

**IN THE CIRCUIT COURT 3 OF GHANA HELD IN ACCRA ON FRIDAY THE 17TH
DAY OF FEBRUARY, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.)
CIRCUIT COURT JUDGE**

SUIT NO. C5/279/2022

ALVERA NAA MORKOR AMOO

PETITIONER

VS.

DANIEL MARK AMOO

RESPONDENT

PARTIES PRESENT AND REPRESENTED

JUDGMENT

The Parties to this suit got married under the Marriages Ordinance (CAP 127) on June 26, 1999, at the St Luke Methodist Church, Abossey Okai Accra. After the marriage was celebrated the parties co-habited at North Kaneshie. There are two children of this marriage. The Petitioner currently resides in the United Kingdom whilst the Respondent lives at Mataheko Accra. The Petitioner is seeking the dissolution of the ordinance marriage celebrated between the parties on grounds of Adultery, Desertion and Unreasonable Behaviour on the part of the Respondent.

1. The Petitioner prayed the marriage between the parties be dissolved
2. That the Respondent be ordered by the court to make a lump sum payment of GHC10,000.00 being compensation for abandoning the Petitioner and for emotional trauma suffered as a result of his infidelity.

The Respondent on the other-hand did not contest the dissolution of the marriage, he has however cross-petitioned for the following reliefs:

- a. That the marriage celebrated between them be dissolved
- b. That the parties bear their own cost.

Section 1(2) of the Matrimonial Cause Act, 1971 (Act 367) states that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In addition, the court before which such a petition is presented is required by law to determine as a fact that the marriage, has indeed broken down beyond reconciliation. In Support of this, Section 2(3) of Act 367 provides as follows:

Notwithstanding that the court finds the existence of one or more of the facts specified in subsection (1) the court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation.

Section 2(1) of Act 367 stipulates the facts which a Petitioner or a cross-petitioner may rely on to prove that the marriage which is sought to be dissolved has broken down beyond reconciliation as follows,

- a. That the Respondent has committed adultery and by the 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 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 such 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 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;
- f. That the parties have after diligent effort been unable to reconcile their differences.

Unreasonable behaviour is a conduct that gives rise to injury to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger. In **Ansah v Ansah [1982-1983] GLR 1127-1133, Owusu-Addo J** held that:

“The test under the section, was whether the Petitioner could reasonably be expected to live with the Respondent in spite of the latter's behaviour. The test was therefore objective. But the answer obviously had to be related to the circumstances of the petition in question that had to be a question of fact in each case. It followed that the conduct complained of must be sufficiently serious - since mere trivialities would not suffice.”

In the case of **MENSAH V. MENSAH (1972) GLR** the Court held that ‘the conduct complained of must be sufficiently grave and weighty enough to justify the finding that the Petitioner cannot reasonably be expected to live with the Respondent. Mere trivialities will not suffice. The parties must be expected to put up with what has been described as reasonable wear and tear of married life”

In **Mensah v Mensah [Supra]**, Hayfron-Benjamin defined what amounts to unreasonable behaviour when he held as follows,

“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 weighty and mere trivialities will not suffice for Act 367 is not a Casanova's Charter. The test is objective."

In considering whether one party has good cause for leaving the other much depends on whether the conduct of the other is of a grave or weighty character as to amount, in law, to cruelty: **see Gollins v. Gollins [1963] 2 All E.R. 966, H.L.** Conduct which is of a grave or weighty nature may sometimes fall short of cruelty if it lacks the element of injury to health as in **Edwards v. Edwards [1950] P. 8, C.A.**

The **main issues** for determination is whether or not the marriage celebrated between the parties on June 26, 1999, at the St Luke Methodist Church, Abbossey Okai Accra, has broken down beyond reconciliation?

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under section 2(1)(C) *of the Matrimonial Causes Act, 1971 (Act 367)* "For the purpose of showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the court that the Respondent has deserted the Petitioner for continuous period of at least 2 years immediately preceding the presentation of the petition." Rayden defines desertion as "the separation of one spouse from the other with an intention on the part of the deserting spouse to bring cohabitation permanently to an end without reasonable cause and without the consent of the other spouse..." The Petitioner would consequently have to prove that there is a defecto separation of the spouses; with the intention to bringing cohabitation to an end, lack of consent and lack of reasonable cause on the deserting party for the withdrawal.

The Petitioner would also have to satisfy the court that the parties 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. The Petitioner would also have to convince the Court that she and the Respondent have, after diligent effort, been unable to reconcile their differences.

The Petitioner did not testify but called one Witness. The Respondent also gave oral evidence in court.

PW1 was Grace Akokor Addae Armah the Petitioner is her daughter and the Respondent is his son- in- law. She tendered in evidence the marriage certificate of the parties and it was admitted in evidence. According to PW1 the Petitioner left the country about 18 years ago but the Respondent was unable to join the Petitioner. For the past two years the parties have not lived as husband and wife even though the parties share the responsibility of taking care of the children.

The Respondent in his evidence told the court that the Petitioner left the country about 18 years ago and since that period the Respondent has not seen the Petitioner. Respondent told the court that he has two children with the Petitioner who are currently in his custody. The Respondent however denied having had any amorous relationship with other women as alleged.

The Petitioner's evidence on record to support her claim of adultery and unreasonable behaviour remains allegation which has not been proved by proper legal means.

The court after considering the evidence of the parties as a whole, the court finds from the Petitioner's evidence on record supports the ground of desertion. That the parties have not lived together as husband and wife more than two years. The Respondent's evidence corroborates the Petitioner's evidence of desertion. The court is however unable to tell given the evidence on record which of the parties deserted that other, that the deserting party.

Even though the Courts desire to maintain the sanctity of the marriage bond some situations warrant the granting of the divorce. In my opinion and on the strength of the

evidence before this Court, the parties should not be compelled to stay in the relationship.

The Court therefore finds that the marriage celebrated between the parties herein has broken down beyond reconciliation and same is dissolved.

There is no evidence on record however to prove the lump sum relief claimed by the Petitioner.

DECISION

1. The marriage celebrated between the Petitioner herein, **ALVERA NAA MORKOR AMOO** and the Respondent herein, **DANIEL MARK AMOO** on the June 26, 1999, at the St Luke Methodist Church, Abossey Okai Accra has broken down beyond reconciliation and same is dissolved. A decree of divorce is accordingly granted. The marriage certificate with registration No. SLMC/02/99 is hereby cancelled.
2. The court makes no order as to cost.

LEGAL REPRESENTATION

ROSEMOND AWUARABENA ATTA-KESSON FOR THE PETITIONER

EMMANUEL OWUSU-BANAH FOR THE RESPONDENT

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT COURT JUDGE)**