

**CORAM: BEFORE HER LADYSHIP JUSTICE MARIAN AFFOH (J) JUSTICE OF THE  
HIGH COURT, SITING ADDITIONAL AS CIRCUIT COURT JUDGE (CIRCUIT  
COURT 2, TAKORADI) ON MONDAY, 31<sup>ST</sup> JULY, 2023**

**SUIT NUMBER C5/17/2022**

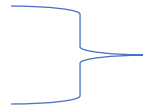
**EMELIA BENNIEH**  
HOUSE NO. PT 29  
FUNKO ROAD



**PETITIONER**

**VRS.**

**DANIEL BENNIEH**  
HOUSE NO. PT 29  
FUNKO ROAD



**RESPONDENT**

**JUDGMENT**

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The likely result of a marital relationship gone sour is the filing of a petition for dissolution of marriage by one party against the other. Such is the case for the instant petition where the petitioner herein is seeking a dissolution of her marriage to the respondent citing unreasonable behavior on the part of the respondent as the basis. In addition, the petitioner seeks and order for the custody of the three children of the parties, monthly maintenance in the sum of GHC 1,500.00 and any orders deemed fit by the court.

The respondent in a late answer file on 03/02/2022 pursuant to leave of this court denied the claims of the petitioner and maintained that it is rather the petitioner who has been

disrespectful towards him. However, he did not contest the claim for the custody of the children but on the issue of maintenance indicated that he could afford only GHC 600.

In a brief reply, the petitioner joined issues with the respondent after largely denying all the averments of the respondent in his answer to the petitioner. After hearing the parties, the court set down the following issues for determination;

1. Whether or not the respondent has behaved in an unreasonable manner
2. Whether or not the amount of GH¢600.00 offered by the respondent as maintenance is adequate.

According to the Osborn's Concise Dictionary, 8<sup>th</sup> Edition, 'unreasonable behavior' is defined as 'the behavior of the respondent that is such that the petitioner cannot be expected to live with him'

The duty however is on the petitioner to prove the fact of unreasonable behavior as stated in section 2 (1) (b) of the Matrimonial Causes Act of 1971, (Act 367) [See also sections 10(1) and 11(1) & (4) of Evidence Act, 1975 NRCD 323].

In Mensah v. Mensah [1972] 2 G. L. R 198 the court held 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 the circumstances constituting such behaviour 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 Casanova's Charter. The test is an objective one."

The words grave and weighty have been described by the Advanced Oxford Learner's Dictionary 7<sup>th</sup> Edition at pages 651 and 1670, 'as something that is serious and important or heavy matters'.

Again what do we mean when we say that the test is an objective one? It refers to a test not influenced by personal feelings or opinions in considering and representing facts.

The question for the court to determine is whether or not on the facts presented by the petitioner the respondent can be said to have behaved in an unreasonable manner.

In her evidence, the petitioner referred to oral abuse and name calling by the respondent who was fond of calling her a “prostitute”

In addition, the respondent denied her sex and has been telling petitioner’s mother and counsellors that he is no more interested in the marriage. Also frequent physical abuse and death threats have been meted out to the petitioner by the respondent for refusing to abort the last issue of the parties whom petitioner has refused to name. The Respondent told the petitioner’s mother that he made the petitioner bear all the expenses of their marriage because he did not love her and to top it up he has been insensitive to the plight of the petitioner whenever she was ill.

In addressing the issue of unreasonable behavior, it is my considered opinion that conjugal relations form an essential part of marriage. Therefore willful denial of sex in a marital relationship may be construed as unreasonable behavior.

The respondent denied this by insisting that it was rather the petitioner who left the matrimonial bed to sleep in the children’s bedroom since August 2021.

On the facts it is evident that the parties have not had sex since August 2021. The answer of the respondent on this was not contradicted by the petitioner in her reply. Under the rules of procedure governing this court, a party’s failure to deny an allegation against the party may be construed as an admission of that fact.

Under Order 11 rule 13 (1) of The High Court Civil (Procedure) Rules 2004 C. I. 47 it is provided that any allegation of fact made by a party in a party's pleading shall be deemed to be admitted by the opposite party unless it is traversed by that party in a pleading...'

Therefore the veracity of an averment that is not denied is presumed to be the truth of the averment and forecloses further enquiry and renders further evidence unnecessary. [See Addo v. Asare 1967 GLR 231-236]

Again in the face of the denial by the respondent of the said issue the petitioner ought to have led further evidence to establish the fact of willful denial of conjugal relations and that she failed to do so. [See Zabrama v Sebgedzi [1991] 1 GLR 221.

