

**IN THE DISTRICT MAGISTRATE COURT HELD AT NEW TAFO-AKIM ON
MONDAY 18-11-2022 BEFORE HER WORSHIP JOSEPHINE SARFO (MRS.)**

SUIT NO: A4/14/22

**JUDITH AWO KORANKYEWAA BRAKO
JUMAPO**

PETITIONER

VRS

**FREDERICK OSEI GYAMERAH
POKUASE**

RESPONDENT

PARTIES - PRESENT

**ALFRED A. BOTA, ESQ. HOLDING BRIEF FOR SULEMAN MUSAH, ESQ. FOR
RESPONDENT-PRESENT**

JUDGMENT

INTRODUCTION

The Petitioner issued this Petition out of the registry of this Honourable Court claiming against the Respondent the following reliefs:

- a. Dissolution of the marriage celebrated on 2nd September, 2017 at the Presbyterian Church of Ghana, Bethel Congregation, New Tafo-Akim.
- b. A compensatory package in alimony of Ten Thousand Ghana Cedis (GHC 10,000) to be paid to Petitioner for her financial support, anxiety, distress and embarrassment Respondent had caused Petitioner.

PETITIONER'S CASE

It is the case of the Petitioner that the customary marriage had been dissolved by the families and parties were living their separate lives and upon advice she took the

initiative to have the ordinance marriage between the parties dissolved. Petitioner therefore prayed for the reliefs as endorsed on the Petition.

THE RESPONDENT'S CASE

The Respondent in his Answer to the Petition denied that the customary marriage had been dissolved and stated that he had not set eyes on Petitioner since October 2021 until May 2022, when the Petitioner came to his house without notice in the company of her brother, mother and uncle to return her bible, ring and schnapps. According to the Respondent, he was the only person at home and when he requested for a formal meeting between the families, they dumped the Bible, ring and schnapps on him and conveyed Petitioner's belongings away. The Respondent further averred that the marriage could be salvaged if the Petitioner was willing to do so and thus in his view the marriage had not broken down beyond reconciliation. The Respondent averred that when the Petitioner began her midwifery course in 2019, for two years he assisted the Petitioner to pay her school fees and also purchased a laptop, mobile phone, clothing and provided other personal needs of the Petitioner. The Respondent stated that for most part of the marriage he lived at Pokuase while the Petitioner lived at Asante Mampong and has, at all material times during the subsistence of the marriage, not benefitted from the service of the Petitioner as she has lived apart from him and rebuffed all attempts to obtain transfer to Accra. Respondent avers that he discovered that the Petitioner had committed adultery in October 2021, she left the Respondent's residence and was not seen or heard of until May 2022. Respondent stated that the Petitioner does not deserve any alimony from him as he had not caused her any anxiety, distress or embarrassment. Respondent further averred that the marriage had not broken down beyond reconciliation however if the court was minded to dissolve the marriage, the Petitioner should be ordered to pay GHC 30,000.00 as compensation for all the investments, the pain, suffering and embarrassment he had endured at the hands of the Petitioner.

PETITIONER'S REPLY TO THE ANSWER OF RESPONDENT

In her Reply to the Answer of Respondent, Petitioner joined issues with the Respondent and averred that Respondent was aware that she was returning the Bible, ring and schnapps and that the items were presented in the presence of one sister Ama. According to the Petitioner, she fully funded both her internal and external midwifery course until she completed same in March 2022. That the Respondent was remitting her money for her maintenance until she asked him to stop in December 2021. Petitioner averred that Respondent had also benefitted from her service in that she cooked and washed for him and also contributed financially during the subsistence of the marriage. That she had not committed any adultery with Appiah Ankomah, a facebook friend who lives in Spain and whom she had never set eyes on. Petitioner averred that she was no more interested in receiving any compensation from Respondent and Respondent was also not entitled to any compensation as she had not caused him pain, suffering and embarrassment.

ISSUE

The issue to be determined in this trial is whether or not the marriage between the parties has broken down beyond reconciliation?

BURDEN OF PROOF

Section 11(1) of the Evidence Act, 1975 (NRCD 323) provides that, “for the purpose of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue”.

In Re AshalleyBotwe Lands; Adjetey Agbosu and others vrs Kotey and Others [2003-2004] SC GLR 420. It was held inter alia at page 425 that;

“(5) the burden of producing evidence in any given case was not fixed, but shifted from party to party at various stages of the trial, depending on the issue(s) asserted and/or denied”.

It was further stated as per **Brobbery JSC** at page 425 that;

“.... 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 realise that the determination cannot be made on nothing.... The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court.....”

Section 12 of NRCDD 323 further provides that proof must be by a preponderance of probability. “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.”

This position was affirmed by the Supreme Court in the case of **Adwubeng v Domfeh [1997-98]1 GLR 282** where it was stated that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities.

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. **Under Section 2(1) of the Matrimonial Causes Act, 1971, (hereinafter called Act 367)** the Petitioner would have to satisfy the Court that the marriage has broken down beyond reconciliation.

Section 2 of Act 367 provides that, “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:

- a) That the respondent has committed adultery and that by reason of the adultery the Petitioner finds it intolerable to live with the Respondent;
- b) That the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent;
- c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition;
- d) That the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the grant of a decree of divorce provided that such consent shall not be unreasonably withheld and where the court is satisfied that it has been so withheld, the court may grant a petition for divorce under this paragraph notwithstanding the refusal;
- e) That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f) That the parties to the marriage have after diligent effort, been unable to reconcile their differences”.

