

IN THE DISTRICT COURT, LA, TRADE FAIR-ACCRA, HELD ON THE 15TH DAY
OF FEBRUARY, 2023, BEFORE HIS HONOUR JOJO AMOAH HAGAN SITTING
AS AN ADDITIONAL MAGISTRATE

SUIT NO. G/LA/A4/66/21

BETWEEN

MERCY KORKOR NAI.....PETITIONER
H/NO. G125/6 LA NATIVITY
PALM-WINE JUNCTION
LA-ACCRA

AND

JOSEPH TETTEH AYITEY.....RESPONDENT
LA WIRELESS ROAD
PALM-WINE JUNCTION
LA-ACCRA

JUDGMENT

Introduction

1. The parties herein have been married since 2 April 2011 and have two children aged nine (9) and seven (7). The Petitioner wants this marriage dissolved because she alleges the Respondent committed

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adultery with two different women and continues to have concubines. Apart from the Respondent's alleged adulterous behaviour, the Petitioner alleges further that she cannot reasonably be expected to live with him because he has behaved unreasonably. The bases of the alleged unreasonable behaviour are his failure to take care of the children of the marriage; his denial of paternity of the second child; and his tendency to disrespect her family and insult her and her family in public. Additionally, the Respondent is alleged to have told the Petitioner to stop work to avert the tendency of males making advances at her at her workplace. Finally, the Respondent is alleged to have deserted the Petitioner since 2017. Petitioner, therefore prayed to a dissolution of the marriage, financial provision, and an order to compel the Respondent to rent a room for her until she remarries or the last child is eighteen (18) years, and for cost.

2. In his answer, the Respondent averred that the Family Tribunal had previously resolved the issues of maintenance and custody. He denied that he had committed adultery. The Respondent further denied the allegation of unreasonable behaviour and asserted that the Petitioner caused him so much stress and emotional distress that he could not continue to live with her. Additionally, he denied that he was not taking care of the children. On the allegation that he had denied

paternity of the second child, the Respondent averred that the basis for that denial was that he saw the Petitioner coming out of the room of a male neighbour at an odd hour and therefore suspected that she was having an affair with the said neighbour. The Petitioner denied this allegation and the matter was resolved when he appeased the Petitioner. Since the appeasement, the Petitioner refused to have sex or any form of intimacy with him and even moved in to sleep in her mother's room. In his denial of the allegation that he disrespects the Petitioner's family and insults her and her family in public, the Respondent told the Court he did not remember conducting himself in that manner and questioned why he would tell the Petitioner to stop work when she was assisting him in taking care of the children at a time when his job was unstable.

3. The Respondent denied the allegation of desertion and explained that after the marriage they cohabited in La. A year later, his father-in-law advised them to move in with his mother-in-law. Despite agreeing with the suggestion he failed to act upon it. Subsequently, the Petitioner left the house to stay with her mother about eight months after her father had made the suggestion aforementioned. He eventually joined her wife and renovated but denied leaving of his volition. He was sacked from the Petitioner's mother's house, as he put

it. The Petitioner essentially joined issues with the Respondent on his answer.

Evaluation of the evidence

4. It is undeniable that the parties prior to this petition had, at the instigation of the Petitioner herein, appeared before the Family and Juvenile Court, Accra to settle the issues of custody and maintenance. The said Court did settle the said issues. I am therefore at a loss why the Petitioner would, notwithstanding include in her petition, a prayer for custody and maintenance. I, therefore, strike out the reliefs for maintenance and custody since there is no basis to review the same.

5. On the issue of whether the marriage between the parties ought to be dissolved, I have no doubt whatsoever that the marriage between the parties has broken down beyond reconciliation. Apart from the parties agreeing that the marriage ought to be dissolved, there is ample evidence on record and even looking at the demeanour of the parties herein that there is no way the said marriage can be salvaged. The parties have not lived together as husband and wife for more than four years and have accused each other of adultery proof of which left much

to be desired. The same goes for their claim of unreasonable behaviour. After careful consideration of the evidence adduced, I do not believe that any effort to reconcile the parties would succeed. Accordingly, I dissolve the marriage celebrated between the parties.

6. Two other issues are left to be resolved. Firstly, whether the Respondent should rent a room for the Petitioner until she remarries or until their last child becomes eighteen (18) years; and secondly, whether the Petitioner is entitled to financial provision.

