

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 23<sup>RD</sup> MARCH, 2023

SUIT NO. C5/59/23

DARLING DELALI NYATEDZU - PETITIONER

VRS

EDEM OCLOO – ANIPAH - RESPONDENT

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**JUDGMENT**

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On the 24<sup>th</sup> day of July, 2003, at the office of the principal Registrar of Marriages, Accra, the parties herein converted their customary marriage into marriage under the ordinance. They have since their marriage resided in Tema and have three (3) issues aged between twelve (12) and eight (8) years.

On the 21<sup>st</sup> day of December, 2022, the petitioner herein after almost twenty (12) years of their union, presented the instant petition to this court for the dissolution of their marriage on the grounds that same has broken down beyond reconciliation. She contends that the respondent has deserted the marriage for the past four (4) years and also behaved in such an unreasonable manner that she cannot be expected to continue to live with him as husband and wife.

By way of reliefs, she prayed the court for:

1. Dissolution of the marriage celebrated between them on the 24<sup>th</sup> day of July, 2003
2. Order the respondent to maintain her and the issues of the marriage pending the determination of the suit and thereafter periodic maintenance as and when necessary for the upkeep of the petitioner and the issues

3. Financial compensation of twenty thousand Ghana cedis (Ghs 20,000) in favour of the petitioner
4. Maintenance of the three issues in the marriage and payment of their school fees
5. Any further orders as this honourable court may deem fit.

The respondent filed an answer and admitted that their marriage has broken down beyond reconciliation. He however denied that the breakdown was due to his unreasonable behavior and desertion. He contended that the petitioner has for the past four years, the petitioner had refused to perform her conjugal duties. That the petitioner has treated him shabbily notwithstanding all the financial provision he has made for the family throughout the years.

By way of cross petition, he sought the reliefs of:

1. That the marriage between the petitioner and himself be dissolved
2. That he be given reasonable access to the issues of the marriage
3. Financial provision in his favour
4. That he and the petitioner be ordered to cater for the education and health needs of the issues of the marriage.

In the course of proceedings, the parties settled the ancillary reliefs and filed terms of settlement on the 26<sup>th</sup> day of January, 2023 for adoption by the Court. That being so, the only issue left for the court to determine is whether or not their marriage has broken down beyond reconciliation.

**THE CASE OF PETITIONER**

The evidence of petitioner is that the marriage has broken down because of issues related to respondent's infidelity and responsibility to the home after the birth of their third child. That when she complained to the respondent's immediate family, he left the matrimonial bedroom and later the matrimonial home.

That the respondent left the matrimonial home in October, 2018 and only visits rarely when he feels like it. That he does not care for either the issues of the marriage or herself emotionally, financially or physically. That the respondent makes unilateral decisions and refuses to account or discuss decisions concerning the family.

Further that for the past five (5) years of their marriage in particular, the respondent has taken to verbally assaulting her and was almost shouting at her upon a daily basis in the presence of the children. That the past six (6) years of their marriage has been without love and respect and the respondent has abandoned and exposed her to public ridicule and mockery.

She also testified that the respondent has continuously stated that he no longer wants anything to do with her and his biggest priority is his freedom from the marriage hence all attempts at reconciliation by their family and friends have failed. That she took the initiative to institute divorce proceedings due to the constant threats of divorce by the respondent.

#### **THE CASE OF THE RESPONDENT**

According to the respondent, their marriage has broken down beyond reconciliation as the last four (4) years has eroded the love and respect they shared when they were happily ushered into holy matrimony.

That for the major part of 2018 till date, he and petitioner have not had any sexual intimacy as the petitioner avoids all advances he makes towards her. That petitioner also refused to wash for him.

He contended that the woman he married years ago has changed and it is in their best interest that the marriage be dissolved. That the petitioner started to disrespect him as a display of her discontent of the marriage. That although he has never cursed the petitioner, she has severally abused him verbally and emotionally.

Also that although the petitioner does not contribute enough for the financial needs of the family, she never appreciates all his efforts at providing for the family and rather takes up entrenched provisions. That the actions of the petitioner made it difficult for him to continue to live with her and the dissolution of the marriage is necessary to help preserve the dignity and life in him.

A certified true copy of their marriage certificate was tendered through him as EXHIBIT A.

#### **CONSIDERATION BY COURT**

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

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, (8<sup>th</sup> 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 i.e. 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 that the respondent has deserted the marriage for four (4) years prior to the presentation of the petition and has also behaved unreasonably. As either of the grounds when proven, founds the basis for the conclusion that the marriage has broken down beyond reconciliation, I would first consider the claim of desertion.

