

IN THE CIRCUIT COURT HELD AT WEIJA-ACCRA BEFORE HIS HONOUR JAMES KOJOH BOTAH SITTING ON WEDNESDAY THE 4TH DAY OF OCTOBER, 2023.

SUIT NO. C4/39/2022

AKOSUA KORKOR KWASHIE ----- PETITIONER

VRS:

HILARY KWAME NYADZI-TAMAKLOE ----- RESPONDENT

Parties – present

Amos Anokye-Kusi for Humphrey Omaboe for Petitioner – present

JUDGMENT

1. INTRODUCTION

Per her petition for divorce filed on 29/6/2022, the Petitioner is praying the Court for the following reliefs:

- (1) Dissolution of the marriage celebrated between the parties on 14th November, 2020 at Ga South Municipal Assembly at Ngleshie Amanfro;
- (2) That the Petitioner be granted custody of the child of the marriage Manuel Selikem Nyadzi-Tamakloe with reasonable access to the Respondent when he is of age;

- (3) An Order for maintenance of the child with at least GH¢500.00 monthly; payment of educational and medical fees and all expenses of the child of the marriage;
- (4) Payment of accommodation for the child;
- (5) That the Respondent be Ordered to pay to the Petitioner a lump sum, of Twenty Thousand Ghana Cedis (GH¢20,000.00) as compensation for the assault, pain, humiliation and embarrassment caused to the Petitioner;
- (6) That the Respondent be ordered to pay for the cost of this suit including Solicitors fees; and
- (7) Any other reliefs this Honourable Court deems fit to make.

On 1/11/2022 the Respondent filed an answer to the petition for divorce and cross-petitioned for the following reliefs:

- (1) A dissolution of the marriage that was contracted on the 14th November, 2020;
- (2) That the custody of the child of the marriage be given to the Petitioner with unrestricted access to the Respondent;
and
- (3) Each party to bear the costs incidental to this suit.

The Petitioner filed on 22/11/2022 a reply to the Respondent's answer and cross petition.

2. THE CASE OF THE PETITIONER

The Petitioner testified that during the subsistence of the marriage, she saw cannabis and other drugs in the possession of the Respondent and when she confronted the Respondent he admitted smoking cannabis and apologized but he did not stop the smoking. According to Petitioner the Respondent subjects her to physical abuse anytime he is under the effect of cannabis. In Paragraph 10, 11, 18, 19 and 20 of her witness statement the Petitioner narrated other forms of physical abuses and neglect perpetuated against her by the Respondent. According to the Petitioner, the Respondent never cared for her during her pregnancy and she has to pay her medical bills and charges for her caesarean section.

Petitioner told the Court that during an altercation between the Respondent's sister and herself on 28/8/2021 the Respondent slapped her a number of times.

In paragraph 6, 7 and 8 of her witness statement, the Petitioner also accused the Respondent of adultery.

Petitioner complained that due to the infidelity of the Respondent with other women the Respondent infected her with vaginal warts which is a sexually transmitted infection.

The Petitioner further complained at paragraph 13, 14, 15,16 and 17 of her witness statement that the Respondent poorly maintained her and their child.

Petitioner informed the Court that all attempts by the Parties and their families to reconcile their differences have proven futile.

The Petitioner called two (2) witnesses in support of her case. PW1 Collins Ofoe Kwashie and PW2 Rebecca Kwashie largely corroborated the evidence of the Petitioner and also testified to other acts of alleged unreasonable behavior of the Respondent.

2.THE CASE OF THE RESPONDENT

The Respondent denied all the allegations of unreasonable behavior levelled against him by the Petitioner in her witness statement. Respondent said he does not smoke weed or drink alcohol. Respondent denied ever being violate towards the Petitioner. Respondent also denied accusations of infidelity levelled against him by the Petitioner and stated in his witness statement that he has never been diagnosed of having genital warts.

Respondent told the Court that the Petitioner has wounded him emotionally which has taken away his desire in the Petitioner as a wife.

3.ISSUES FOR DETERMINATION

- (1) Whether or not the marriage between the parties has broken down beyond reconciliation and therefore same should be dissolved;
- (2) Whether or not the Petitioner should be granted custody of the issue of the marriage namely, Manuel Selikem Nyadzi-Tamakloe and
- (3) Whether or not the Petitioner is entitled to her ancillary reliefs endorsed on the petition for divorce.

4. THE BURDEN OF PROOF

By Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) the sole ground for granting a petition for divorce shall be that the marriage between the parties has broken down beyond reconciliation.

Section 2(1) of Act 367 places on the shoulders of the Petitioner the burden of satisfying the Court about the breakdown of the marriage beyond reconciliation.