The Petitioner in this case would have to prove that the Respondent’s behavior is such that a reasonable person in the circumstances and environment of the parties could not be expected to continue to endure. She would also have to convince the Court that she and the respondent have, after diligent effort, been unable to reconcile their differences.

The evidence of the Petitioner is that after their marriage she moved to Mampong because of work while Respondent stayed at Pokuase. That Respondent had prior knowledge of her returning the Bible, Ring and schnapps used in contracting the customary marriage

and the said items were returned in the presence of a witness by name, Ama. Petitioner admitted that Respondent supported her financially to pursue her internal midwifery course however she solely financed the pursuit of her external midwifery course which she completed in March 2022. That she was physically assaulted by Respondent on several occasions and tendered into evidence Exhibit A and B, photographs of a bandaged neck and bruises as evidence of the assault. Petitioner further stated that Respondent had also benefited from her services as a wife in that she contributed financially during the subsistence of the marriage and also bought clothes for him. She denied committing adultery with Appiah Ankomah and maintained that he was just a facebook friend who lived in Spain.

Respondent also testified that at all material times during the marriage the parties have lived separately and only visited each other occasionally. That he performed his duties as a husband by supporting the Petitioner in her education, feeding and general welfare until December 2021, when Petitioner asked him to put a stop to it. He, on the other hand, has not benefited from the services of the Petitioner as at all material times the parties have each lived separately and the Petitioner rebuffed all attempts to obtain a transfer to Accra. Respondent stated that he has been verbally abused severally by the Petitioner in public who referred to him as “an unadvanced husband”, “koraseni”, among others. Respondent maintained that Petitioner had committed adultery with one Appiah Ankomah and when he made a complaint of it to Petitioner’s mother and uncle and showed them messages between them, the mother of Petitioner pleaded with him to forgive the Petitioner. That upon the discovery of Petitioner’s infidelity in October 2021, Petitioner left his residence and he never set eyes on her until May 2022 when Petitioner returned the Bible, Ring and schnapps.

The evidence before this Court has established that the harmonious relationship desired of husband and wife is totally missing in the case of the Petitioner and Respondent. Each

of them accused the other of harassment. The Petitioner averred that the Respondent has been assaulting her anytime he gets angry. The Respondent also contends that without provocation, the Petitioner insults him even in public. The Respondent averred that the Petitioner has on several occasions threatened to leave the marriage to be with someone abroad. Even though the Respondent has not consented to the grant of a decree of divorce expressly, this Court finds as a fact that the parties cannot live in harmony; in fact, the parties before the commencement of the suit have been living separately with no hopes of cohabitation in sight and thus a refusal to grant a decree of divorce will not augur well for the parties. More so, the evidence before this Court establishes that all efforts to reconcile the parties have proved futile. The Petitioner had before the institution of this Divorce Petition returned the customary drinks(schnapps), ring and Bible to end the customary marriage between the parties. The Respondent has accused the Petitioner of adultery with one Appiah Ankomah, however beyond the bare assertion that the Petitioner had communicated with the said Appiah Ankomah, in a way which seems to suggest that the two were involved in an illicit relationship, the Respondent failed to prove that the Petitioner and Appiah Ankomah had had penetrative sexual intercourse. That notwithstanding for the reasons earlier alluded to in this judgment, I declare the marriage as having broken down beyond reconciliation. I accordingly decree the dissolution of the ordinance marriage contracted between the parties on 2nd September, 2017.

Having come to the conclusion that the marriage between the parties has broken down beyond reconciliation, the Court will now consider the issue of compensation.

PAYMENT OF COMPENSATION

The Respondent has cross-petitioned for a compensation of GHC 30,000.00 in the event the court dissolves the marriage. The Petitioner on the other hand, abandoned her claim for GHC 10,000.00 compensation.

Section 19 of Act 367 states that, *“the Court may, whenever it thinks just and equitable award maintenance pending suit or financial provision to either party to the marriage, but no order pending suit or financial provision shall be made until the court has considered the standard of living of the parties and their circumstances”*.

Section 20 of Act 367 further provides as follows:

- 1) *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 a part of financial provision that the court thinks just and equitable.*
- 2) *Payments and conveyances under this section may be ordered to be made in gross or by instalments.*

Factors to be considered in awarding financial provision include the following: the income earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future; the financial needs, obligations, and responsibilities each of the parties has or is likely to have in the foreseeable future; and the standard of living enjoyed by the family before the breakdown of the marriage. The Court must also take into consideration the ability of the spouse who will be required to make the payment.

The Petitioner admitted that the Respondent supported her financially through her internal midwifery course and bought a phone and also supported her to purchase a laptop. Although the evidence at hand reveals that the parties were not cohabiting during the subsistence of the marriage, each party nevertheless performed the duties as required of a husband and wife. In fact, the Petitioner admitted that Respondent was remitting her money until she asked him to stop. The Respondent also did not deny the fact that Petitioner contributed financially during the marriage, washed, cooked food and bought

clothes for him. I find that there was a mutually beneficial relationship between the parties despite the short duration of the marriage. It is also undeniable that both parties are gainfully employed. Each party has prospects to increase the earnings or standard of living in the foreseeable future. For the above stated reasons and in the interest of justice and equity, I will exercise my discretion and not award either party compensation.

DECISION

I find from the evidence led before this Court that the marriage between the parties has broken down beyond reconciliation. I therefore decree that the marriage be dissolved. The marriage between the parties is hereby dissolved. In the interest of justice and equity, I will make no order as to compensation for either of the parties.

SGD

H/W JOSEPHINE SARFO (MRS.)

18th NOVEMBER, 2022