IN THE GENDER-BASED VIOLENCE CIRCUIT COURT AT SEKONDI-W/R, HELD ON THURSDAY, 3RD AUGUST 2023 BEFORE H/H NAA AMERLEY AKOWUAH (MRS.)

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C4/03/2021

HELENA EKUA DANSOAH DERBY PETITIONER

v

GODWIN APPIAH BAIDOO RESPONDENT

.....

PARTIES.: PRESENT

C/PET.: PHILIP NKRUMAH, Esq.

C/RESP.: BAFFOUR DWUMMAH, Esq.

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JUDGMENT

The particulars of unreasonable behavior that Petitioner pleaded as the ground for her prayer for dissolution of her marriage to Respondent included irresponsibility, threats of death, drunkenness, physical abuse and consistent verbal abuse (by Respondent and his friends) on the part of Respondent. Additionally, Respondent was said to be guilty of having extramarital affairs with women, some of whom he fathered children with, and abandonment (desertion) of Petitioner and their children since 2014. Consequently, she wants custody of their three (3) children and an order directed at Respondent to pay maintenance for their care.

In a detailed rebuttal, Respondent agreed that indeed the marriage has broken down but denied Petitioner's supporting allegations. He averred that it was rather Petitioner who cut all ties with him and ignored his calls, making it impossible for him to communicate with her and the children and to remit them, as he used to. Secondly, he stopped remitting

Petitioner and their children because anytime he called her, she rained insults on him, making conversations impractical. Respondent also denied deserting his matrimonial home. Rather, that it was Petitioner who threw him out of their apartment at the Garrison School on four (4) occasions, incidents that sorely embarrassed him and subjected him to public scorn and ridicule. Notwithstanding, he rented an apartment for her and the children at Anaji when they moved out of the Windy Ridge residence, even though he was then living with his mother in her house. Respondent pleaded that he suffered emotional and physical distress due to Petitioner's insolent and disrespectful behavior towards him, his family and friends, especially his mother and close friends. He denied physically abusing Petitioner, who he described as '*boisterous and very aggressive*', ruling out the very thought of her being beaten. In respect of their children, he pleaded that it was Petitioner who kicked two of them out of her house, despite pleas not to, and was in the habit of maltreating them and that accounted for their election to live with him, Respondent. In paragraph 20 of his Answer Respondent pleaded as follows;

i. The parties have not had sexual contact for almost seven (7) years because the Petitioner would not allow it

ii. The parties have not communicated for over six (6) as a result of the Petitioner's refusal to pick calls of the Respondent

iii. The parties have lived apart for close to seven (7) years.

In her Reply and Defence to the Cross-Petition, Petitioner admitted paragraphs (i) and (iii) above.

In line with s. 2(2) of the Matrimonial Causes Act, 1971 (Act 367) the court carried out its duty to "*inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent*" using s. 2(1) (a), (b), (c) & (e) as guiding principles. The hearing spanned from February 202….. to November 2022 due to lengthy and detailed cross-examination where both

parties gave unnecessarily detailed and petty answers all in an attempt to put their respective cases across.

On her part, Petitioner tendered a copy of the marriage certificate dated 9th August, 2003 (Exh. A), 65 copies of receipts of school fees allegedly paid by Petitioner in the names of their 3 children (Exh. B series), 19 copies of hospital bills paid for children (Exh. C series) and a District Court Summons for maintenance between Diana Freeman v Godwin Appiah Baidoo (Respondent) (Exh. D).

Respondent gave evidence through his Witness Statement, subsequently adopted under the rules of the Practice Direction on Case Management Conference and Disclosures, and called Smart Stanley Nkansah as RW1.

