

**IN THE DISTRICT COURT 2, TAMALE  
HELD ON MONDAY 24<sup>TH</sup> OCTOBER, 2022  
BEFORE HIS WORSHIP D. ANNAN ESQ.**

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**SUIT NO. A4/4/22**

**BETWEEN**

**CHARLOTTE KOMASHI - PETITIONER**

**AND**

**BISMARK DZAGBLA - RESPONDENT**

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**JUDGMENT**

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**INTRODUCTION**

1. This judgment relates to dissolution of marriage.
  
2. The parties herein married under the Marriage Ordinance, 1951 Rev. (CAP 127) on 17<sup>th</sup> November, 2018 at Royalhouse Chapel International, Volta Area C, Aflao in the Votla Region of Ghana. The parties are Ghanaian citizens and resident in Tamale. The Petitioner is a beautician whiles the Respondent is a police officer. There is no child of the marriage. There are no listed properties acquired during the marriage.

3. On 18<sup>th</sup> March, 2022 the Petitioner filed this petition for the following reliefs:
  - a. That the said marriage celebrated between the parties herein be dissolved;
  - b. Costs including solicitors fees
  - c. Any other order as this court may deem fit and equitable.
4. The Respondent filed an answer to the petition basically saying that he is not opposed to the dissolution of the marriage, however the Petitioner should not be granted the other reliefs.
5. The Petitioner filed a reply also disputing the averments of the Respondent.

#### PETITIONER'S CASE

6. The Petitioner in her petition and reply says that the Respondent has behaved in such a manner that she cannot reasonably be expected to live with him as a wife. She summarized her grounds for divorce as (a) unreasonable behaviour, (b) adultery, (c) physical abuse, (d) separation for more than 2years, and (e) threat of death.
7. According to the Petitioner, that the Respondent repeatedly maltreated her by verbally and physically abusing her. She adds that at an event at the Respondent's family home, the Respondent slapped her in the presence of family members. As a result, she called her family and was told to come home. She contends further that Respondent threatened to shoot her with his official weapon. Regarding adultery, Petitioner says that the Respondent brought into their matrimonial home a lady aged 21years claiming to be her daughter. She claims that the Respondent never mentioned to her that he had a daughter prior or during the marriage. She

argues that the said lady uses the same sponge and towel with the Respondent and the Respondent will go to work together with her at all times. On two occasions, she found the Respondent and the lady in a compromised position. She exhibited the pictures as Exhibits A and A1. Petitioner adds that she had to move out of the matrimonial home to preserve her sanctity and life. She maintains that all attempts by family members and friend to reconcile their differences have proved futile. Petitioner, therefore, filed this present petition for the reliefs aforementioned and also attached a copy of the marriage certificate. Lastly, Petitioner In her reply denied destroying personal effects or taking away any savings of the Respondent.

#### RESPONDENT'S CASE:

8. The Respondent, on his part, states that he has four children prior to this marriage. He contends the Petitioner in January 2019 deserted their matrimonial home and that caused him to bring home his daughter, the said lady, Innocentia Dzagbla, to assist him with the household chores. He denied engaging in sex with the lady/daughter. He argues further that when the Petitioner in January 2019 left the matrimonial home for Accra without notice to him, he had to file a Missing Report at the Lamashegu Divisional Police Station, which he tendered a copy of the police extract as Exhibit 1. He adds that in January 2020 the Petitioner again packed out of the matrimonial home, when he was on operational duties at Bimbilla. He claims the Petitioner this time around destroyed some of his personal effects and took away his savings. He claims that the Petitioner has lost interest in the marriage and that this present petition is a ploy to dent his reputation among his peers and at work. He indicated that all attempts by family members and friends to ensure that the marriage survives the challenges have not yielded any desired

results. In effect, he is not opposed to the petition for dissolution of the marriage, but the Petitioner is should not be granted her other reliefs.

#### THE EVIDENCE AND THE LAW

9. Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that a decree for divorce shall be granted only on the ground that the marriage between the parties has broken down beyond reconciliation. Section 2(1) of the Act specifies the conditions to prove that the marriage has broken down beyond reconciliation as follows:

- a. that the *Respondent has committed adultery* and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent;
- b. that the Respondent has *behaved in such 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 man 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*;  
or
- f. that the parties to the marriage have, after diligent effort, been *unable to reconcile their differences.*"

10. The law, therefore, requires the Petitioner to satisfy the Court on one or more of the aforementioned grounds, see the case of **Ansah v Ansah [1982-83] 2 GLR 1127**.

Section 2(3) of Act 367 further provides that:

“Although 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.”

11. From the evidence, Petitioner contends that Respondent has behaved in such a manner that she cannot reasonably be expected to live with him as a wife. She indicated that the Respondent abused her verbally and physically. This is what ensued when she was cross-examined:

“Q: In 2019 in the absence of the Respondent, you left your matrimonial home?

