IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON FRIDAY THE 23RD DAY OF JUNE BEFORE HER HONOUR KIZITA NAA KOOWA QUARSHIE CIRCUIT COURT JUDGE

SUIT NO C5/213/2023

EBENEZER BUABIN =
PETITIONER
907 LAKE RUN CIRCLE
COLUMBUS OHIO
43081
USA
&
ACTING PER HIS LAWFUL ATTORNEY
(OTABIL ACQUAH-QUANSAH
COURT 14 APT 01
ADENTA - ACCRA

VRS

IRENE BUABIN =
RESPONDENT
HOUSE NUMBER 16/2A
GBEGBE CRESCENT
MAMPROBI – ACCRA

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JUDGMENT

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Parties absent

Many cultures have their own notions about marriage. Similarly perceptions concerning marriage and its persistence as a form of human institution have varied ranging from the sublime to the ordinary. "*Marriage has been compared to a beleaguered city with all those outside wanting to get in, and all those inside wanting to get out*" (The Law on Family Relations by William Cornelius Ekow Daniels) Chapter 2.

The Petitioner Mr. Ebenezer Buabin pursuant to leave granted on the 16th of March 2023 filed a petition for divorce from Irene Buabin his wife under customary law on the 22nd of March 2023. Petitioner's main prayer is for the dissolution of the marriage between the parties.

On the 20th of April 2023, Petitioner filed to set the case down for trial, after the Respondent failed to enter appearance within the time limited for appearance. The court gave orders for pretrial checklists and witness statements to be filed by the parties.
The Petitioner gave Mr. Acquah- Quansah power of attorney to represent him.

On the 19th of May 2023, the court held a case management conference, and subsequently on the 6th of June 2023 the court admitted the Witness Statement and an attached exhibit A by the lawful attorney as the evidence of the Petitioner before this Honourable Court.

Of note is the fact that at all material times, the respondent was served with a hearing notice to ensure her attendance at court but she failed to show up.

FACTS

According to Petitioner, the parties got married customarily on the 5th of December 2000. After the marriage the parties lived at Sowutoum in Accra. The petitioner is a clergy man but currently does not know the occupation of his wife. Their marriage produced no issues and he claims that the marriage between himself and the respondent has broken beyond reconciliation.
Petitioner says that the respondent refused to join him in his business. He had thought that as his wife, she would be interested in joining him as there was stealing going on in the business by some of his staff and she could have checked it.

The respondent claims that he gave the Respondent a substantial amount of GH¢50,000.00 for her own business but she collapsed the business due to her inability to demand payment from her debtors. He also suspected that she could be unfaithful due to her sexually explicit chats that she engaged in with men. Again the Respondent kept threatening to divorce him and kept telling him that there are better men out there.

In an attempt to resolve the issues between the parties, Petitioner claimed he reached out to their families to attempt reconciliation between the parties but was unsuccessful.
Petitioner said on the 15th of December 2008, following several disagreements the customary marriage was dissolved in the presence of witnesses and after 2008 the parties have led their own separate lives.

DISSOLUTION OF CUSTOMARY MARRIAGE UNDER THE MARRIAGE CAUSES ACT

Section 41 of the MCA allows any party to a customary law marriage to apply to the court in order to dissolve his or her marriage. For the purpose of this case I refer to Sections 41(2) and 41 (2) c and I quote, S 41 (2) On application by a party to a marriage other than a monogamous marriage, the court shall apply the provisions of this Act to that marriage and in so doing, subject to the requirements of justice, equity and good conscience 41(2)b grant any form of relief recognized by the personal law of the parties to the proceedings in addition to or in substitution for the matrimonial reliefs afforded by this Act.

As previously stated the Petitioner sought leave of the honourable court before he issued the petition in order to dissolve the marriage between himself and the respondent. The petitioner also served the respondent with hearing notices at all times the case was called.

Satisfied that the Petitioner has complied with the law, the court will proceed to determine the case.

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 issue 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 a dissolution of the marriage between himself and 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 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, o**r

(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 Petitioner I surmise that this petition is brought primarily under section 2(1) b, e and f of Act 367. To determine whether the respondent has behaved unreasonably towards the petitioner the court refers to some indicators of unreasonable behavior. Cornelius Ekow Daniels at page 308 of the book The Law on Family Relations in Ghana under the heading Test of unreasonable behavior states the following "All that the 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 reasonably be expected to live with respondent.

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.'

On the 6th of June 2023 the Lawful attorney of the petitioner submitted a witness statement on behalf of the petition as his evidence before this Honourable Court. To determine whether unreasonable behavior on the part of the Respondent can be established I refer to some aspects of the witness statement.

Para 10 " The Petitioner provided the respondent with huge capital of 50,000 cedis to commence business after the respondent commenced business said

business collapsed because the respondent was too generous and felt shy to demand payment from her debtors.

Para 11 "The respondent always threatened the petitioner with divorce saying there are better men out there"

Para 12 "The respondent engages in sexually explicit chat with men all indicative of her penchant of infidelity".

Apart from paragraph 12 which does not prove that the respondent indeed was unfaithful the above indicators no doubt point to the fact that the respondent behaved unreasonably towards the Petitioner which caused him to come to the conclusion that the marriage has broken down.

Petitioner again told the court that despite several attempts with the help of their families the parties were unable to resolve their differences.

At Para 15 Petitioner stated that "On the 15th of December 2008 following several years of disagreement and unreasonable behavior some selected family members presented drinks to the family of the respondent to dissolve the customary marriage".

Para 17 it is stated that the petitioner's marriage with the respondent has remained dissolved to this date with each party carrying on with their lives.

I firmly believe that sections 2(1) d, e and f of the MCA though obvious from the statements in the WS have been proven by the petitioner.

In addition to considering if the marriage between the parties has broken down the courts must consider whether or not the breakdown of the marriage is beyond reconciliation. I believe the fact that the parties were unable to reconcile their differences leading to the dissolution of their customary marriage fully satisfies the fact that indeed their marriage has broken down beyond reconciliation and the petitioner has been able to prove same to the court.

In the book entitled Pride and Prejudice, Ch 5 188 Jane Austin the British novelist wrote that "Happiness in marriage is entirely a matter of chance."

As this game of chance yielded no happiness to the parties, the best available choice for their peace of mind no doubt is to leave with the legal stamp of approval of the court.

DECISION

Having evaluated the facts and the evidence provided by the petitioner with no opposition from the respondent it is clear that the marriage between the parties has far exceeded its expiry date and more importantly has satisfied the legal requirement of being broken down beyond reconciliation.

It is hereby decreed that the customary marriage celebrated between the parties on the 4th of March 1990 be dissolved in accordance with s41(b) of the MCA this 23rd day of June 2023.

ALEX OWOO ESQ. FOR THE PETITIONER PRESENT

H/H KIZITA NAA KOOWA QUARSHIE
CIRCUIT COURT JUDGE