In view of that I find the allegation of willful refusal of sex not proved by the petitioner and her claim on that issue fails accordingly.

On the claim of being called a prostitute, the Concise Oxford Dictionary 8<sup>th</sup> Edition Page 267, defines 'prostitution' 'as the offence of a man or a woman offering his or her body for payment. It states further that sexual intercourse need not be involved.' In view of that any reference to a wife as a prostitute is a weighty matter which may amount to unreasonable behavior. Further the refusal of a father to name the child born by his wife for the reason only that she refused to abort that child is wholly unacceptable in the marriage setting. I find the above behavior of the respondent unreasonable.

However same cannot be said of the alleged physical abuse, the death threats or anything the respondent told the petitioner's mother regarding the payment of the marriage expenses. This is because the petitioner failed to demonstrate on the facts and the evidence the physical abuse and death threats in question thereby making it impossible for the court to make an independent determination of whether or not the occurrence

being referred to by the petitioner as physical abuse or death threats actually constitute same.

Also whatever respondent might have told the petitioner's mother amounts to hearsay evidence and remains inadmissible under the circumstances. On that basis I dismiss the claims of unreasonable behavior in that regard.

On the issue of custody it is apparent that same is not being contested by the respondent as is evidenced by paragraph 15 of the respondent's witness statement filed on 06/04/2022.

Paragraph 15: I pray the court gives custody of Bridget Ekuba Bennieh, 16 years and Emelia Akosua Bennieh, 13 years to the petitioner .... I pray the court grant me reasonable access to the children.

The apparent failure of the respondent's to include the third issue of the parties in his offer of custody might have been as a result of inadvertence rather than a deliberate act of exclusion as paragraph 4 of his own witness statement clearly indicates that the issues of the marriage are three. On that basis the courts considered view is that any references to children should include the third issue of the parties also. If that is the case then the court can safely conclude that issue was not joined on the custody of the third child. For that matter the petitioner is entitled to enjoy the custody of the issues of the marriage with reasonable access to the respondent.

Finally, the issue of maintenance is also not in dispute however, the parties are at variance with the amount of maintenance the respondent should pay to the petitioner. While the petitioner demands GHC 1,500.00 the respondent proposes the amount of GHC 600.00. The question is what does the law say on these matters?

Section 16 (1) of the Matrimonial Causes Act 1971, (ACT 367) provides for maintenance of the petitioner and child where the respondent has willfully neglected to provide, or to

make proper contribution towards reasonable maintenance. From the above it will not be far-fetched to say that maintenance orders involving children must be made with regard to the financial status of the parties. [See section 49 (a) of Children's Act, 1998, (Act 560)]

The evidence describes the petitioner as a caterer and the respondent as an accountant. This fact is not disputed by the respondent. For this reason the court is of the considered view the respondent is better placed financially to maintain the issues of the marriage.

Again, section 54 of the Children's Act, 1998, (Act 560) provides for the maintenance of children who are more than eighteen years but are engaged in in a course of continuing education or training. Therefore, for the first child to benefit from any order of maintenance in that regard the petitioner must prove that she is still schooling or furthering her education. This the petitioner failed to do. Failure to do so means the first child cannot be entitled to an order for maintenance.

For this reason I find that the first child of the parties being over the required age for which a child qualifies for maintenance is not entitled to it. Further, it is my considered view that, because the remaining children who qualify for maintenance are two, the offer of GHC 600.00 by the respondent for maintenance, is grossly inadequate, therefore, any maintenance ordered should be adequate to cater for the needs of the two issues of the marriage.

A careful examination of the rest of the evidence adduced by both parties coupled with the ensuing cross-examination by counsel for the petitioner and the respondent respectively clearly showed that evidence was copiously led by both sides on extraneous matters bordering on properties of the parties, the indebtedness of the respondent to the petitioner for which no reliefs were being sought by either party. This is because they were never pleaded and as such the parties are estopped from leading evidence on them.

In conclusion, this court grants the instant petition for the dissolution of the marriage and makes the following consequential orders;

1. That parties submit their marriage certificate for cancellation
2. That the custody of the three issues of the marriage be given to the petitioner with reasonable access to the respondent
3. That the respondent maintains each of the two issues of the marriage with a monthly maintenance sum of GHC 500.00
4. That parties bear their own cost.

(SGD)

**JUSTICE MARIAN AFFOH (J)**

**JUSTICE OF THE HIGH COURT**

**(ADDITIONAL CIRCUIT COURT JUDGE)**

**COUNSEL**

**PHILLIP FIIFI BUCKMAN**

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**PETITIONER**