

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 16TH FEBRUARY, 2023

SUIT NO. C5/33/21

AVUSU LAWRENCE ATSU - PETITIONER

VRS

GLADYS ANNANG - RESPONDENT

JUDGMENT

In a 14 paragraph petition presented to this Court on the 24th day of February, 2021, the petitioner prayed the court to issue a decree of dissolution to dissolve the marriage celebrated between him and the respondent on the 4th day of April, 2015 at the Tema Regular Baptist Church on the basis that the said marriage has broken down beyond reconciliation.

He averred that there are two issues of the marriage and the respondent has behaved in such a way that he cannot be expected to continue to live with her as husband and wife.

He petitioned the court to;

- (a) Dissolve the ordinance marriage celebrated between the parties on 4th April, 2015
- (b) That the respondent be granted reasonable access to the children of the marriage
- (c) That the petitioner's shares in the parties joint business; G and L Catering Services Ltd. be given to the respondent.

On her part, the respondent filed an answer and although she averred that the marriage has not broken down beyond reconciliation, she cross petitioned for a;

- a) Dissolution of the marriage
- b) That the respondent be granted custody of the two children of the marriage being Enyonam Avusu and Senam Akos Avusu
- c) That the petitioner be ordered to pay to her such monthly maintenance of two thousand Ghana cedis (Ghs 2,000) for the upkeep of the children.
- d) That an unnumbered house at Kweiman, Accra being the matrimonial home of the parties be settled in Respondent's favour
- e) That the petitioner be ordered to pay to the Respondent a lump sum of seventy thousand Ghana cedis (Ghs 70,000) as financial settlement.
- f) Legal fees and cost.

In the course of proceedings, the parties settled the ancillary reliefs and filed terms of settlement on the 11th day of January, 2023 for adoption by the Court. The only issue left for the Court to determine is whether or not their marriage has broken down beyond reconciliation.

THE CASE OF THE PETITIONER

According to the petitioner, he is an employee of a bank whilst the respondent is a businesswoman. That there are two issues of the marriage aged five (5) and three (3) years respectively.

His evidence is that they cohabited in his father's house peacefully after their marriage until frequent misunderstandings between them made their peaceful cohabitation difficult.

That he began to fall ill frequently and lost weight drastically. Medical check ups did not reveal any particular ailment. That whilst he was praying one day, he discovered some unusual objects in respondent's wardrobe. He tendered same in evidence as EXHIBIT A.

That at a meeting of their respective families and themselves, the respondent confessed to bringing those strange items home as love potions to charm him. That as soon as the said charms were taken away from the home, his health got restored and so he became convinced that his frequent infirmities were due to the said charms.

That the respondent does not respect him and two meetings with their pastor to attempt reconciliation could not change the situation.

THE CASE OF THE RESPONDENT

According to respondent, she realized that the petitioner was into voodoo in 2018 when her mother really fell ill. That although the petitioner advised that her mother be taken to a herbalist, they realized upon getting to the supposed herbalist that he was a fetish priest.

That when she had their second child, the petitioner refused help offered to her by a pastor and rather brought in a fetish person with the aim of infusing my child with juju and this went on for a period of three months.

That after that, her parents in law also took over the responsibility of taking care of the baby and they would also take the child to unknown places. Upon their return, she would notice that herbs and oils had been used in bathing her.

That although they established a catering business, the petitioner was the one receiving payments from customers and he kept all the money. That even when their first and second children were ill, the petitioner refused to allow her to take them to the hospital to seek medical attention until her brother intervened. Even at that, he only gave a meagre amount of money to pay their hospital bills. It was whilst at the hospital that petitioner's younger brother informed her that petitioner was no longer interested in the marriage.

That after the children were discharged from the hospital, she went to her parents' home with the children. The next day, her family together with their pastor went to see petitioner's family to resolve their issues but petitioner's father told them that his son was no longer interested in the marriage and would take the necessary steps to dissolve it.

