

IN THE CIRCUIT COURT WEIJA BEFORE HIS HONOUR JAMES KOJOH
BOTAH SITTING ON MONDAY THE 23RD DAY OF OCTOBER, 2023

SUIT NO. C4/23/2023

MATTHEW QUANSAH

... PETITIONER

VRS

THEODORA ADDY

... RESPONDENT

PARTIES: Present

COUNSEL: Ernest Koranteng for Petitioner – Absent

Deborah Okuan Duodu for Lom Nuku Ahlijah for Respondent –
Present

JUDGMENT

INTRODUCTION

On 8th February, 2023 the Petitioner filed a Petition for divorce against the respondent seeking the following reliefs:

1. *That the marriage between the petitioner and the Respondent be dissolved;*
2. *That, the property below be settled in favour of the petitioner that is House No. GJ 174-7228, Weija-Accra; and*
3. *Such further orders as this Honourable court may deem fit.*

On 17th February, 2023 the respondent filed an answer to the petition for divorce and cross petitioned for the following:

1. *That the said marriage celebrated between the parties on the 4th day of August, 2018 be dissolved;*

2. *An order that the petitioner pays a sum of GH¢300,000.00 to the respondent as financial settlement;*
3. *That, the house situated at Weija be settled in favour of the respondent; and*
4. *An order for the petitioner to bear the legal fees of the respondent.*

(2) THE CASE OF THE PETITIONER

The petitioner testified that he married the respondent on 4th August, 2018 at the Emmanuel Presbyterian Church Dansoman, Accra. The parties co-habited at Weija-Accra after the marriage. The parties have no biological issues between them.

Petitioner informed the court that the respondent has been constantly harassing and embarrassing him to refund to her all the monies she spent during their marriage. According to Petitioner he has paid such monies to the Respondent as per his Exhibit "A" "attached to his Witness Statement and that the Respondent acknowledged receipts of the payment in the presence of one Pastor Seth.

Petitioner complained that the respondent is habitually rude towards him has disrespected him and his family without provocation. Petitioner said the respondent insults him and makes unsavoury remarks about him. Petitioner further complained that the respondent does not keep the matrimonial home hygienic.

The petitioner stated in his Witness Statement that he purchased the land on which the matrimonial home is built on 13th January 2014 from the Gbawe Kwatei Family per their head Nii Adam Kwatei Quartey. Petitioner annexed Exhibit "B" to his Witness Statement which is the Indenture in respect of the Land. Petitioner also attached Exhibit "C", a yellow card to his Witness Statement to show he started the registration of the Land at the Land Title Registry. Accordingly to the petition he solely constructed and completed the matrimonial home before the respondent came into the house as a wife. Exhibit "E" and E1" series are pictures of the house. Petitioner intimated to the court that the respondent has not paid a dime on the building and that he is solely responsible for maintaining the building and paying for electricity

and water bills whilst the respondent lives in the building. Petitioner exhibited Exhibit "F" which is a payment of water bill made by the petitioner.

(3). THE CASE OF THE RESPONDENT

The respondent told the court that prior to their marriage, the parties agreed that she should take a loan from her bank and friends in her name to enable them celebrate the marriage.

However, the petitioner refused to pay off the loan after the celebration of the marriage. According to respondent the refusal of the petitioner to pay off the loan burdened and embarrassed her before her friends who gave them the monies and so she had to look for money to settle the loans. Respondent said the petitioner never cared even though he was aware of the harassment she was getting from the creditors. The respondent complained that the petitioner is selfish. At a point in the marriage, he stopped coming home early from work and also stopped eating her cooked meals. Respondent said the petitioner was emotionally detached from her although they lived together in the same matrimonial home. The petitioner does not care about their marriage and does not appreciate her efforts to make the marriage work. According to respondent the petitioner moved out of the matrimonial home and only comes from time to time for his personal effects.

Respondent testified that at the time they got married, the matrimonial home was incomplete and she incurred huge expenses to complete the matrimonial home since they moved into it. Respondent attached Exhibit 2 series to show the expenses she incurred on the building.

