

**IN THE CIRCUIT COURT 3 OF GHANA HELD IN ACCRA ON FRIDAY THE 2ND
DAY OF JUNE, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.)
CIRCUIT COURT JUDGE**

SUIT NO. C5/320/2022

GLADYS TETTEH

PETITIONER

VS.

GONGJIAN WANG

RESPONDENT

PARTIES PRESENT AND UNREPRESENTED

JUDGMENT

The Petition has indicated that she sought leave of the court to issue this Petitioner.

The Parties to this suit got married under the Marriages Ordinance (CAP 127) on December 30, 2020, at the Principal Registrar of Marriages Office Accra. The Petitioner is a Ghanaian and the Respondent is a Chinese.

The Petitioner is seeking the dissolution of the ordinance marriage celebrated between the parties on grounds of unreasonable behaviour.

The other ancillary reliefs the Petitioner is seeking are;

1. That custody of the two children be given to the Petitioner
2. Alimony of GHC200,000.00 to be paid to the Petitioner

3. Two Bedroom apartment to be rented by the Respondent for the Petitioner and the two children of the marriage for 5 years
4. A monthly maintenance of the two children and also medical and educational bills of the children.
5. An order for a refund of an amount of GHC12,000.00 used to pay for their rent accommodation.

The Respondent in his response did not contested the Petition, he prayed for grant of the divorce. He also prayed that the court grants his reliefs endorsed on his Answer to the Petition.

To avoid delay in the proceeding as he was difficulty to get a chines interpreter the Respondent agreed that the Petitioner who speaks the chines language be made to interpreted proceedings to him. The Petitioner agreed to do so and she affirmed to the court interpret to the Respondent truthfully.

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 live 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.**

ISSUE

At the close of the trial, the legal issue that fell for determination by the court was;

1. Whether or not the marriage celebrated between parties on December 30, 2020 at the Principal of Marriages Office Accra has broken down beyond reconciliation.
2. Whether or not the Petitioner is entitled to custody of the three children of the marriage.
3. Whether or not the Respondent can be ordered by this court to provide for the three children's necessities of life including payment of medical bills and school fees.
4. Whether or not the Respondent can be ordered to provide Accommodation for the two children of the marriage
5. Whether or not the Petitioner is entitled to financial provision.

ISSUE ONE (1)

Whether or not the marriage celebrated between parties on December 30, 2020 at the Principal of Marriages Office Accra has broken down beyond reconciliation.

The Petitioner in her evidence to the court tendered exit A the marriage certificate to prove that the parties are indeed a marriage couple under CAP 27 of the Marriages Ordinance. According to Petitioner she co-habited with the Respondent for 4 years before their marriage was celebrated in 2020. The Petitioner sought the leave of the circuit court to file the Petitioner in July 2020 at the Circuit Court because the marriage had lasted less than two years prior to the filing the action in court.

The Petitioner stated in evidence that shortly after her marriage to the Respondent, the Respondent initially indicated his wife had passed on and informed Petitioner he was rather divorced and that his former wife was not dead. The Petitioner later found out later that the Respondent was still in good relationship and also communicating with the said woman. Again, the Respondent could not provide Petitioner with any divorce certificate to prove same. According to the Petitioner the Respondent started sleeping outside the matrimonial home. Whenever the Petitioner queried the Respondent, he would assault her physically and verbally. After Petitioner filed the action in court the Respondent sacked her from the matrimonial home and the Petitioner rented another apartment. Also, the Respondent brought his friends to their home on weekends on drinking spree and they will all get drunk and put the house in a complete mess. Given the age of their children the

Petitioner complained and advised Respondent severally, but the Respondent would remain adamant. The Respondent rather rained insults on the Petitioner. On August 9, 2021, The Petitioner had to run-away from the matrimonial home to seek refuge elsewhere to prevent further assault on her life. The Respondent assaulted the Petitioner again on May 15, 2022, it was through the intervention of neighbours that she was rescued. The Petitioner prayed that the court dissolves their marriage as the actions of Respondent caused her pain and emotional stress.

The Respondent also testified orally in court and stated he is indeed married to the Petitioner. According to the Respondent there are two children of their marriage. They are Wang Xu aged 3 and Wang Yang aged 2. Respondent prayed the court to dissolve the marriage as he does not want to stay in the marriage and in the same house with the Petitioner.

