

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY
THE 4TH DAY OF MAY BEFORE HER HONOUR KIZITA NAA KOOWA
QUARSHIE CIRCUIT COURT JUDGE

SUIT NO C5/147/2022

ALICE OWUSU
HOUSE NUMBER B309/29
LAPAZ – ACCRA

PETITIONER

VRS

KOJO OWUSU
HOUSE NUMBER B309/29
LAPAZ – ACCRA

RESPONDENT

JUDGMENT

By a Petition for divorce filed on the 6th of January 2022 Petitioner prayed for the following reliefs:

- a. The marriage between the parties be dissolved
- b. That the respondent be ordered to pay alimony.
- c. Costs

Respondent entered appearance and filed an Answer on 28th April 2015. The petitioner filed to set the cause down for trial on the 23rd of February 2022, after a search revealed that the Respondent though successfully served had failed to file an answer per the rules of court. After the court gave directions for the parties herein to file pre-trial checklists and witness statements for Case Management Conference, the Respondent filed an Answer to the petition on the 4th of May 2022.

FACTS

According to Petitioner, the parties got married under the ordinance on the 12th of January 2014 at the Fire Mountain Prayer Ministry. The parties co-habited at Lapaz, Accra and there is no issue between them.

Petitioner says that the issues in the marriage for her started when after a year of marriage, she had failed to conceive. She said she went to the hospital for a check-up and was told she was fine, respondent was however told that all was not well and was given some medications to come back after a month, but failed to go and in fact never went again. Petitioner said because she had a child before the marriage as did the Respondent she didn't worry herself too much.

Petitioner said Respondent told her his relatives were not around when they got married and so an uncle who was available did everything during the marriage celebrations. Petitioner said on one occasion her husband informed her that his grandmother was sick but refused to allow her to accompany him to his village of Tano Odumase in the Ashanti Region. Petitioner said the grandmother of the respondent died later and he still refused to allow her to accompany him. Contrary to his refusal Petitioner went to his village and informed him she was there. He met her and took her to the family home where the family expressed surprise at the fact that she is a wife of the Respondent. According to the family they assumed that the ring on respondent's family was because he had blessed his marriage with a certain Sister Ama the woman they knew to be Respondent's wife.

Petitioner said Respondent's sister urged him to introduce her to the family after the funeral but although his sister accompanied her to a family gathering to do so they waited and waited but he failed to show up.

Petitioner said their problems multiplied after the funeral. Some instances were when she asked him to rent another house since where they were staying had no toilet which caused her several infections, but he refused to do so. She says though he did nothing about the movement to a new location he bought a new car in addition to the one he was using as a taxi cab.

Petitioner said she asked Respondent what was happening in the marriage but he refused to answer and rather came to her shop four days later to ask her when she was returning the drinks he and his Uncle had presented for her marriage celebration.

Later when she was sitting quietly the Respondent asked her what the matter was, she said nothing. He further probed if the marriage will work at all? Petitioner said it depends on him whereupon he started insulting her and told her she cannot kill her like she did to her first husband and took the wedding ring forcefully from her and also her shop keys and told her to bring the drinks before he releases the keys to her. Petitioner said though she never discussed her marital problems with her family she was compelled to tell her father who also called respondent's Uncle who advised her to forget the past and live in peace.

Petitioner says her Blood Pressure is rising due to the issues and she has lost interest in the marriage. She said respondent has put up a building at Agape and bought 2 cars but is treating her badly wherefore she cannot be expected to live with him as man and wife. Petitioner prays for the marriage between herself and the Respondent to be dissolved by the Honourable court and also that an order be made for him to pay her alimony.

The respondent in turn filed an answer to the petition on the 4th of May 2023. He said the marriage between himself and the petitioner did not break down because he has lost interest in the marriage but rather for the following reasons

- That both he and the petitioner had a child each before the marriage but his child had to stay with her mother because the Petitioner didn't like her. Petitioner's child has however stayed with them from when he was in class 6 till now that he is at the University of Ghana.
- That though he welcomed the Petitioner's family she did not allow his to come to their home.
- That he did not intentionally refuse to rent new accommodation for the Petitioner but was rather cash trapped since he had used proceeds from the sale of his car to buy hard ware stuff for the shop he rented for her at Nii Boi junction.
- Respondent said after that Petitioner would not talk to him and he reported the matter to one elder Amoako, who called the petitioner but Petitioner she said to the elder that there was nothing wrong with the marriage.

- That Petitioner started coming home late, sometimes as late as 11pm which was not the case previously.
- That petitioner makes calls all night till morning, goes to funerals without informing him and removed her ring saying it was too tight and also refuses to have sex with him.
- That he reported the above behavior to one brother Eric who talked to the petitioner. The former informed him that Petitioner said he should leave the house and he did so and is currently staying at a different place until now.

