

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 25<sup>TH</sup> DAY OF  
AUGUST, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE

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SUIT NO.C5/69/23

MICHAEL KUMADOE ----- PETITIONER

VRS.

MRS. VERONICA KUMADOE ----- RESPONDENT

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PARTIES PRESENT

NO LEGAL REPRESENTATION

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JUDGMENT

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FACTS:

The petitioner, a pastor and formerly a bachelor was lawfully married to the respondent, a trader and formerly a bachelor under **Part III of the Marriage Act (1884-1985) Cap 127** at the Holy of Holies Church, Golf City on the 10<sup>th</sup> day of November 2019. After the marriage both parties co-habited at Gbetseli and later moved to Middle East, Ashaiman. There is no issue in the marriage and there has also been no litigation between the parties in any court. The petitioner filed the instant petition for divorce on 25<sup>th</sup> April, 2023, alleging that the marriage celebrated between herself and the respondent has broken down beyond reconciliation and prayed the court for the sole relief of the dissolution of the said marriage celebrated between the parties.

The petitioner avers that the respondent has behaved in such a way that he cannot reasonably be expected to live with her. The particulars of behaviour alleged by the petitioner are that respondent is disrespectful and does not regard him as a pastor and as her husband. According to the petitioner, the respondent's attitude is a source of disgrace to him as a pastor and he tried all he could to help her change but she is not prepared to change to bring harmony in the matrimonial home. Again, the petitioner says that the respondent can sit on the floor naked and rain curses on him with the least misunderstanding which is not healthy for the work as a pastor. The petitioner further states that he has known no peace in the marriage since the respondent insults him publicly and this behaviour has retarded the growth of the church. At a point, situation became unbearable and he brought the problems in the marriage to the attention of both families. As a result, they were advised to separate for three months to observe if the marital issues would improve.

According to the petitioner, after the three months period, the respondent had not shown any remorse and he did not see any change in the attitude of the respondent. The petitioner therefore maintains that he cannot live with the respondent as his wife and says further that for almost a year now, they have not lived together as husband and wife and there are no sexual intimacies between them. Additionally, there is no effective communication between them and that they are generally incompatible. Again, the petitioner avers that the behaviour of the respondent has caused him to be traumatised and that the respondent has caused him much pain and anxiety that he cannot reasonably be expected to live with him. According to the petitioner, all efforts made by their families to

reconcile their differences have proved futile and prays the court for the dissolution of the marriage.

The respondent vehemently denies that the marriage celebrated between the parties has broken down beyond reconciliation. The respondent states that the marriage was rather celebrated on 10<sup>th</sup> November, 2018 and not 2019 as the petitioner would want the court to believe and that she is a Distributor of laboratory items and equipment and not a trader. The petitioner denies the allegation of unreasonable behaviour and states that all the times material to this marriage, she has respected the petitioner as her husband and a pastor and has been a supportive wife who contributed financially in setting up the church to the knowledge of the petitioner's family members. The respondent avers that it is rather the respondent who started beating her the marriage. She states that after she had undergone the said surgical operation, and there was a misunderstanding and the petitioner started beating her without just cause and she sat on the floor as a result of the beatings but she was not naked as he stated. The respondent, in further answer to the petition states that as a result of the beatings, she reported the issues in the marriage to both families. At a meeting held by their families, the petitioner requested that she stays with her family at least three months because of her health condition which they all agreed to.

Additionally, the respondent says that though the petitioner was sending her money through mobile money, she stayed with her parents for over nine (9)

months and due to that the respondent's father called the petitioner to find out the reason but the petitioner informed him that he wanted a divorce. The respondent maintains that the petition is baseless since she has not committed any matrimonial offence to warrant a dissolution of the marriage celebrated between them and prays the court to settle the differences between the parties and admonish the petitioner to stop beating her. Based on the pleadings and the evidence led, the court set down the following issues for determination.

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### **LEGAL ISSUE**

Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

### **ANALYSIS**

Under the **Matrimonial Causes Act, 1971 (Act 367)**, the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts set out in **section 2(1) of Act 367**. The petitioner in the instant petition has set out to prove fact **2(b) and (c)**, namely, *"that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent"*. To encourage reconciliation as far as may be practicable, **section 8** enjoins the petitioner or her counsel, to inform the court of all attempts made to effect reconciliation. Under **section 2(3)**, a court shall refuse to grant a petition for divorce notwithstanding

the fact that a petitioner has proved any of the facts in **section 2(1)**, if there is reasonable possibility of reconciliation.