To discharge this burden, the Petitioner is expected to prove one or more of the facts contained in paragraph (a) to (f) of the subsection, namely; adultery on the part of the Respondent; unreasonable behavior; desertion of the Petitioner by the Respondent for at least a period of two (2) years; irreconcilable differences between the parties and failure by the parties to live together as husband and wife for a continuous period of two (2) to five (5) years preceding the filing of the Petition for divorce:

In the case of Trudy Amanor v. Emmanuel Agyeman [2020] DLHC 11656 Dr. Richmond Osei-Hwere J. stated that:

“... the statutory prescription that the sole ground for granting divorce is when it is established that the marriage has broken down irretrievably is a common learning. A Court must come to that satisfaction before decreeing a divorce. The duty of the Court in coming to that determination is well settled.”

5. EVALUATION OF THE EVIDENCE

Per their respective pleadings the parties are in agreement that the Ordinance Marriage contracted between them be dissolved. However, this agreement is not enough for the Court to dissolve the marriage. The parties are to show by their testimonies in Court why the marriage ought to be dissolved. One fact that is clear to me is various conduct of unreasonable behavior narrated by the Petitioner in her Evidence-In-Chief against the Respondent. PW1 and PW2 have corroborated the Petitioner’s account of how the Respondent behaved unreasonably towards the Petitioner in the course of the marriage. The Respondent has denied the charge of unreasonable behavior. However, he stood alone in his testimony. No one was

called by him to testify in support of his case. Accordingly, I believe the testimony of the Petitioner and her witnesses.

The Respondent has also accused the Petitioner of some instances of unreasonable behavior. However, his evidence has not been corroborated.

The Petitioner has alleged adultery against the Respondent in paragraph 7 and 8 of her witness statement. In Quartey v. Quartey [1972] 1GLR 6 the Court held that the burden of proving adultery lies on the person who alleges it and that it cannot be shrugged off by evidence that is tainted, indifferent, suspicious or uncertain. The standard of proof required in proving adultery is proof beyond reasonable doubt as in criminal cases. The Petitioner's evidence is that she saw flirtatious message on the Respondent's phone between him and a certain lady by name Lorretta in which the two of them were planning to meet in a hotel. Petitioner said she confronted the Respondent on the issue, but he became abusive and assaulted her. Petitioner also testified to how the Respondent infected her with genital warts as a result of his sexual affairs with other women. Petitioner attached Exhibit "C" to her witness statement to prove that she was diagnosed of genital warts. I have looked at Exhibit "C" which is the patient folder of the Petitioner's from the American Fertility and Cosmetic Surgery, a health facility. The petitioner was indeed found to have had genital warts and treated accordingly. Genital warts is said to be a sexually transmitted infection normally spread through unprotected vaginal sex. Once the Respondent has not also accused the petitioner of infidelity, if the Petitioner got genital warts she might have gotten it from the Respondent whom the Petitioner has accused of having sexual escapades with other women outside his marriage with Petitioner. On the face of the evidence, I find therefore that the Respondent has committed adultery in the course of the marriage.

The parties also appear to have numerous differences between them in the marriage which they failed or were unable to reconcile.

Evaluating the evidence as a whole, I am satisfied that the marriage contracted between the parties on 13/11/2020 at the Ga Municipal Assembly, Accra has broken down beyond reconciliation. I hereby dissolve the said marriage. The Marriage Certificate No. GSMA/137/2020 evidencing the marriage between the parties is hereby cancelled and declared null and void. Each party is free to marry a different partner if he or she chooses to do so.

In respect of the second issue for determination, section 45 of the Children Act, 1998 (Act 560) requires the Court to consider the best interest of the child and the importance of a young child being with his or her mother when making an order of custody in respect of the child. The issue between the parties, Manuel Seliken Nyadzi- Tamakloe is a young and tender child aged 2years. This Court is of the view that his best interest and wellbeing will be served if his custody is granted to the Petitioner. Accordingly, the Petitioner is granted custody to the child of the marriage. The Respondent is granted reasonable access to the child to be restricted to weekends and school vacations.

The Respondent is ordered to maintain the child in the sum of GH¢500.00 per month effective from October, 2023. The money is to be paid into Court for the Petitioner to collect same.

The Respondent is ordered to cater for the health and educational needs of the child as well as provide the child with all the necessities of life.

The Respondent is further ordered to provide a decent accommodation for the child in the custody of the Petitioner.

I award GH¢10,000.00 as financial provision or alimony in favour of the Petitioner against the Respondent. There will be no order as to costs.

Each party is to bear his or her own costs in the action.

H/H JAMES KOJOH BOTAH
CIRCUIT COURT JUDGE

