which was celebrated on 26/11/2011 at the Methodist church, Akim Achiase and Orders a decree of divorce to that effect.
- ii. Custody of the children is granted to the Petitioner with reasonable access to the Respondent. Respondent shall call and inform Petitioner anytime he intends to visit the children and the time should be at the convenience of the Petitioner.
- iii. The Respondent says he was paying for the needs of the children. He is Ordered to pay their school fees, including medical bills when presented by the Petitioner, to pay their transportation fee to and from school, buy their books and the Petitioner is to feed them.

- iv. Respondent is Ordered to pay Five Hundred Ghana cedis (GH¢500.00) per month to the Petitioner to meet expenses on the children such as snacks and other bills since accommodation for the children is provided for by the Petitioner.

(SGD)

H/H MICHAEL K. AMPADU

CIRCUIT COURT JUDGE