During Cross – Examination of Petitioner By Respondent The Following Ensured:

Q. I have been giving you money.

A. No, you only buy food for the children.

Q. I am the one who paid for the place you are sleeping, not so?

A. Before the case was brought to court, I paid for the place. He later paid it to me but for the rent is due he only gave me part of the money to pay the landlord but the landlord refused to take. The rent is GHC12,000.00 a year and he gave me GHC5,000.00.

Q. I gave you all the money to rent the house.

A. Now I don't have money so when I get money I will give you. I know you have plenty money.

Q. I don't agree.

I am done.

During CROSS – EXAMINATION OF RESPONDENT BY PETITIONER the following ensured:

Q. GHC3,000 for the kids is too small.

A. I am not having enough money.

Q. If you leave the country, how do I take care of the children?

A. I will not be long. I will come back.

Q. The time you are gone, how will you pay the money?

A. I will be sending you money when I go through the bank account.

Q. The GHC1,000.00 a month are you sure you'll give me?

A. Yes.

I am done.

C.Q. Have you closed your case or you have a Witness?

A. I have closed my case. Respondent,
you are discharged.

Court questions to the Respondent.

Q. How many children do you have with her?

A. Two (2), they are 3years and 2years.

Q. How much do you want to give the children every month?

A. GHC3,000.00 a month.

Q. How do you want to see your children?

A. Every week on Sundays.

Q. How much can you pay for her accommodation?

A. GHC1,000.00 a month.

Q. How much compensation do you want to give the Petitioner?

A. I don't have money to give you but I will take care of the children.

I can give her GHC1,000.00 a month for five (5) years.

Even though it is the Court's desire to maintain the sanctity of the marriage bond, some situations warrant the granting of 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 is satisfied from the evidence on record that the Petitioner has proved unreasonable behaviour on the part of the Respondent and her inability to continue in the marriage with the Respondent.

Courts finds the behaviour of the Respondent- assaulting the Petitioner at the matrimonial home when drunk cruel and constitutes unreasonable behaviour as no reasonable person can tolerate that behaviour.

In the circumstances, I hold that the marriage between the parties have broken down beyond reconciliation. A decree of divorce is granted.

Whether or not the Petitioner or the Respondent is entitled to custody of the children?

The Petitioner is praying the court to grant custody of the issues of the marriage to her with reasonable access to the Respondent and that the Respondent be made to solely maintain the children of the marriage. The Respondent has also cross-petitioned for custody of the children with reasonable access to the Petitioner. The Respondent has not given any evidence concerning the custody of the children. In making an order regarding the custody of the children, the court is guided by what is in their best interest. Section 2(2) of the Children's Act, 1998 (Act 560) states that 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. In **Braun v Mallet [1975] 1 GLR 81-95**, it was held that in questions of custody it was well-settled that the welfare and happiness of the infant was the paramount consideration.

In **R v. Gyngall [1893] 2 QB 232 at 243, CA the Court of Appeal per Lord Esher MR** stated further:

"The Court has to consider, therefore, the whole of the circumstances of the case, the position of the parent, the position of the child, the age of the child, the religion of the child ... and the happiness of the child."

Brobby J. as he then was, in **Attu v. Attu [1984-86] GLR pg. 144** said that "In divorce proceedings where the custody of children is concerned, the welfare of the children is of paramount consideration. In principle children should not be separated from

each other and the advantage of motherhood and sisterhood should be considered when there is more than one child of the marriage”

“Unless such traumatic change is proved in all probability to be in the child’s better interest than their present habitat, it will invariably be better to leave the status quo alone”.

Under section 45(1) of the Children’s Act 1998 (Act 560),

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

Under section 45(2) (d) of Act 560, the Family Tribunal shall take into consideration the fact that it is desirable to keep siblings together.

The court will not change the environment of the children the children who are 3 and 2 years of age are very tender and have been custody the Petitioner without any interruption. The court considers that it is in the interest of the children that the children remain with the Petitioner. The court accordingly grant custody to the Petitioner with the Respondent having reasonable access to them.

ISSUE 3

Whether or not the Respondent can be ordered by this court to provide for the two children’s necessities of life including payment of medical bills and school fees.