A: It is never true. We went to Respondent’s mother’s birthday at Asamankese.

Q: I am putting it to you that you long absence without the consent of the Respondent that he brought the daughter, Innocentia Dzagba, to live with him and assist him with household chores?

A: It is never true. But when we went to the birthday party, Respondent’s family tried to resolve the issue but the Respondent slapped me in front of them and threw my phone away and I called my family and they asked me to come home.”

12. Regarding adultery, this is what ensued when Petitioner was under cross-examination:

“Q: The persons in the picture [Exhibits A and A1] obviously did not notice you when you took it, not so?

A: Yes.

Q: They didn't notice you because they were obviously sleeping?

A: Yes.

Q: They were both lying down on different sleeping materials?

A: Yes.

Q: Look at the Respondent in the picture, he is wearing a jeans trousers?

A: Yes.

Q: The pair of trousers is buckled with a brown belt?

A: Yes.

Q: And the Respondent was wearing a boxer under the pair of jeans trousers which is buckled with a brown belt?

A: Yes.

Q: The lady in the picture has a clothe tied to the body whiles lying down, not so?

A: Yes.

Q: I am suggesting to you that this is not a compromising position between the persons in the exhibits?

A: I do not agree with you.

Q: I am suggesting to you that the picture does not show that Respondent was having sex with the lady in the picture?

A: I do not agree with you.

Q: I am putting it to you that it is not true when you said in your petition that you have seen Respondent in a compromising position with the daughter?

A: I can say that. I cannot be there with my husband and he would go and bring a lady claiming she is his daughter which I do not know anything about her. When the lady came everything changed. They go out together, to work with her, use the same sponge together.

Q: I am putting it to you that Respondent and the daughter, Innocentia Dzagbla, were using separate sponges and towels?

A: It is never true."

13. The Petitioner did not lead any evidence on the threat of death or desertion.

14. In the circumstances narrated supra, I find that the Petitioner has been able to lead sufficient evidence in proof of unreasonable behaviour in that the Respondent verbally and physically abused her. This part of the evidence was unchallenged by the Respondent.

15. I am, however, unclear with that of adultery. Here, the Respondent maintains that the lady is his daughter. The Petitioner failed to lead any evidence to the contrary that the lady is not the daughter. It is, therefore, unclear to this court whether or not the Petitioner is pleading incest or adultery. For incest, it is a criminal offence which require proof beyond reasonable doubt. Unfortunately, it is not a ground for divorce under s. 2(1) of Act 367. For adultery, it is a civil or moral wrong which entitles one a decree of divorce when proved on the balance of probabilities. What is rather interesting and worth mentioning is when the Petitioner was being cross-examined, she admitted committing adultery. This is what ensued:

"Q. How old is your pregnancy?

A: 3 months

Q: It is not the Respondent who impregnated you?



A: Yes.

Q: So it is another man, not so?

A: Yes.”

16. Although the Respondent did not cross-petition or plead adultery, the above is a simple and classical case of adultery and is sufficiently proved. I note, however, that Petitioner's actions were during the pendency of this petition of which a divorce is yet to be decreed.
17. The Respondent also failed to prove what personal effects or savings that the Petitioner destroyed or took away. Nothing, in fact, was said about the items or amount involved.
18. The law requires that one of the grounds in s. 2(1) of Act 367 is enough to warrant a decree of divorce and with the above evidence I say nothing further.
19. In effect, I find that the Petitioner has been able to lead sufficient evidence in proof that the Respondent has behaved in such a manner that she cannot reasonably be expected to live with him as a wife. I find that marriage has broken down beyond reconciliation and it is for this reason that the petition shall be granted. I, therefore, decree that the marriage between the Petitioner and the Respondent herein, celebrated on 17<sup>th</sup> November, 2018 at Royalhouse Chapel International, Volta Area C, Aflao in the Volta Region of Ghana with certificate number RCI/VAC/006/18 and licence number A4/52/2019 be and is hereby dissolved.

## CONCLUSION

20. In effect, the marriage between the parties herein celebrated on 17<sup>th</sup> November, 2018 at Royalhouse Chapel International, Volta Area C, Aflao in the Volta Region of Ghana with certificate number RCI/VAC/006/18 and licence number A4/52/2029 is hereby dissolved.

21. Costs of GHS1,000.00 awarded in favour of the Petitioner.

**H/W D. ANNAN ESQ.**

**[MAGISTRATE]**

*References:*

1. ss. 1(2), 2(1) and 2(3) of *Matrimonial Causes Act, 1971 (Act 367)*
2. *Ansah v Ansah [1982-83] 2 GLR 1127*