CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 1ST JUNE, 2023

**SUIT NO. C5/75/22**

**DEBORA NAA AKU ALLOTEY - PETITIONER**

**VRS**

**PRINCE SENYO DZAHENE - RESPONDENT**

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**JUDGMENT**

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The parties to this action celebrated their marriage under the ordinance on the 12th day of January, 2019. They have one issue who is a toddler. Per the Petition presented to this court by the Petitioner on the 28th day of April, 2022, she is seeking a decree of dissolution to dissolve their marriage.

Her basis for this is that their marriage has broken down beyond reconciliation due to the unreasonable behavior of the Respondent as well as adultery; that all attempts to reconcile them has failed. She sought the following reliefs:

1. Dissolution of the marriage celebrated on the 14th day of September, 2019 between the parties
2. An order that the Petitioner maintain custody of the issue of the marriage
3. That the Respondent be ordered to maintain the issue of the marriage
4. That the Respondent be ordered to rent an apartment for the Petitioner and issue of the marriage within a specified time ordered by the court
5. Alimony in the sum of GH¢20,000.00

6. An order for cost, including lawyer's fees
7. Such further orders or reliefs as the Court may deem fit.

The Respondent filed an Answer to the Petition and denied that their marriage had broken down beyond reconciliation. He contended that the Petitioner has refused to return to the matrimonial home solely on the basis that he has not been able to meet her request for rental of a new apartment as their matrimonial home. He denied committing adultery.

Despite insisting that their marriage has not broken down beyond reconciliation, he cross-petitioned for a dissolution of their marriage and for the court to waive petitioner's relief 3, 4,5,6 and 7.

Petitioner filed a Reply to the Answer. In the course of proceedings, the parties resolved the ancillary reliefs and filed terms of settlement on the 21st of February, 2023. That being so, the only issue for the court to determine was whether or not their marriage had broken down beyond reconciliation.

**THE CASE OF PETITIONER**

In her Evidence-in-Chief, Petitioner contended that when she was pregnant, the Respondent asked her to go and live with her mother, that he would rent another place after three months and come for she and the child. Petitioner says that Respondent has failed to do that and she still lives with her mother.

She contended further that she and the Respondent have not lived together as husband and wife since 2019, that the Respondent does not maintain she and the child and has threatened her not to make this known to his father.

Petitioner says that the Respondent has not set eyes on their child since she turned two months old. A meeting was held with their church elders to resolve their issues and Respondent promised to rent a place so that she and the child could join him but he has failed to do so. He has also failed to visit her and the child despite being advised to do so.

Petitioner says that Respondent has not been forthcoming about his work and till date, she does not know what he does for a living. Respondent also made unreasonable sexual demands of her such as anal sex and he abused her when she refused.

Petitioner says she saw several WhatsApp messages of Respondent making sexual advances to unknown women, and he has committed adultery with the unknown women. He makes and receives calls from unknown women at odd hours and the conversation is mostly amorous.

Petitioner says that all attempts by family to reconcile their differences has failed.

**THE CASE OF THE RESPONDENT**

The evidence of Respondent is that the Petitioner abandoned the matrimonial home in 2019 and they have since been separated. He says there has not been any sexual relation between them for the past three years and he wholly consents to the dissolution of the marriage as same has broken down beyond reconciliation.

**CONSIDERATION BY COURT**

"Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. Thus although the

Respondent in her answer admits that the marriage has broken down beyond reconciliation and also alleges unreasonable behavior and adultery, the Court through evidence must satisfy itself that the marriage has broken down beyond reconciliation". See the case of ***Ameko v. Agbenu [2015] 91 G.M.J.***

***Blacks' law dictionary, (8th edition, 2004 p. 1449)*** defines divorce as "***the legal dissolution of a marriage by a Court***." In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. 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, that is adultery; 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 for arriving at the conclusion that their marriage has broken down beyond reconciliation is unreasonable behavior and adultery. As the Respondent had also cross-petitioned, the burden of proof and persuasion fell on each of them to establish their case. The respected ***Benin JSC*** in the case of ***John Tagoe v. Accra Brewery Ltd. [2016] 93 G.M.J. 103 @ 123*** *was convicted that: "It is trite law that he who alleges, be he plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when he has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be*."

The burden on both of them is akin to a double-edged sword. Akamba JA (As he then was) in the case of ***Kwaku Mensah Gyan & I Or. v. Madam Mary Armah Amangala Buzuma & 4 Ors. (Unreported) Suit No. LS: 794/92 dated 11th March, 2005*** explained: *"What is required is credible evidence which must satisfy the two fold burdens stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section.*

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

The Petitioner's basis for arriving at the conclusion that her marriage to the Respondent has broken down beyond reconciliation is that the Respondent has behaved in such an unreasonable manner that she cannot be expected to continue to live with him as husband and wife, that he has committed adultery and further that all attempts made by their families, pastors and friends to reconcile them have failed.

I will first deal with the ground of adultery. Adultery is defined by the ***Blacks Law Dictionary (8th ed. 2004 at page 160)*** as "voluntary sexual intercourse between a married person and someone other than the person's spouse''.

In order for adultery to be basis for holding that a marriage has broken down beyond reconciliation, a party relying on same must prove not only the adultery but the fact that he/she found it intolerable to continue to live with the offending spouse after the notice of adultery came to his/her attention.

It is trite that a claim of adultery must be proven with positive evidence and not mere speculations. The law recognizes that it is in the nature of a married couple to be

protective of each other's attention especially to the opposite sex. It also recognizes that the nature of that protective character may lead one to be suspicious and anxious about the spouse's relationship with the opposite sex.