CONSIDERATION BY COURT

In divorce just like in all civil cases, the degree of proof required by law is that of a balance or preponderance of probabilities. See *section 12 (1) and (2) of the Evidence Act, 1975 (Act 323)*. In the case of *Adwubeng V. Domfeh [1996-97] SCGLR 660*, the Supreme Court held that '*sections 11 (4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by a preponderance of probabilities – no exceptions were made*'.

It is he who asserts who bears the burden of proof and so the burden of persuasion lies on him/her to lead cogent and positive evidence to establish the existence of his/her claim in the mind of the court. See the case of *Takoradi Flour Mills v. Samir Paris [2005-6] SCGLR 882*.

1. Whether or not the marriage between the parties has broken down beyond reconciliation.

In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. Divorce is defined as “*the legal dissolution of a marriage by a Court.*” See Blacks’ law dictionary, (8th edition, 2004 p. 1449) The court must enquire as far as is reasonable into the reasons for the divorce and may either grant or refuse to decree a divorce after hearing. See the case of *Ameko v. Agbenu [2015] 91 G.M.J.*

The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*. In *section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery which the offended party finds intolerable to live with; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner’s basis of presenting this petition is that the respondent has behaved in such an unreasonable manner that he cannot be expected to live with her.

Although the respondent denied that the marriage has broken down beyond reconciliation, she cross petitioned for a dissolution of the marriage at the instance of

the petitioner. She also contended that the petitioner had behaved unreasonably towards her in the course of their marriage.

Act 367 does not define what constitutes unreasonable behaviour. By virtue of the varied nature of mankind character and sensibilities, it may very well prove a herculean task if an attempt is made to set in stone what acts constitute unreasonable behaviour. However, the test that is used is whether or not the act committed by one spouse is such that all right thinking men would hold that the act is unfair and unjust and the spouse who has been so offended, cannot be expected to continue to live with the other as husband and wife.

In determining what constitutes unreasonable behavior, the test to be applied is an objective one. Hayfron Benjamin J (as he then was) held in the case of *Mensah v. Mensah* [1972] 2 G.L.R. 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 weighty and mere trivialities will not suffice for *Act 367* is not a Cassanova's Charter. The test is objective”.

This test was relied on by the Court of Appeal in the case of *Knusden v. Knusden* [1976] 1 GLR 204-216 where the court held that “The cross-petition was based on *Act 367, Section 2 (1) (b)* under which the test to be applied in determining whether a particular petitioner could or could not reasonably be expected to live with the particular respondent was an objective one, and not a subjective assessment of the conduct and the reaction of the petitioner.”

In assessing such conduct, the court had to take into account the character, personality, disposition and behaviour of the petitioner as well as the behaviour of the respondent as alleged and established in the evidence. The conduct might consist of one act if of sufficient gravity or of a persistent course of conduct or series of acts of differing kinds, none of which by itself might be sufficient but the cumulative effect of all taken together would be so."

For the petitioner, this unreasonable behavior consists of one singular act; the respondent bringing in charms to their home on the basis that same were love potions meant to charm him. He tendered same in evidence as EXHIBIT A series. Petitioner considers this singular act which according to him led to him suffering various ailments and losing weight without any particular medical diagnosis as being of sufficient gravity to warrant him arriving at a conclusion that he can no longer be expected to live with the respondent.

The respondent denies this accusation. However, she also proceeds to mount allegations of the petitioner being involved in fetishism and his own parents bathing her second child with the petitioner in herbs which she was not allowed to know of or question them about.

She further alleges that the petitioner neglected both she and the children of the marriage even when the said children were particularly ill. That it was when she was at the hospital during the admission of one of the issues that the petitioner's brother notified her that petitioner was no longer interested in the marriage. That she has not been able to return to the matrimonial home since then and has had to live with her parents.

Further that when her family attempted to resolve their issues, the petitioner's father made it clear that his son was no longer interested in the marriage. For the respondent, these acts of the petitioner have had the cumulative effect of making his behavior unreasonable such that she cannot be expected to live with him.