At the conclusion of hearing, the issues for determination were;

i. **Whether or not the particulars set out by either party amounted to unreasonable behavior**
ii. **Whether or not Petitioner was able to prove the grounds of adultery and desertion against Respondent**

Before I deal with the issues set down, I will deal with the admitted fact of the parties not living together for almost seven (7) years prior to the presentation of the petition. S. 2(1) (e) of Act 367 provides that:

(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 facts:

(e) that the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or

Despite the drama, protracted controversy and denials by the parties on who caused the marriage to be in its current state, they joined issue on the fact of living apart for close to seven (7) years, commencing pre-2014. With the admission and on the authority of Or. 23 r. 1&6 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) and the case of ***Ewusie-Mensah v Ewusie-Mensah [1992]1GLR 271***, neither party had to lead evidence to support the admission and a finding of fact is hereby made that s. 2(1) (e) has been established. What is the legal effect of this finding? In ***Eugenia Atswei Yawson Adjei v Alberto Akuetteh Osasu [petition filed on 15/07/2016]*** the High Court granted a divorce decree on the finding that the parties had not lived together as husband and wife for six years, having cohabited for less than a few months together after the marriage celebration. In the *locus classicus* **Kotei v Kotei [1974]2 GLR 172,** Sarkodee J noted that;

> *"once the facts are proved bringing the case within any of the facts set out in s. 2(1)(e) a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that special grounds exist justifying the exercise of the court's power. Once he or she comes within any one of the provisions in s. 2(1) (e) and (f), the presumption is in his favour; proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation. Proof of five years' continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage … As the provision of the Act stands, it seems no blame need be attributed to either party and there may be no passing of any sort of moral judgment. There may be no need to label one or the other party as technically innocent even though the conduct of both has brought about the breakdown of the marriage"*

Whether Respondent left the matrimonial home voluntarily or out of compulsion due to Petitioner's behavior is immaterial, unlike in a submission under paragraph (c) of section 2(1) of Act 367 where the actions of either spouse will determine whether the departed

party should be guilty of desertion or not, as in this instance Petitioner pleaded and testified to in paragraph 14 of her Witness Statement. As has been stated by the authorities cited above, a court exercises no discretion in refusing a petition for divorce where it is proved that the parties have lived apart for 5 years.

Despite the admission by the parties, do the facts fall in line with what is deemed as not "*lived as man and wife*". At page 128 of Frederica Ahwireng-Obeng's "*Contemporary Principles of Family Law in Ghana*", she explained that '*if the parties are separated … and carry on living independently without each other'*, they will be deemed not to be living as *'man and wife*'.

From their testimonies, both parties confirmed that prior to 2014 when they separated, Petitioner had her separate fridge, in which she stored her cooked food while Respondent also had his in which he admitted he stored his food because Petitioner refused to give him some of hers. Initially, Petitioner disputed this assertion but eventually admitted with the explanation that she insisted on Respondent having his own fridge because he stopped providing maintenance for her and rather, gave money to one Dinah Freeman, his admitted concubine, who cooked for him which food he stored in his fridge.

Further testimony was led that as early as 2005/2006, a few years into the marriage, the parties started sleeping in separate bedrooms and had a lot of differences. Indeed, I find that but for having sexual intercourse and producing children, literally all the other incidents of marriage including companionship, open communication, friendship, joint participation in social engagements, etc., were absent. The totality of the evidence showed a very troubled marriage of two rather uncompromising and difficult individuals who could not overcome their differences. On the foregoing, it was obvious that the marriage existed mostly in shell-form without much substance.

In addition to the admissions, I am satisfied on the evidence that the parties have lived apart for more than 5 years because it would be impossible to carry on marital relations when both had stopped being 'wife' and 'husband' to the other, their respective families were obviously at loggerheads, no friends in common, etc.

Due to the determinative effect of paragraph (e) OF Act 367, it is of no moment to discuss the other grounds upon which either party based her/his petition or cross-petition.

CUSTODY of ACT 560

Section 2—Welfare Principle.

(1) The best interest of the child shall be paramount in any matter concerning a child.

(2) The best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child.

Section 45—Considerations for Custody or Access.

(1) A Family Tribunal shall consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access.