In order that a multitude of suspicions is not accepted as proof of adultery, the law requires that for conduct to amount to adultery, the spouse must have been found inflagrante delicto in the throes of passion with another or in such circumstances that the only inference that can be made is that they were about to or have just ended a passionate embrace involving their sexual orifices.

In proof of her claim of adultery, the evidence of Petitioner is that the Respondent speaks to unknown women at odd hours and engages in amorous conversations with them. Her evidence appears to be mere suspicions. She could not provide any specific details about any of the said women or the manner in which the Respondent relates to them which would lead to an inference of adultery. She did not provide any material evidence from which the court could infer that indeed the Respondent has committed adultery with other women or another woman.

I would now proceed to the ground of unreasonable behavior which the Petitioner contends. Act 367 does not define what constitutes unreasonable behaviour. By virtue of the varied nature of mankind's 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".

In the case ***of Ansah v. Ansah [1982-1983] GLR 1127, 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 behavior. 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".

The evidence of the Petitioner as to the unreasonable behavior of the Respondent is that he asked her to go and live with her mother prior to her giving birth to their child as he wanted to rent a place to move them to after she had delivered, and that he has since not rented the said place and she and the child still live with her mother.

Also, that Respondent does not maintain her and the issue of the marriage and has not been truthful to her. She says that the Respondent does not visit her or the issue of the marriage and the last time he laid eyes on the issue of the marriage was when the child was two months old.

Although the Respondent denied these claims, the evidence on record showed otherwise. To begin with, the Petitioner under cross examination led evidence that the Respondent refused to organize a naming ceremony to name their child and had been adamant about this even after her mother stepped in to speak to him.

Respondent under cross-examination by learned counsel for the Petitioner admitted that he was not the one who named their child, that it was the Petitioner who did so. This is after he admitted that he himself was named by his father. Although he had initially answered that naming ceremonies are not performed in his custom, he had changed the goal post later to say it is optional.

Apart from the fact that he did not name their child, his own evidence indicates that he contributed very little to the ceremony, and he attended not with his family but with his friends; a male and a female whom the Petitioner suspects him of having an affair with. He also admitted that he does not maintain the Petitioner.

As to his visits to the child, he did not challenge the claim that he visits the baby in the evenings only even after he had done so a few times and found out the baby was asleep. Due to this, he hardly sees the issue of the marriage who is currently more than three years old.

Between the Petitioner and the Respondent, I found the Petitioner to be more credible. She maintained her claims under cross-examination and her evidence provided circumstances and details of events from which the court could infer the existence of her claims to be more probable than not. The Respondent on his part was not so credible to the court. He shifted the goal post when it suited him and appeared to be quite belligerent.

In the case of ***Ntim v. Essien [2001-2002] SCGLR 451***, it was held that in determining the credibility of a witness, the court must take into account "*the demeanour of the witness, the substance of the testimony, the existence or non existence of any fact testified to by the witness, a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial, the statement of the witness admitting to untruthfulness or asserting truthfulness among others''.*

To insist on visiting your own child at a certain time even upon realizing that the child sleeps early is highly unreasonable. It appears that he sent notifications of his visit on time to the Petitioner to ensure that she was aware of his coming. However, whereas the Petitioner is an adult and can be expected to keep late hours, the sleeping habit of a toddler cannot be reasonably adjusted to suit the visiting times of an adult. It is the other way round. Thus one would have expected the Respondent to adjust his visiting times to ensure that the issue was awake when he visited.

He did not do so. He rather chose to maintain his visiting time in the evenings and abuse the Petitioner and her family whenever he was told the child was asleep. That he chose not to maintain the Petitioner even though she was not staying under his roof and had just given birth cannot also be seen as a reasonable act.

As she and the baby were not living under his roof, it means that he was saving some money on if nothing at all, utility bills and food. One would expect and reasonably so that he provides Petitioner with some form of maintenance to enable her eat properly as a new mother so as to be able to take care of the baby. That he chose not to do so is quite unreasonable.

Although the Respondent says he attempted to go for the Petitioner and the child from her mother's house, I did not find his answer to be credible. He admits that he sent the Petitioner away to her mother's when she was pregnant and wants the Court to believe that he made only one attempt and when the Petitioner refused, he did not make any further attempts or inform any of their family or friends about this for an amicable resolution.

From the evidence, even though they celebrated their marriage in January, 2019, they only cohabited for seven months after their marriage. They have not lived as husband and wife since then and according to Respondent, they have also not had any sexual relations.

I find from the evidence that their not having lived together as husband and wife is due to the unreasonable behavior of the Respondent. His unreasonable behavior does not stem from one act. It is from several acts which when put together leads the court to a conclusion that he has behaved in such a manner that the Petitioner cannot reasonably be expected to continue to live with him as husband and wife.

As only one ground is necessary to make a finding that a marriage has broken down beyond reconciliation, I would not consider the ground of inability to reconcile their differences after diligent efforts as claimed by the Petitioner.

Accordingly, after my enquiry, I hereby find that the marriage celebrated between the parties on the 12th day of January, 2019 at the Presbyterian Church of Ghana, Hope Congregation, Sakumono Estates has broken down beyond reconciliation due to the unreasonable behavior of the Respondent. Consequently, I hereby decree that their marriage has broken down beyond reconciliation and same is hereby dissolved. Their

marriage certificate is accordingly cancelled. The Registrar is to notify the administrator of the church to enable them amend their records accordingly.

Let the terms of settlement filed on the 21st day of February, 2023 at 2:00pm and which is duly signed by the parties and counsel for the Petitioner on one hand and a witness for the Respondent on the other hand be and same is hereby adopted as consent judgment. The usual default clause applies.

(SGD)

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

PATIENCE ABLAH AMANSIE BOATENG FOR CHRISTOPHER LARTEY FOR THE PETITIONER PRESENT