To succeed under **section 2(1) (b)**, the petitioner must prove the respondent's conduct constituting unreasonable behaviour, and the fact that the petitioner cannot reasonably be expected to live with the respondent as a result of the bad behaviour. In the case of **Ansah v. Ansah** [1982-83] GLR 1127, the court held in holding 1 that:

*"...The test under the section (section 2 (1) (b) of Act 367) 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."*

The petitioner testified in line with his pleadings that the respondent had behaved in such a way that he cannot reasonably be expected to live with her and that the marriage has broken down beyond reconciliation. The behaviour complained of in his testimony are that since the inception of the marriage, the respondent has failed to regard him as her husband and a pastor. According to his testimony, few months into the marriage, the respondent became arrogant, disrespectful and dishonest just to provoke him to act out of character and constantly disregarded his personal duties. The petitioner further testified that

the respondent would at times sit on the floor and rain curses on him with the least provocation which is not healthy for his pastoral duties.

Additionally, the petitioner testified the respondent insults him publicly and this behaviour has retarded the growth of the church. The situation became unbearable which caused him to inform both families of their predicament and the couple was granted separation for three months to see whether their differences could be resolved. However, after the three months, he did not see any remorse or change in the respondent since the respondent was happily staying with her parents ever since she moved out of the matrimonial home. Consequently, for almost a year now, they have lived their separate lives and have not had any sex or shared any form of intimacy. There is also no cordial relationship between them and he has tried on several occasions to amend the relationship but the respondent by her behaviour and attitude has shown that she is not prepared to make the marriage work. The petitioner says communication between them is not effective so he can emphatically say they are generally incompatible.

Furthermore, they are generally not compatible and numerous efforts made to reconcile their differences always proved futile. According to the respondent, he has emotionally been traumatized and the respondent has caused so much pain and anxiety in him so he strongly believes the marriage has broken down beyond repair and should be dissolved.

The respondent on her part testified that the marriage has not broken down beyond reconciliation. The petitioner states that after the marriage, she was the one providing for the home for about a year. According to the respondent, at a point, the petitioner started abusing her physically and verbally even in public. She further states that the petitioner slapped her and kicked her abdomen right in front of a visitor by name Seth in their home knowing very well that she had undergone surgical operation. The respondent says that at a time she was nursing her surgical wound, she was pounding fufu for the petitioner slapped her, slammed her head against a wall and she fell on the ground but the petitioner did not stop assaulting her but rather heartlessly kicked her abdomen and ribs. It took the intervention of a co-tenant by name Aunty Joyce to come to her aid. The petitioner also assaults also assaults her in the presence of his mother and brother and once, she fell of a metal seat and injured herself in the process of the petitioner assaulting her.

Additionally, the respondent testified that as a result of the abuse and assaults meted out to her by the petitioner, her health began deteriorating so the petitioner had to call her parents and his parents to report her condition to them because she always concealed the assaults from her parents. She says that petitioner openly told both families that he does not have any money to pay for rent because she was in good financial standing by then and she was taking care of all his financial needs before and after marriage.

According to the respondent, both families agreed upon petitioner's request that she relocates to her parent's house for three (3) months and afterwards return to

their matrimonial home. However, after the three (3) months, the petitioner refused to accept her back home and did not give any respect to both families for honouring his request for them to separate for three months. Based on that, her father invited both petitioner and his family and the petitioner informed them that he was longer interested in the marriage. She states that petitioner's attitude of arrogance and pride makes members leave the Church. She spent hours talking and praying for some of the members who had the courage to approach her with their problems with the petitioner's bad utterances and arrogance. Again, the respondent states that as at now, two (2) of petitioner's pastors had left the church due to his pride and arrogance. She has supported the petitioner and his ministry physically and spiritually. She states that Petitioner never considered her opinion and suggestions as a wife after he started funding for some responsibilities at home and had now gone to rent a two (2) bedroom fully furnished apartment at Ashaiman Tulaku days after deceiving both families that he does not have what it takes to pay for rent. In support, she tendered in evidence photographs allegedly rented by the petition for his occupation admitted and marked as **Exhibit "A"** series.