(2) Subject to subsection (1) a Family Tribunal shall also consider—

(a) the age of the child;

(b) that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;

(c) the views of the child if the views have been independently given;

(d) that it is desirable to keep siblings together;

(e) the need for continuity in the care and control of the child; and

(f) any other matter that the Family Tribunal may consider relevant.

Sections 2 & 45 of the Children's Act 1998 (Act 560) provide that;

Similarly, in ***Opoku-Owusu v Opoku Owusu [1973] 2GLR.349 Sarkodee J noted that "in an application for custody, the paramount consideration was the welfare of the children. The court's duty was to protect the children irrespective of the wishes of the parents"***

In Happee v Happee [1974] 2GLR. 186), the court held that "section 22 (2) of Act 367 enjoined the court in deciding on custody to have regard to what was reasonable and what would be for the benefit and welfare of the child".

I find on the evidence that both parties have tendencies and proclivities that are inimical to child care and upbringing; Petitioner being temperamental and abusive while Respondent indulges in alcoholism, maintains friends who are not examples for children and involves himself in extramarital affairs. These notwithstanding, both parties claim custody of their children; two of whom are currently above 18 years although still in school. The record shows that the two older children are currently living with Respondent while the third born, 10 years of age, lives with Petitioner.

However, I find it expedient to for all three children to live together with one parent, and not be separated. This is because the parties do not see eye-to-eye on any issue and it will not cooperate should either party have custody of two or one of the children. From the antecedents of this case, the reasonable fear is that Respondent may abandon his financial responsibilities to the children, as he has done before. The records also show that Respondent is currently living in his mother's house, a not-too-assured-accommodation. On the other hand, Petitioner may verbally abuse the children but on the whole, as per the evidence in Court, will exercise proper control and supervision over the children that

Respondent would. As such, it is the fervent hope that both parties will stay in communication and physical touch with the children to afford them the best opportunities that either parent brings to the table.

DECISION

On the foregoing, I hereby grant the petition for divorce dated 06/07/2020 on the finding that the marriage between the parties has broken down beyond reconciliation on the basis of s. 2 (1) (a) & (e) of Act 367.

On the authority of s. 42 (1) (b) of the Courts Act, 1993 (Act 459) the Ordinance Marriage between Godwin Appiah Baidoo and Helena Ekua Dansoah Derby celebrated on 09/08/2003 at the Bethel Methodist Church, Takoradi is hereby dissolved and a certificate of divorce shall issue.

CUSTODY

Custody of Beatrice Afrifa Baidoo, Francis Kofi Baidoo and Nyiraba Kojo Baidoo is granted to Petitioner.

Respondent shall have unfettered access to the children in the Petitioner's custody, specifically on school vacations, holidays and weekends. Any other arrangements for visits, etc., may be agreed to by the parties forthwith.

MAINTENANCE & OTHERS

Respondent is ordered to pay monthly maintenance of GHC600 for the upkeep of the children. Order made in consideration of both parties' salaries, arrangements for custody and access whereby the children will be with Respondent during vacations, holidays, etc.

The monthly maintenance shall be reviewed annually at 10%.

Respondent is ordered to fully pay for the school fees, major educational fees and medical bills of the three children, as and when they arise.

Petitioner shall provide the children with shelter and bear the cost of other education-related expenses including stationery, school uniforms, transportation to and from school, extracurricular activities and incidentals.

With the years of marriage and the ancillary orders made above, with their attendant financial burdens on both parties and the welfare of the children in mind as provided for under s. 2 of the Children's Act 1998 (Act 560), I do not consider it of any purpose to order financial settlement in favour of Petitioner, a claim she did not include in her case.

There will be no order as to costs. Both parties engaged the services of a lawyer and personally bore incidentals and so it is my considered opinion, guided by Or. 82 of C.I. 47, that costs against either will be unwarranted.

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H/H NAA AMERLEY AKOWUAH (MRS.)