

**IN THE DISTRICT MAGISTRATE'S COURT HELD AT NSAWAM N.A.M.A. ON  
TUESDAY, 18<sup>TH</sup> OCTOBER, 2022 BEFORE HER WORSHIP SARAH NYARKOA  
NKANSAH MAGISTRATE**

**SUIT NO. A4/23/21**

**DAVID MENSAH  
OF POKUASE-MAYERAH  
ACCRA**

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**PETITIONER**

**VRS**

**GIFTY MANU SENYA  
OF NSAWAM  
EASTERN REGION**

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**RESPONDENT**

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PARTIES: PRESENT.

NO LEGAL REPRESENTATION

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**JUDGMENT**

The Petitioner commenced this instant divorce petition praying the Court for the following reliefs:

- a. An order by the Honourable Court praying it to dissolve the marriage contracted and celebrated on the 5<sup>th</sup> October, 2013 as it has broken down beyond reconciliation.
- b. An order for custody of the child in issue to be granted to the Respondent, with reasonable vacation access to the Petitioner.
- c. An order for the adoption of the GH¢100.00 a week maintenance to the child/Respondent together with the logistics and other necessities of life.
- d. An order to rent a single room self-contained accommodation for the Respondent and the child.

- e. An order to occupy and or rent out the chamber and hall erected on a leasehold land at Mamprobi, to exhaust the remaining eight (8) unexpired lease.
- f. Any other orders deemed fit by the Honourable Court.

### **PETITIONER'S CASE**

The Petitioner told the Court that, the parties have been married under the ordinance since 5<sup>th</sup> September, 2013 and that the marriage has been blessed with one child. The Petitioner maintained that, for the past three (3) to four (4) years, the Respondent's attitude has changed towards Petitioner and that Respondent has packed out of the matrimonial home and deserted Petitioner. According to Petitioner, he gives Respondent GH¢100.00 weekly for her upkeep. The Petitioner concluded that, all efforts to get the Respondent to come back have proved futile and that both families have agreed to dissolve the marriage since the Respondent is no longer interested in the marriage.

The Petitioner closed his case without calling any witness.

### **RESPONDENT'S CASE**

The Respondent also told the Court that, she got married to the Petitioner under the ordinance on the 5<sup>th</sup> of October 2013 and the marriage has produced one issue. The Respondent continued that, after a while, things got worse and the Petitioner went out of business so Respondent, with the permission of the Petitioner, moved to stay with her sister at Nsawam to work. The Respondent added that, she went home every weekend. The Respondent maintained that, she never deserted her matrimonial home and that it was the parties mutually agreed before she moved to Nsawam. According to the Respondent, the Petitioner has informed her that, he no longer loves her and also that he needs to divorce Respondent to enable him marry another woman. It is the Respondent's case that, she has made every effort to reconcile with the Petitioner and to make him rescind his decision but it has been to no avail. The Respondent concluded that, since the Petitioner has no love or interest in her, the Court should grant the reliefs of the Petitioner and also order the Petitioner to compensate the Respondent with a reasonable sum.

The Respondent closed her case without calling any witness.

In the circumstance the issues that falls for determination are;

- a. Whether or not Respondent deserted the matrimonial home
- b. Whether or not the marriage has broken down beyond reconciliation

The law on dissolution of marriages is laid out in the ***Matrimonial Causes Act, 1971 (Act 367). Sections 1(2), 2(1)(b) and (3) of Act 367*** provides as follows:

- a. *"1(2) the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.*
- b. *2(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. *(b) that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;*
- d. *(3) notwithstanding that the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation."*

The main grounds upon which the Petitioner seeks this divorce is that, the Respondent deserted the matrimonial home two (2) years prior to the commencement of this action. The Respondent on her part has denied this assertion and has maintained that, although she moved to Nsawam to work, it was by mutual agreement. Respondent added that, she always returned to the matrimonial home on weekends. The following ensued when the Petitioner was under cross-examination:

*Q. In your witness statement you have stated that I deserted my matrimonial home but this is not true. Did I desert my matrimonial home or it was an agreement between the two of us.*

*A. Yes you deserted. You said you were leaving yourself.*

*Q. Why did I say I want to leave? Didn't I give you my reason?*

*A. You said you were going to sell food and I said don't go.*

*Q. Later didn't you agree and even gave me capital to come and work with?*

*A. I did not give you capital. It was my sister who gave me the money to give to you because at that time I didn't have money but my sister gave me the money to give to you because of the pressure you mounted on me.*

*Q. When I was working was I coming home on weekends or I wasn't coming home?*

The answers given as reproduced supra corroborates that, the Respondent was returning to the matrimonial home on weekends. The Respondent also answered that, he asked Respondent not to move to the uncompleted house with him and that he would rather pick Respondent when he completes all the rooms. It is clear on the face of the record that, the Respondent did not desert the Petitioner as he alleges. The Court finds Petitioners assertion of desertion by Respondent to be without merit. Respondent did not desert the matrimonial home.

Respondent has told the Court that, efforts to reconcile with the Petitioner have proved futile. The Respondent states at paragraph 15 of her Witness Statement as follows:

*"15. I have since made every effort to reconcile with the Petitioner and made him rescind his decision but to no avail."*

The parties were also referred to Court connected ADR by the Court before the commencement of hearing. This effort could not also yield reconciliation. It is altogether indicative of the fact that, the marriage has broken down beyond reconciliation. I accordingly find that; the marriage of the parties has broken down beyond reconciliation. Although the Respondent did not cross-petition, she per both her answer and witness statement prayed the Court to grant her reasonable compensation commensurate to her

toil with the Petitioner for the eight (8) years of their marriage. The Court takes notice of the fact that, the Respondent was unrepresented and thus considers this prayer by the Respondent her prayer for financial settlement.

**Section 20 (1) of Act 367** provides that:

*“The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable.”*

It is the opinion of the Court that, it may order payment of financial settlement to the Respondent by the Petitioner.

In **Mensah v. Mensah [1972] 2 GLR 198, Hayfron-Benjamin J.** (as he then was) held that:

*“... it is therefore incumbent upon a Court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough...”*

On the totality of the evidence adduced at the trial, I find on a preponderance of probabilities that, the marriage between the parties has broken down beyond reconciliation.

I accordingly enter judgement as follows:

- i. The marriage celebrated between the parties on the 5<sup>th</sup> October, 2013 is hereby dissolved.
- ii. Petitioner to pay the sum of GH¢10,000.00 as financial settlement to the Respondent.
- iii. No order as to cost.

(SGD)

**MAGISTRATE**

**H/W SARAH NYARKOA NKANSAH**

**18/10/2022**