(4). ISSUES FOR DETERMINATION

- 1) *Whether or not the marriage between the parties has broken down beyond reconciliation;*
- 2) *Whether or not the property situated at Weija, was jointly acquired by the parties during the subsistence of the marriage; and*
- 3) *Whether or not the respondent is entitled to alimony of GH¢300,000.00.*

(5). 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 petitioner the burden of proving that the marriage has broken down beyond reconciliation. To discharge this burden, the petitioner is required 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 behaviour; 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.

(6). EVALUATION OF THE EVIDENCE

Per their pleadings the parties are in agreement that the ordinance marriage they contracted should be dissolved. However, this agreement is not enough ground for the court to dissolve the marriage. The parties are required to show by their testimonies why the marriage between them should be dissolved. Both parties have accused each other of conduct that amounts to unreasonable behaviour in the cause of the marriage. From the evidence on record, the parties also have a lot of differences between them which they failed to reconcile. Per the evidence of the respondent, things got to a stage in the marriage where the petitioner deserted the matrimonial home for the respondent alone to live in and the petitioner only came to the matrimonial once in a while to take his personal effects. In the case of **Trudy Amanor v Emmanuel Agyeman** [2020] DLHC 11656, the court held that:

“The statutory prescription that the sole ground for granting divorce is when it is established that the marriage has broken down beyond reconciliation is 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.”

Having evaluated the evidence on record, I am satisfied that the marriage celebrated between the parties on 4th August, 2018 at the Emmanuel Presbyterian Church

Dansoman, Accra has broken down beyond reconciliation and the said marriage is accordingly dissolved.

The Marriage Certificate evidencing the said marriage between the parties is hereby cancelled and declared null and void.

In respect of the second issue for determination, the Supreme Court in Peter Adjei v Margaret Adjei [2021] DLSC 10156 held as follows:

“The combined effect of the decisions referred to is that any property that is acquired during the subsistence of a marriage be it customary or under the English or Mohammedan ordinance is presumed to have been jointly acquired by the couple and upon divorce should be shared equally between them on the equality is equity principle. This presumption of joint acquisition is however rebuttable upon evidence to the contrary.”

The petitioner’s evidence is that he purchased the land on which the Weija property is situated on 13th January, 2014 from Nii Adam Kwatei Quartey head of the Gbawe Kwatei Family. Exhibit “B” is the petitioner’s indenture in respect of the land. Petitioner’s evidence is further that he purchased the land alone and then build the matrimonial home before he married the respondent. The respondent’s evidence on the other hand is that the matrimonial home was incomplete at the time the parties got married and that she contributed and incurred expenses to complete the matrimonial home. I have examined Exhibit “B” the petitioner’s indenture of the land. Per Exhibit “B” on 13th January, 2014, Nii Adam Kwatei Quartey of the Gbawe Kwatei Family of Accra leased a parcel of land situate at Gbawe South to the petitioner as described in the Schedule to Exhibit “B”. Per their respective testimonies, the parties married under the Ordinance on 4th August, 2018. I therefore find from the evidence that the petitioner acquired the land on which the matrimonial home is built long before he married the respondent. The respondent admits that at the time the parties got married the matrimonial home was incomplete thus giving credence to the petitioner evidence that he bought the land and constructed the matrimonial home before the marriage between the parties was contracted.

The respondent has alleged that she incurred huge expenses in respect of the uncompleted matrimonial home. It is the prayer of respondent that the matrimonial home be settled on her. I have tried to examine the exhibits the respondent attached to her Witness Statements to prove contributions she has made. The documents are receipts photocopied from their original documents. However, the photocopies the respondent has exhibited as Exhibit "E" series are not legible and so I could not make any meaning out of them. In any case, the fact still remains that the property in issue was not acquired together by the parties during the subsistence of the marriage. It was the petitioner who acquire the land and started construction of the building before he married the respondent. Since the property was not jointly acquired by the parties during the subsistence of the marriage, it cannot be shared equally between the parties or settled on the respondent. The land and the house on it remains the sole property of the petitioner.

In respect of the final issue for determination, it is my opinion that the respondent is entitled to financial provision or alimony from the petitioner. Accordingly, I award the respondent an amount of GH¢10,000.00 as financial provision to be paid to her by the petitioner. There will be no order as to costs.

(SGD)

H/H JAMES KOJOH BOTAH

(CIRCUIT COURT JUDGE)