

IN THE DISTRICT MAGISTRATE COURT HELD AT NEW TAFO-AKIM ON
MONDAY 22-08-2022 BEFORE HER WORSHIP JOSEPHINE SARFO (MRS.)

SUIT NO: A4/13/22

DONKOR STANLEY
OSIEM

PETITIONER

VRS

LOVE GYAPONG
OSIEM

RESPONDENT

PARTIES PRESENT

JUDGMENT

The Petitioner issued out this Petition claiming against the Respondent the following relief:

A dissolution of the Marriage celebrated on 24th March, 2007 at Pentecost Church, Akyem Hermang.

To the Petitioner's Petition, the Respondent filed an Answer and Cross-Petitioned as follows:

- a. Dissolution of the marriage celebrated on 24th March 2007 at Pentecost Church, Akyem Hemang.
- b. Alimony of GHC 20,000 for the 15 years they have been married.
- c. GHC 900 as monthly maintenance for their three issues.

The case of the Petitioner is that the parties got married under the ordinance on 24th March 2007 at Pentecost Church, Akyem-Hermang. The parties have three children namely, Rachel Esaamah Donkor, 15 years, Marcia Amala Donkor, 12 years and Iris Debrah Donkor, 9 years. According to the Petitioner the customary marriage had been dissolved

by their families and parties are living their separate lives for the past five years however he has been taking care of the children.

The Respondent per her Answer to the Petition, among other things averred that the Petitioner behaved in a way which made it reasonably unbearable for her to continue with the marriage. Respondent claimed that Petitioner was promiscuous and engaged in extra-marital affairs and on one occasion brought a lady to their matrimonial home and had sexual intercourse with her on the parties' matrimonial bed. That upon confrontation for his amorous act, she was severely beaten up by the Petitioner. Respondent claimed also that Petitioner was a habitual drunkard, had no respect for her and abused her before their children and in public. That Petitioner also accused Respondent of adultery publicly. The Respondent further claimed that the Petitioner maintained the three children at GHC 400.00 but failed to pay their tuition fees, clothing or health insurance. According to Respondent Petitioner has caused her hardship and emotional torture and thus if Petitioner wishes to divorce she accepts same.

Emanating from the pleadings and facts of this case the following issues were set down for trial:

1. Whether or not the marriage between the parties had broken down beyond reconciliation?
2. Whether or not the Respondent is entitled to alimony of GHC20,000?
3. Whether or not the issues of the marriage should be maintained at GHC 900 per month?

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. **Section 2 of the Matrimonial Causes Act,1971 (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”.

It is not in doubt per the evidence on record that each of the parties have accused the other of serious harassment. The Petitioner averred that Respondent threw tantrums and displayed violent behavior in each of the houses they lived in upon their marriage causing them to move from one house to the other. Petitioner further accused Respondent of fighting with both co-tenants and landlords in each of the houses they lived in. Petitioner also contends that Respondent was not sleeping in their matrimonial bedroom even before she left the matrimonial house in September 2017 despite persistent plea from him for her to return to the bedroom. Thus for the past five years he has being living alone.

Respondent also contends that Petitioner abused her physically anytime he drunk to stupor and even though she reported Petitioner's persistent assault and drunkenness to the parties' parents, Petitioner never put a stop to the behavior causing her to flee from the matrimonial home for her dear life. Respondent averred that Petitioner had committed adultery with several women and once brought one of such women to have sexual intercourse with her on their matrimonial bed. The Respondent confirmed Petitioner's assertion that both parties have not lived together since September 2017 and that all efforts to reconcile the parties have also failed.

From the foregoing it clearly evident that the Parties have not lived as husband and wife for a period of five years and that all attempts at reconciling the parties have proved futile. The parties have both consented to the dissolution of the marriage and have taken steps to dissolve the customary marriage five years ago although that fact is not essential to the dissolution of the ordinance marriage the parties contracted. I conclude that the marriage between the parties has broken down beyond reconciliation. I accordingly decree the dissolution of the ordinance marriage contracted between the parties.

I now move on to consider the issue of alimony. I refer to **Section 19 of Act 367** which 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"*. 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 filed his affidavit of means and attached his payslip in which he averred he earned a net salary of GHC2,352.64 monthly. The Respondent also filed her affidavit of means and attached her payslip in which she averred that she earns a net salary of GHC 1,344.89. It can be deduced from the affidavit of means of the parties that the Petitioner is in a better financial position than Respondent since he earns more than the Respondent. It is evident on record that Respondent has been shouldering part of the responsibilities of the Petitioner in terms of the maintenance of the children. The Petitioner conceded during cross-examination that he has been remitting GHC 400.00 instead of GHC 500 to Respondent for the upkeep of the three children since November 2017. In awarding financial provision however, I have also taken into consideration the fact that the Petitioner will bear the greater responsibility of taking care of the three children until their adulthood and thus in striking a fair balance, I will order Petitioner to pay a lump sum of GHC 12,000.00 as financial settlement to the Respondent.

CUSTODY OF THE CHILDREN

Section 22 of Act 367 empowers the Court to make any orders consequential to the child's welfare which relates to custody, right of access, education and maintenance. **The Children's Act, 1998 (Act 560)** provides per **Section 2** that the best interest of the child shall be the primary consideration.

Though none of the parties specifically sought for the custody of the children, it can be inferred from the reliefs the Respondent is claiming that she wants custody of the children. Again having regard to the fact that the Petitioner who commenced this divorce action did not claim for the custody of the children of the marriage, the court will proceed on the tangent that he is not opposed to Respondent being granted custody. In any case, since the separation of the parties in September, 2017, the children have lived with the

Respondent. The court will therefore not disturb the current arrangement which have proved satisfactorily till date and in consequence of that award custody of the three children of the marriage to the Respondent with reasonable access to the Petitioner. For the avoidance of doubt, reasonable access means that the children can go and spend weekends and vacations with Petitioner if he so wishes upon reasonable notice given to the Respondent. Taking into consideration the earning capacities of both parties and the current economic situation in the country coupled with the fact that the children would be living with the Respondent, I hereby order Petitioner to maintain the three children at GHC 900.00 monthly which shall be paid upfront for each ensuing month. In addition, the Petitioner shall pay for all educational and health needs of the three children.

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 celebrated some 15 years ago is hereby dissolved.

I proceed to make the following consequential orders:

1. The Petitioner is to pay to the Respondent GHC12,000.00 as financial settlement.
2. Custody of all the three children is awarded to the Respondent with reasonable access granted to Petitioner.
3. Petitioner is to pay monthly maintenance of GHC900.00 which must be paid upfront for each ensuing month subject to periodic review.
4. The Petitioner shall pay for all the educational and health needs of the children.

SGD

H/W JOSEPHINE SARFO (MRS)

22nd AUGUST 2022