7. Regarding the first issue, I find no legal justification for this Court to order the Respondent to provide accommodation for the Petitioner until she remarries. It would appear the Petitioner was inspired by subsection (1) of section 28 of the Matrimonial Causes Act, 1971 (Act 367) to make that prayer. The said provision is however restricted to financial provision under section 19 of Act 367. Subsection 1 of section 28 of Act 367 provides that

“[a] person to the marriage is not entitled to financial provision for that party in respect of any period after the remarriage of that party.”

8. The Petitioner's prayer is not related to financial provision but accommodation and cannot, therefore be justified under this provision or any other provision of the said Act. But the Petitioner prays for accommodation until the last child of the marriage becomes eighteen (18). Impliedly, she prays for accommodation for the sake also, of the children of the marriage.

9. In that regard, I have considered the fact that the Petitioner voluntarily moved in to live with her mother and has been living with her for not less than 4 years. The record shows that she admitted under cross-examination that she left her husband to live with her mother. She also admitted that her father advised the Respondent to move in to live with her mother. This is the very place the Respondent renovated by at least replacing wooden window blades with louvre blades and painting the whole house. In that house, the children of the marriage would find family support not only from the Petitioner but also from their grandmother. There is not enough evidence to show that the current lodgings of the Petitioner are unsuitable for the children of the marriage. Therefore, I shall allow the status quo to appertain and shall not grant the Petitioner's prayer for the Respondent to rent a room for her.

10. The final issue is whether the Petitioner is entitled to financial provision. Section 19 of Act 367 provides that

“[t]he Court may, whenever it thinks just and equitable, award ...financial provision to either party to the marriage, but an order for ... financial provision shall not be made until the Court has considered the standard of living of the parties and their circumstances.”

11. Under section 20 of Act 367, the Court may order a party to pay a sum of money to the other party as part of financial provision and any such sum may be ordered to be made in gross or by instalments. But financial provision from the above has never been automatic. The Court is mandated to assess the standard of living of the parties and their circumstances. In *Aikins v Aikins* [1979] GLR 223 the Court awarded a lump sum payment to the wife of the marriage on the bases that she had no capital assets, had not worked for years prior to the petition for divorce and needed money to rent premises for herself and her children and venture into some business. In *Quartson v Quartson* [2012] 2 SCGLR 1077 the Supreme Court awarded a lump sum financial provision to the Petitioner to sustain her whilst she re-organised her life.

12. In the instant case, the evidence shows that the Petitioner earns GHC2,200.00 and does some trading on the side. She could not provide any figures as to how much she earned from her trading activities. The evidence further shows that the Respondent earns about GHC2,700.00. These figures from both parties were the amount they declared to earn monthly and no amount of cross-examination could assail their respective claims. Additionally, the evidence shows that the Respondent has an older child with another woman which he had prior to his marriage with the Petitioner herein. According to the Respondent, she stays with him and is an apprentice. These are the living standards and circumstances of the parties which I am bound to consider to determine whether the Petitioner is entitled to financial provision. Being guided firstly by the fact that by the judgment of the Family and Juvenile Court, the Respondent is mandated to maintain the children of the marriage, be responsible for their education [except feeding and school uniforms which is to be the Petitioner's responsibility] and all medical expenses of the children of the marriage, and secondly by the respective salaries of the parties and the Respondent's additional responsibility for his first child, I believe the Petitioner is entitled to a lump sum financial provision of GHC10,000.00.

Conclusion

13. After careful consideration of the respective cases of the parties herein, I find that the marriage between the parties celebrated on 2 April 2011 has broken down beyond reconciliation. It is accordingly dissolved. Since the Family and Juvenile Court has already pronounced

on the issues of custody, access and maintenance, the Petitioner's prayer for custody and maintenance is dismissed considering that there is no basis to vary the orders of the said Court. The Petitioner shall continue to reside in her mother's premises, a place which has been renovated by the Respondent and which she has lived in for more than 4 years. More importantly, it would prove to be a better place for the upbringing of the children considering the likely family support they would get. Finally, after considering the living standards and circumstances of the parties, I hereby award a lump-sum financial provision of GHC10,000.00 to the Petitioner. I do not believe costs against either side are warranted. No order as to costs.

**JOJO AMOAH HAGAN
CIRCUIT COURT JUDGE**