The respondent further testified that the petitioner has lost interest in the marriage and has neglected her sexual and emotional needs as a result of the gap created between them. As a result, the respondent states that she currently lives with a friend at Emmanuel Estate, Mataheko and her belongings are with petitioner's foster mother. The respondent states that she has personally made all efforts through family members, friends and other relations to make the relationship work but all her efforts have proven futile and that the marriage between them has broken down beyond reconciliation due to the recalcitrance of



the respondent. The respondent who did not cross-petition for divorce and alimony now testified that the marriage should be dissolved and the court to award her an amount of GH¢80,000 as alimony and to rent accommodation for her.

The evidence led by the parties is characterised by allegations and counter allegations. The petitioner testified to various forms of verbal abuse and mistreatment that the petitioner subjected him to without further proof. The respondent also, testified to the various forms of physical abuse that the petitioner has subjected her to without providing further proof aside her bare assertions. In the case of **Zabrama v. Segbedzi** [1991] 1 GLR 221, the court stated at page 246 that:

*“a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And, he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden.”*

The petitioner therefore failed to adduce sufficient and cogent evidence from which the court can conclude that the respondent has behaved in an unreasonable manner. Also, the respondent who gave a horrendous account of ill treatment she had endured in the hands of the petitioner and mentioned the names of friends and family members who witnessed these torturous acts in the hands of the petitioner failed to call these people as witnesses to corroborate her account. There is also no medical evidence or police evidence corroborating her

account. It has been held that *"...however credible a witness may be, his bare affirmation on oath or the repetition of his averments in. the witness box cannot constitute proof"*. See the case of *Majolagbe v. Larbi* [1995] GLR 190 per Ollenu J.

The petitioner therefore failed to prove the behaviour of the respondent complained of against the respondent. The respondent in cross-examining the petitioner suggests that the petitioner made her to believe that the marriage was ordained by God and as such the decision of the petitioner to seek divorce is unwarranted. Again, the respondent suggests that the petitioner is in a relationship with someone who is pregnant for him and that his reason for seeking divorce without further proof. The evidence led by the parties shows that the parties have differences which after diligent efforts they have not been able to reconcile. The parties agree that due to the challenges in their marital relationship, it was agreed at a family meeting for them to separate for three months but after this period, they could not reconcile their differences to live together as man. Again, for more than one year now, the parties have not lived together as husband and wife and there is no effective communication between them. Also, during the pendency of the suit, the court referred the parties to the Court-Connected Alternative Dispute Resolution (CCADR) but they were not successful at reconciling their differences. Subsequently, the respondent who vehemently opposed the dissolution seeing no hope of reconciliation agreed in her evidence in-chief that the marriage has indeed broken down beyond reconciliation.

On the totality of the evidence led, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation on account of irreconcilable differences and ought to be dissolved. I therefore grant the petition for divorce and decree for the dissolution of the marriage celebrated between the petitioner and the respondent.

The respondent who opposed the dissolution did not pray for ancillary reliefs but in her evidence states that she is entitled to an amount of Eighty Thousand Ghana Cedis (GH¢80,00) as financial provision and that the court should order the petitioner to rent accommodation for her. It is trite learning that financial provision is not for the asking and it is also not based on fault. Thus, the respondent has not led evidence based on which the court can grant her a favourable verdict. The door of justice is not shut on the respondent who failed to include ancillary relief since under **Order 65 rule 23** of the High Court (Civil Procedure) Rules, 2004(C.I. 47) after judgment, the respondent has one month within which to make an application of ancillary relief in the nature of financial provision, property settlement or conveyance of title as of right and thereafter with leave of the court.

### **CONCLUSION**

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce and enter judgment in the following terms;

1. I hereby grant a decree for the dissolution of the Ordinance marriage celebrated between the petitioner and the respondent at the Holy of Holies Church, Golf City on 10<sup>th</sup> November, 2018.
2. The parties shall present the original copy of the marriage certificate for cancellation by the Registrar of the court.
3. No order as to costs.

**H/H AGNES OPOKU-BARNIEH  
(CIRCUIT COURT JUDGE)**