

**IN THE DISTRICT COURT KIBI, EASTERN REGION, HELD ON MONDAY 3RD
OCTOBER, 2022 BEFORE HER WORSHIP MRS. JULIET OSEI – DUEDU SITTING
AS A MAGISTRATE**

SUIT NUMBER: A4/01/22

BELINDA SERWAA BONSU BOATENG
PLAINTIFF

KWAME SARFO

DEFENDANT

JUDGMENT

Petitioner herein, initiated this divorce proceeding against the respondent in this case on the 24th March, 2022. With leave of the court, Petitioner filed an amended petition on the 26th May, 2022. After three failed attempts at personal service on the respondent, the court granted petitioner leave to serve defendant via substituted service, with which petitioner duly complied. Petitioner who alleges that the ordinance marriage contracted by the parties on the 18th May, 2019 has broken down beyond reconciliation on the ground of unreasonable behavior on the part of the respondent prays the court as follows;

- “i. That the ordinance marriage celebrated between the parties under the ordinance be dissolved or alternatively annulled.
- ii. An order cancelling the marriage certificate issued to the parties evidencing the celebration of the marriage.
- iii. Any other order(s) as the court may deem fit or proper.”

Respondent though duly served with the petition filed no answer to same neither did he attend the trial of the case. This court thus, has only the evidence of the petitioner to consider in this judgment.

The unchallenged evidence of petitioner is that, the parties married customarily on 18th May, 2019, and converted the marriage into an ordinance one that very day at the Glory Gate Chapel Accra. The certificate issued to evidence the said marriage was tendered in evidence as exhibit A. The parties thereafter relocated to Asiakwa. Respondent however refused to stay at home and support the petitioner in maintaining the matrimonial home. There is no issue to the marriage as respondent never had any sexual relationship with petitioner for the entire period of the marriage. To use the exact words of the petitioner; ‘the marriage has not been consummated.’ Respondent has even moved out of the matrimonial home since 2nd May, 2020. All attempts by family, church elders, friends and even the Assembly member of the area to reconcile the parties have proven futile.

It is the above conduct of respondent that petitioner has described as unreasonable behavior. The superior courts have held that, the conduct of the spouse that is considered as unreasonable behaviour must be serious and higher than the normal wear and tear of married life. This conduct the courts have explained, must be grave and weighty and must make living together impossible. Hence, in the case of **Happee V Happee and Another [1974] 2 GLR 186**, where the petitioner complained that respondent frequently heaped insults on him in public and on one occasion created a scene and demanded her marriage certificate from him while he was in a meeting with his lawyer, smashed the windscreen of his car and wrote to his employers falsely accusing him of stealing the company's property, the court held that respondent's conduct was unreasonable and ordered the dissolution of the marriage.

In the instant case also, respondent's conduct recounted above clearly amounts to unreasonable behavior. This is the case in spite of the fact the marriage has not been consummated. This is because petitioner's evidence on the issue does not establish a willful refusal of respondent to consummate the marriage. An annulment of a marriage for want of consummation is permissible under the law only when respondent's refusal is willful. In the circumstances, the refusal of respondent to have sex with petitioner can only amount to an unreasonable behavior on his part. And on the basis of this fact, this court is satisfied that the marriage concerned has irretrievably broken down.

Since credible evidence has been led with none on record to contradict same, this court is inclined to enter judgment in this case in favour of the petitioner and against the respondent, and same is hereby entered. Consequently, the ordinance marriage celebrated by the parties on 18th May 2019, in Accra is hereby dissolved. The marriage certificate evidencing the said marriage is accordingly cancelled. Registrar should draw up the divorce order. There will be no order as to costs since petitioner waives same.

SGD
H/W MRS JULIET OSEI – DUE DU ESQ
DISTRICT MAGISTRATE
3/10/2022