From their evidence, this petition and cross petition for dissolution of their marriage is based on issues of spirituality; particularly fetishism. It is a legal known that the law does not admit of spiritualities. It is so because there is no means of positively proving spiritualities in court.

The law bothers itself with positive evidence of events which establish the existence or otherwise of a claim. As spiritualities do not and cannot lend themselves to such positive evidence the law does not admit of same. Upon these grounds, EXHIBIT A is of no evidential value to this court.

As the focal basis of their claim of unreasonable behavior cannot be proven in court, I would move on to the second ground of their claims. Both parties admit that all attempts to reconcile them have failed. That is one of the basis for arriving at a conclusion that a marriage has broken down beyond reconciliation; inability to reconcile after diligent efforts.

Section 2 (1) (f) of the Matrimonial Causes Act, 1971, (Act 367) provides that;

2. (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:

(F) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

Whereas the petitioner maintains that two attempts by their pastor has not yielded any results and also that their families met and agreed that due to their differences, the marriage be dissolved, the respondent testified of various reports to their pastor of the petitioner's activities which have not been resolved and also the respondent's family making it crystal clear to her family that the petitioner was no longer interested in the marriage and would take steps to dissolve same.

Under cross examination by learned counsel for the petitioner at page 9 of the record of proceedings; the petitioner had answered;

Q: For how long have you been living separately from the respondent?

A: Almost 4 years my Lord.

Q: And in your evidence in chief, you have listed some behavior on the part of the respondent that you think makes you uncomfortable to continue to live with her as husband and wife. Is that not so?

A: Yes, my Lord.

Q: And whilst you were going through those marital challenges, attempts at settlement never worked. Is that not so?

A: Yes, my Lord. We had family meetings and it was finally decided that it was an ordinance marriage and so we have to come to court for the divorce process.

Under cross examination by learned counsel for the petitioner at page 11 of the record of proceedings, the respondent had answered;

Q: In 2020, do you remember that joint family meetings were held?

A: Yes.

Q: At whose instance were the meetings called?

A: *At my husband's instance.*

Q: *Why were the meetings called?*

A: *So that we can resolve the issues in the marriage.*

Q: *What issues were in the marriage?*

A: *I was sacked by my husband saying that I use charms on him which is not true. So the family met to see if they can resolve the issue.*

Q: *Are you in agreement with this divorce?*

A: *Yes, I am.*

Both parties are ad idem on their inability to resolve their differences after diligent effort. They have not lived together as husband and wife throughout these court proceedings which have lasted for almost two years and had even ceased to live together as such for almost two years prior to the petitioner presenting this petition.

From their evidence, their families have also given up on the prospect of their reconciling. In our Ghanaian society, the family of both parties to a marriage play an important part in the sustenance of the marriage. they are usually called upon to settle any differences that the parties may have and by so doing steady the marital boat and keep it afloat.

The families usually put their best foot forward to reconcile the parties and are usually the last point of hope in resolving matrimonial disputes. *The fact that the families of both the petitioner and respondent have resolved that they go their separate ways is a strong indication that the differences between the parties cannot be resolved.*

On the basis of the evidence, I hereby find after my enquiry that the marriage between the parties has broken down beyond reconciliation on the grounds that all diligent

efforts to reconcile them have failed. I duly issue a decree of dissolution to dissolve the marriage celebrated between them on the 4th day of April, 2015, at the Tema Regular Baptist Church. Their marriage certificate is accordingly cancelled. The Registrar is to notify the administrator of the Regular Baptist Church of the cancellation to enable them amend their records accordingly.

Let the terms of settlement, filed on the 11th day of January, 2023 and duly signed by their parties and their respective lawyers be and same is hereby adopted as consent judgment. The usual default clause applies.

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

LOIS KOOMSON FOR THE PETITIONER PRESENT

EDWARD METTLE NUNOO FOR THE RESPONDENT PRESENT