Also on the issue, whether or not the Respondent can be compelled to maintain the two children of the marriage every month, pay their school fees and all other incidental expenses associated with the children's education as well as medical health of the child? The court has taken into consideration the provisions of **Section 3 of the Matrimonial Causes Act, 1971 (Act 367) states:**

"Without prejudice to the generality of subsection (2), an order under that subsection may;

(c) Provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage"

Section 6 of the Children's Act, 1998 (Act 560) states:

"6(1) No parent shall deprive a child of his welfare whether-

- (a) The parents of the child are married or not at the time of the child's birth, or
- (b) The parents of the child continue to live together or not.

6(3) Every parent has the rights and responsibilities whether imposed by law or otherwise towards his child which include the duty to –

- (c) Provide good guidance, care, assistance and maintenance for the child and assurance of the child's survival and development.
- (d) except where the parents have surrendered his rights and responsibilities in accordance with law.

When the Respondent was questioned by the court he admitted to pay the amount of GHC3,000.00 a month for the up keep of the children

The court therefore orders the Respondent to pay the amount of GHC3,000.00 every month to the Petitioner based on his own admission to the court to do so. In addition to the payment of school fees and all the incidental expenses associated with the education and medical bills of the children. The evidence on record shows Petitioner is currently unemployed.

Issue 4

Whether or not the Respondent can be ordered to pay rent for the accommodation of the children and the Petitioner.

The Petitioner prayed the court for an order to the Respondent to provide accommodation for the children and the Petitioner which is GHC12,000.00 a year.

In the interest of justice, and having considered the Respondents evidence to the court as a whole. The Respondent is not opposed to the Petitioner prayer. I order the Petitioner provide a two (2) bed room apartment of the Petitioners choice to accommodate the Petitioner and the two children of the marriage.

Issue Five (5)

Whether or not the Petitioner should pay financial provision to the Respondent?

Under section 19 of the Matrimonial Causes Act, 1971 (Act 367)

“19. The court may, whenever it thinks just and equitable, award maintenance pending suit or financial provision to either party to the marriage, but an order for maintenance pending suit and financial provision shall not be made until the court has considered the standard of living of the parties and the circumstances.”

Section 20 (1) of the Matrimonial Causes Act, 1971 (Act 367)

states:

20(1). “The court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the court thinks just and equitable”

The court therefore has a discretion to make an order with regard to financial provisions in respect of and for the benefit of any of the parties. The Court would have to take into consideration the length of time the parties have stayed together; whether any of them was dependent on the other, whether any party would experience any hardships following the dissolution of the marriage; whether the wife gave up her job or profession to run the home among other factors.

In **Oparebea v Mensah [1993-1994]**¹ GLR 61-75 the court pronounced upon the scope of section 20(1) of Act 367. **Lutterodt JA** (as she then was) held that “Section 20(1) of the Matrimonial Causes Act, 1971 (Act 367) empowered a judge to make an order either for (a) settlement of property rights arising from claims of substantial contribution either in money or money's worth; or (2) financial provision; or for both where the spouse was not merely praying for financial provision but was also alleging an interest in the property”

When the Respondent was questioned by the court on the financial provision for the Petitioner, the Respondent admitted to pay the amount of GHC1,000.00 a month to Petitioner for five years. The court accordingly orders the Respondent to pay the amount of GHC1,000.00 a month for 5 years from the dated of this judgement based on the admission by the Respondent to do so.

DECISION

1. The marriage celebrated between the petitioner, the petitioner, Gladys Tetteh and the respondent, **Gongjian Wang** on the December 30, 2020, at the Principal Registrar of Marriages Office in Accra has broken down beyond reconciliation and same is dissolved. A decree of divorce is accordingly granted. The marriage certificate with registration no. REM 1685/2020 is hereby cancelled.
2. Custody of the children Wang Xu aged 3 and Wang Yang are granted to the Petitioner the Respondent is to have reasonable access to them

3. The Respondent is to maintain the issues of the marriage by paying the amount of GHC3,000.00 a month to the Petitioner. Respondent is also ordered to paying their school fees and all other incidental expenses associated with the children's education as well as their medical healthcare as and when the amount falls due. The monthly payments is to be reviewed upward every 2 years from the date of this judgment to accommodate the changes in the economic situation.
4. The Respondent is ordered to pay for a two-bedroom accommodation of the Petitioner's choice for the Petitioner and the children until the children complete tertiary education or until the Petitioner re-marry.
5. The Respondent is further ordered to pay an amount of GHC1,000.00 a month to the Respondent as financial provision to her for 5 years from the dated of this Judgment.
6. Cost of GHC5,000.00 is awarded in favour of the Petitioner.

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