

IN THE CIRCUIT COURT HELD AT BEREKUM ON MONDAY, THE
22ND DAY OF APRIL, 2024 BEFORE HIS HONOUR OSEI KOFI
AMOAKO ESQ. CIRCUIT COURT JUDGE

Suit No. C5/23/2022

DANSO MACLEOD SOLOMON - PETITIONER

VRS

JULIANA DANSO - RESPONDENT

JUDGMENT

On 30th June, 2022, the petitioner filed a Petition praying the Honourable Court for an order to dissolve his marriage with the respondent and to grant the petitioner custody of the three (3) children in the marriage to him.

In response, the respondent filed her answer to the petition on the 20th September, 2022 and cross-petitioned as follows:

- (a) That the ordinance marriage entered into by the parties at Berekum on the 30th day of August 2007 be dissolved if all efforts made by the Court to have the matter amicably settled is opposed to by the petitioner.
- (b) An order for a half share of two houses, one at Atebubu and the other one in Kumasi, which properties were acquired during the subsistence of the marriage.

- (c) An order for a lump sum (alimony) of fifty thousand Ghana Cedis (GH¢50,000.00) as financial provision or compensation from the petitioner to be paid to the respondent.
- (d) An order of the custody of the three (3) issues namely, Geraldine Oforiwaa Danso, aged 14 years; Odeafour Abiam Danso, 12 years and Obrempong Donyina Danso, 7 years to the Respondent with reasonable access to the Petitioner and the payment of GH¢1,500.00 as their feeding per every month and the payment of their school fees and other related expenses.
- (e) Maintenance pending suit and such periodic payments as may be just pending the final determination of the petition.
- (f) Any further order or orders as the Honorable Court deem fit to make.

The petitioner averred that he married the respondent under the ordinance in Berekum on 30th August 2007 after the performance of customary rites to the respondent's parents and they are blessed with three children namely, Geraldine Oforiwaa Danso, aged 14 years, Odaefour Abiam Danso, who is 12 years and Obrempong Donyina Danso aged 7 years.

According to the petitioner, there was absolute peace and tranquility at home until recently that the unreasonable behaviour of the respondent distorted the cordial relationship between them. He explained that the respondent suddenly became insolent and disrespectful to him, his friends, his parents and family members to the extent that she insulted all of them at the least provocation. The petitioner stated that he was so surprised when the respondent during some of her insults described him as 'a criminal from the village' and also threatened to poison him to death.

The petitioner further stated that when he reported the unreasonable conduct of the respondent to her parents, he was rather asked by her parents to bring back their daughter to them amidst insult. So he informed his father about the situation. Again, to his utter dismay, the petitioner said that the parents of the respondent refused all invitations extended them by his father to resolve the matter on three (3) occasions with an insistence that the respondent be sent to them.

It is also the case of the petitioner that the respondent informed him that so many men were prepared to marry her and that her former boy friend had even been remitting their children in the marriage and as a result called for the dissolution of their marriage. He denied the assertion of the respondent that she jointly built a house at Atebubu with him. According to the petitioner, the house in question is the bonafide property of his father, PW1. It is rather his case that he has assisted the respondent to build a house at her hometown, Nkoranza and to own a private car.

Petitioner therefore prayed for the dissolution of the marriage and custody of the children and tendered their marriage certificate which is marked as Exhibit A. Petitioner called his father and mother as his witnesses and both testified in support of his case. In their testimonies, both witness (PW1 and PW2) explained how they frantically tried to settle the differences between the couples but all to no avail.

The answer and cross-petition filed by the respondent filed on 20/09/2022 in respect of the petitioner's petition was a complete denial of the petitioner's case. She opined that she got married to the petitioner under the Ordinance in 2007 and after the marriage, they cohabited at the Sunyani Liberation

Barracks and both were subsequently transferred to Kumasi two Brigade and Ejisu Fire Station respectively.

The respondent stated that she was not initially living together with the petitioner and anytime she decided to join her husband at the Barracks, the petitioner would threaten to resign from the military if she dared do that, without any reasonable explanation. To satisfy her curiosity, the respondent visited the barracks one day without the petitioner's knowledge and met a lady who informed her that she was the girl friend of the petitioner for the past four years after his divorce with his wife.