ISSUES FOR DETERMINATION

Per section 1(2) of the *Matrimonial Causes Act, Act 367, 1971*, the sole ground for the granting of a Petition for dissolution shall be that the marriage has broken down beyond reconciliation. The main issues in the opinion of this court is whether or not the marriage between the parties has broken down beyond reconciliation and whether or not the Petitioner is entitled to alimony from the respondent.

The general rule is that he who asserts must prove. He must prove the essential issues central to his case on the preponderance of probabilities which is the standard of proof in a civil matter.

Section 12(2) of the Evidence Act NRCD 323 defines proof on the preponderance of probabilities to be “The degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable/likely than its non-existence.

To determine the first issue the court refers to Section 2 of Act 367 that provides the grounds which when proven would lead the Court to this conclusion. And it provides as follows

(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

- (a) That the Respondent has committed adultery and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent or*
- (b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent or*
- (c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition, or*
- (d) That the parties to the marriage have not lived as man and wife for continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to the grant of a decree; provided that such consent shall not be unreasonably withheld, and where, the Court is satisfied that it has so been withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal or*
- (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*
- (f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences.*

From the evidence led by the parties I surmise that this petition is brought primarily under section 2(1)(b) and (f) of Act367.

Unreasonable behaviour can take the form of either an act or omission and can include severe issues of physical or emotional violence or more even milder incidents. However, the conduct complained of must be severe and higher than the ordinary wear and tear of married life.

It was held in the case of *Knusden vrs. Knusden* (1976) 1 GLR 204 CA on the test of unreasonable behaviour that

'The behavior of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of one act if it is of sufficient gravity of a persistent course of conduct or series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so'

In respect of what constitutes unreasonable behavior by a spouse, it was held by Hayfron – Benjamin J, in the case of **Mensah vs Mensah (1972) 2 GLR 198** 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 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 mere trivialities will not suffice.'

At this juncture the court will consider whether the evidence of Petitioner constitutes unreasonable behavior on the part of the Respondent.

In his book, the law on family relations in Ghana, the learned author William Ekow Williams made the following statement on the test of unreasonably behavior, he writes at page 308.

"All that a Petitioner is required to do in this context is to give particulars or the extent of the behavior of the Respondent which has necessitated the presentation of the petition. Thereafter he is required to establish that as a result of that particular behavior he cannot be reasonably be expected to live with the Respondent".

Without belabouring the point on whether or not the Petitioner has established unreasonable behavior by the Respondent, it is clear from the tedious and somewhat painful recount of various complaints by the parties that the marriage between them has travelled long past its expiry date.

After a careful study of the evidence and facts in this present case it is quite evident by the court that the Petitioner has been able to establish unreasonable

behavior by the Respondent which is a necessary ground for the grant of a divorce.

The final issue to consider is whether or not petitioner is entitled to alimony.

Alimony is loosely defined as financial support that a person is ordered by a Court to give to their spouse during separation or following divorce in order to allow the recipient to maintain the lifestyle they had during marriage.

Some of the factors a Court will usually take into consideration when deciding on an appropriate amount is the standard of living established during the marriage, duration of the marriage, financial resources of either party, contribution of each party to the marriage etc. The reason is for the Court to do equity and justice between the parties.

This Court is entitled under section 20 of Act 367 to order that a spouse should make lump sum payments to another spouse.

(1) The court may order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision as the Court thinks just and equitable.

It is trite that in any lump sum payment a Court ought to consider the financial standing of each of the parties. I refer to the case of Obeng vs Obeng (2013) GMJ 158.

'What is just and equitable may be determined by considering the following factors, income, earning capacity, property and any financial resources which each party has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the breakdown of the marriage, the age of each party to the marriage and the duration of the marriage'

The evidence led shows that Petitioner is a trader and respondent is a driver. Even though, Petitioner prays for a lump sum she has not led any evidence to show the earning capacity of Respondent.

I have considered the fact that Petitioner and Respondent have been married for almost 9 years and the fact that they have no children between them though the child of the petitioner lived with the couple and she never disputed the fact that Respondent played a father role to the child in those years

I believe that an amount of GH¢5,000.00 as alimony is fair and just in this matter. The respondent is to take steps to pay the said amount to the Petitioner within a year from this judgment.

DECISION

Having heard the parties and considered the evidence, it is clear that both parties have come to the conclusion that the marriage be dissolved.

It is hereby decreed that the ordinance marriage celebrated by the parties on the 12th day of January, 2014, at Prayer Mountain Fire Ministry be dissolved. The Marriage Certificate No. FMPM 44/2014 is accordingly cancelled this 4th day of May 2023.

I further make the following orders on the facts of the instant case

- a. Respondent is hereby ordered to make a lump sum payment of Five Thousand Ghana Cedis (GH¢5,000) to Petitioner within a year from now.
- b. Parties are to bear their own costs.

**H/H KIZITA NAA KOOWA QUARSHIE
CIRCUIT COURT JUDGE**