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

(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

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition

Desertion in law as explained in *Rayden on Divorce (9th ed.)*, p. 165, para. 120, reads, "the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases. But in its essence desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party.

Desertion is not a withdrawal from a place, but from a state of consortium, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state." Djabanor J (as he then was) adopted this definition in the case of *Arku v. Arku and Abraham [1965] 2 GLR 265*.

Again, Sarkodee J (as he then was) in the case of *Hughes v. Hughes [1973] 2 GLR 342* stated that "for the conduct [of the wife] to amount to desertion, the court had to be satisfied that it was an unjustifiable withdrawal from cohabitation and that she had the intention of remaining separated permanently from him. But where a spouse had agreed to the other departing, he could not then complain that the other was guilty of desertion as separation was by consent."

The evidence of the petitioner is that the respondent moved out of the matrimonial bedroom when they were having issues concerning his infidelity and responsibility towards the family and finally moved out of the matrimonial home in October, 2018.

The respondent does not deny this. Under cross examination by learned counsel for the petitioner, he had answered;

Q: *Where do you currently stay?*

A: *West legon – Accra*

Q: *How long have you been living there?*

A: *For almost 5 years*

Q: *Where does the petitioner and the issues of the marriage stay?*

A: *I know they live at north Kaneshie.*

Q: *Why are you in west legon when your children and your wife are in Kaneshie?*

A: *For some time now, there have been disagreements between myself and my wife which has made it very uncomfortable for me to keep staying with her hence I thought it wise that for both of us to still keep to our sanity and be happy, it was best for me to move out hence my living at west legon.*

Q: *I put it to you that because of your selfish interest, you abandoned your wife and the children to go and stay at west legon.*

A: *That cannot be said to be true, because as I earlier stated, I believe it was in the interest of both of us to stay apart to stay apart from each other as the tension at*

*home was just not conducive for us. I cannot even remember having even a nap or good night sleep staying home especially with her.*

*Q: You say in paragraph 10 of your evidence in chief (paragraph read out in court), why do you say so?*

*A: I am the outgoing type and I like to go out, make friends and be around people but she is not the type. We just cannot go out together.*

*Q: I put it to you that, you are being unreasonable in the sense that you got married to the petitioner because she was sociable and out of those social activities you became intimate and had 3 children out of that and all of a sudden, you are saying that she is not sociable.*

*A: I would not call it unreasonable. I would rather say that there are some changes that I cannot adopt to and I just cannot live in such an environment where I cannot adopt. So when she changed from being sociable to keeping to herself, I just cannot adopt.*

*Q: I put it to you again that you abandoned your family because you could not adopt to childbirth and were expecting your wife to be the same even after giving birth to three (3) boys.*

*A: I do not know what to say to this because as I said earlier, I just cannot be in an environment where I feel caged.*

I have reproduced the cross examination of the respondent almost in it's entirety for one reason: his answers clearly evidence that he had deserted the petitioner for five (5) years and he has no intention of returning to or even resuming the state of their consortium as a married couple.



The act of respondent in leaving the matrimonial home and finding a place of his own for five (5) years shows a withdrawal from not only the matrimonial home but the marriage itself. From his own admissions under cross examination, he was clear that he cannot be in the marital environment again due to the social changes in the petitioner.

He had by his actions, evinced a clear intention not to return to the matrimonial state and to bring cohabitation permanently to an end without reasonable cause and without the consent of the petitioner. That the petitioner did not consent to this is evidenced by her testimony that the respondent has abandoned her and the children and exposed her to widespread public ridicule and mockery.

The law requires such desertion to be for a period of two (2) years prior to the presentation of the petition. The petitioner presented this petition on 21<sup>st</sup> December, 2022. From the evidence, the respondent deserted the matrimonial home in October 2018. A simple mathematical calculation means that the desertion had been for four (4) years prior to the presentation of the petition. It was a continuous desertion and at no point have they resumed cohabitation since the respondent abandoned the matrimonial home and the marriage.

After my enquiry, I hereby find that the marriage between the parties has broken down beyond reconciliation due to desertion by the respondent. I hereby issue a decree of dissolution to dissolve the said marriage. Their marriage certificate; RGM.1198/2003 is duly cancelled and the registrar of the court is to notify the principal registrar of marriages, Accra of the said dissolution to enable them amend their records accordingly.

Let the terms of settlement which was filed at the Registry of this Court on the 26<sup>th</sup> day of January, 2023 at 12:40pm and which is duly signed by the parties and counsel for the petitioner as well as a witness for the respondent be and same is hereby adopted as consent judgment. The usual default clause applies.

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

WILLIAM OKOE-OKUNOR FOR OSCAR ASANTE NNURO FOR THE PETITIONER