Respondent further stated that she confronted the petitioner about his infidelity and he pleaded with her to forgive him. So she quickly joined the petitioner at the Barracks and the problems started. According to the respondent, the petitioner completely neglected her at the barracks. He refused to eat her food and will not have sexual intercourse with her unless she begged for it. There was no form of communication between them and she respondent could no longer bear the situation so she reported the case to her parents who asked that the matter be settled. With an expectation that the petitioner would travel to Nkoranza to meet her parents, the petitioner rather requested that the parents of the respondent should travel to Atebubu to meet his parents and the respondent's parents kicked against the arrangement. She continued that every effort she made to settle the matter did not work. The respondent further stated that she pleaded the former Methodist Bishop, Bishop Kantanka and Elder Obeng, but the petitioner would not listen to them, hence her cross-petition as follows:

- (a) That the ordinance marriage entered into by the parties at Berekum on the 30th day of August 2007 be dissolved if all efforts made by

the Court to have the matter amicably settled is opposed to by the petitioner.

- (b) An order for a half share of two houses, one at Atebubu and the other one in Kumasi, which properties were acquired during the subsistence of the marriage.
- (c) An order for a lump sum (alimony) of fifty thousand Ghana Cedis (GH¢50,000.00) as financial provision or compensation from the petitioner to be paid to the respondent.
- (d) An order of the custody of the three (3) issues namely, Geraldine Oforiwaa Danso, aged 14 years; Odeafour Abiam Danso, 12 years and Obrempong Donyina Danso, 7 years to the Respondent with reasonable access to the Petitioner and the payment of GH¢1,500.00 as their feeding per every month and the payment of their school fees and other related expenses.
- (e) Maintenance pending suit and such periodic payments as may be just pending the final determination of the petition.
- (f) Any further order or orders as the Honorable Court deem fit to make.

Quite surprisingly, the respondent suddenly stopped attending Court with counsel after parties were order to file their witness statements for proceedings to continue in earnest but the respondent refused to do so and disregarded all notices served on her to appear in Court. However, proceedings continued in her absence as the law required and the petitioner and his two witnesses testified.

This suit being a civil one, Section 11(4) of the Evidence Act, 1975 NRCD 323 requires the petitioner as well as the respondent who cross-petitioned the action to lead sufficient evidence which on the totality of the evidence leads a

reasonable mind to conclude that the existence of the fact was more probable than its non-existence.

Also Section 12(2) of the Evidence Act defines “preponderance of the probabilities” as follows: “*preponderance of probabilities means that degree of certainty of belief in the mind of the Tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence*”.

From the evidence on record, the respondent is seen to have failed to discharge the burden of producing sufficient evidence to avail a ruling against her. As earlier indicated, the respondent woefully failed to file her witness statement which would invite the Honourable Court in making an effective determination of the issues regarding issues (b) and (c), that is an order of a fair share of two buildings at Atebubu and Kumasi respectively jointly acquired during the marriage and an order for a lump sum as compensation.

In AGBOSU V KOTEY [2006] 2 MLRG 138 & 139, it was held that:

“A litigant who is a defendant in a civil case does not need to prove anything; the plaintiff who took the defendant to Court has to prove what he claims he is entitled to from the defendant. At the same time, if the Court has to make a determination of a fact or of an issue, and that determination depends on evaluation of facts and evidence, the defendant must realize that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the Court such facts or evidence that will induce the determination to be made in his favour...”

Whatever the case, since this is a matrimonial matter with children who need to be maintained, the Court cannot completely ignore the case of the respondent who bears the same responsibility as the petitioner in proving her case. The respondent in her cross-petition requested for a fair share of the two houses acquired by the parties during the subsistence of their marriage, but the petitioner explains that the house at Atebubu is the property of his father (PW1).

It is also the case of the petitioner that he has assisted the respondent to build a house at Nkoranza, the hometown of the respondent and has also assisted her to own a private vehicle so the respondent should not be entitled to any house.

It ought to be noted that there is no evidence on the record as to why the respondent should be compensated by the petitioner. What the evidence shows is that the parties married and they are blessed with three (3) issues. Both parties are employed. The petitioner is a military man and the respondent works with the Fire Service. The parties have decided to dissolve their marriage and all efforts made to reconcile them proved futile and not even the intervention of the Court through the Court-Connected ADR could resolve the matter.

From the findings of the Honourable Court the marriage has completely broken down beyond reconciliation and the Honourable Court will no longer stand in the way of the parties in this regard.

In consequence of the above, the Honourable Court will order as follows:

- A. The ordinance marriage between the parties is hereby dissolved.

- B. An order that the petitioner be given custody of all the three children with an unlimited access to the children by the respondent.
- C. No order as to cost

(SGD)
H/H OSEI KOFI AMOAKO
22 – 04 – 2024