

**IN THE DISTRICT MAGISTRATE COURT TAKORADI MARKET CIRCLE
HELD ON MONDAY THE 21ST DAY OF NOVEMBER 2022. BEFORE HER
WORSHIP CATHERINE OBIRI ADDO ESQ:**

SUIT NO.A4/113/2022

**COMFORT QUAINOO
BLOCK 10
SEKONDI**

.....

PETITIONER

VS

**JOHN KOJO MENSAH
H/NO.33
NEW TAKORADI**

.....

RESPONDENT

JUDGMENT

The petitioner petitioned for dissolution of the ordinance marriage contracted between her and the respondent on the 19th day of September, 2003. Petitioner also sought custody of the two issues of the marriage Prisca Mensah 15 years and Kingsley Mensah 11years respectively.

Petitioner alleged in her petition that the marriage between her and the respondent has broken down beyond reconciliation. The petitioner's assertion for the aforementioned view is that, the respondent has failed to maintain the children of the marriage and fail to perform his responsibilities. According to the petitioner, the respondent threatened to commit suicide to implicate her. According to the petitioner, the respondent mother threatened her family to get her out of the matrimonial home. She also avers to her the respondent cheated on her by cohabiting with a lady by name Gifty Cobbinah.

She avers due to the numerous threats of the respondent and his mother; she vacated the matrimonial home as a result of the insecurity she felt. She indicated that the marriage between her and

the respondent has broken down beyond reconciliation and prays the court for a decree of the dissolution of the marriage contracted between her and the respondent. She in addition praying for ancillary reliefs by the respondent paying Gh¢2,000 a month as maintenance, respondent to pay maintenance arrears for 4years to pay school fees and medical bills and also asking for custody of the two issues of the marriage.

When the petition was served on the respondent, he filed an answer to same that their marriage has broken down beyond reconciliation and cross petitioned for dissolution of the marriage contracted between him and the petitioner on the 19th day of September 2003, he also avers he will take care of the maintenance of the children of the marriage who are in the custody of the petitioner.

Respondent view on the other hand that the marriage has broken down beyond reconciliation is that, he avers, it's been 4years since the petitioner abandoned the matrimonial home without his Consent and knowledge. He further avers, he maintains the children of the marriage however it's untrue that he threatened to commit suicide to implicate the petitioner. He further avers, it is not true that he is in a relationship with Gifty Cobbinah as alleged by the petitioner and also not true that his mother asked the petitioner to pack out of the matrimonial home it was the petitioner who abandoned the matrimonial home.

The issue for determination is whether or not the marriage between the parties has broken down beyond reconciliation.

Although the petitioner sought ancillary reliefs in her petition, the ancillary reliefs are subservient to the relief for dissolution of the marriage as such same cannot be granted until the relief for dissolution is granted. I shall therefore determine the issue for the dissolution of the parties marriage before I deal with the issue of ancillary relief.

The question is, has the marriage between the parties broken down beyond reconciliation, if so, then petitioner is entitled to a decree of dissolution of their marriage. It is trite that a court hearing a petition for divorce, is obligated to carefully consider all the evidence before it as a mere assertion by one party that the marriage has broken down. The court must consider whether the evidence adduce situate the case of the petitioner and respondent cross petition for dissolution of marriage within any of the grounds in section 2 of the MCA.

Per section 1(2) of the Matrimonial Causes Act, Act 367 hereafter referred to as the MCA, the sole ground for the grant of divorce is that the marriage has broken down beyond reconciliation. For the purpose of showing that the marriage has broken down beyond reconciliation, any of the facts enumerated under section 2(1) (a) to (f) of the MCA must be proved by the petitioner and or the respondent in their respective evidence. This was explained in the case of *MENSAH V MENSAH* 1972 2GLR 198-209 by HAYFRON BENJAMIN J (as he then was) at page 202 where the respected judge said “From the relevant sections of the Matrimonial Causes Act 1971 Act 367 namely sections 1(2) and 2(1) and (3) the court ought to grant a divorce only where there has been a breakdown of the marriage beyond reconciliation. It is obligatory on the petitioner to prove one or more of the specified facts in order to establish that the marriage has broken down beyond reconciliation obviously on all evidence. Having establish these facts to such a standard as to lead the court to make a finding that these facts exist, the court can still refuse to grant the decree because it is not satisfied that the marriage has broken down beyond reconciliation”.

The evidence before the court shows that the parties have not lived together as husband and wife for 4years. According to the petitioner, the respondent has failed to maintain the children of the marriage for four years. In fact, during cross examination of the petitioner by the respondent this is what transpired:

Q: you indicated that I do not look after the children of the marriage I put it to you that I look after them.

A: not true. For the past four years he has remitted just an amount of
Gh¢ 800.00 through a friend of his.

In fact, the above assertion of the petitioner, was never challenged by the respondent neither did he led any evidence to the contrary. It is trite that where a party makes an assertion which is not challenged by the opponent nor does the opponent leads evidence to the contrary, that evidence must be accepted by the court.

In the case of *FORI V AYIREBI* 1966 GLR 627 SC, it was held at holding 6 of the head notes that:

“Where a party had made an averment and that averment was not denied, no issues was joined and no evidence need to be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross examined upon, he need not call further evidence of that fact.”

See also the cases of *TAKORADI FLOUR MILLS V SAMIR FARIS* (2005-2006) SCGLR 882.

Base on the above position of the law, the court finds that for the past four years that the parties has lived apart, the respondent has remitted only ghc800.00 as maintenance for the two children of the marriage. The court finds this to be an unreasonable behavior on the part of the respondent.

Petitioner avers, the respondent is cohabiting with one Gifty cobbinah this assertion has been denied by the respondent. The petitioner apart from his bare assertion did not lead any further proof for the court to satisfy itself that what she avers is true. All that she said concerning the respondent cohabiting with another woman implicating adultery on his part, were just bare assertions without more which cannot constitute proof.

That notwithstanding both parties are ad idem on the issue that they have not lived as husband and wife for the past four years.

Petitioner also indicated that the respondent promised to kill himself and to implicate her which was denied by the respondent. However again, petitioner failed to lead any further evidence to satisfy the court that what she avers is true. All that she said in respect of same are just bare assertions without more.

Respondent on the other hand avers they have not lived together as husband and wife for the past 4 years.

The court finds that both parties have behaved unreasonably in this marriage.

The court finds per the evidence before it that it is not only the respondent who has exhibited unreasonable behavior but both parties including the petitioner has behaved unreasonably in the marriage in addition to ego of both parties has indeed aggravated issues in the marriage. Assuming without admitting that the respondent mother asked the petitioner to leave the matrimonial home, the petitioner shouldn't have left same since she is married to the respondent and not his mother.

Both parties admitted that they have not lived as husband and wife for the past 4 years immediately preceding the institution of the action in court as such I so find per section 2(1) (d) of the Matrimonial Causes Act.

The court per the evidence before it, is satisfied that the marriage between the parties has broken down beyond reconciliation.

In view of the foregoing this court accordingly decree a dissolution of the marriage contracted between the parties on the 19th day of September 2003 per the exhibit A, marriage certificate tendered in evidence with certificate no CCM/A0 41/2003 per license number SI/663 is hereby cancelled.

In respect of the ancillary reliefs, petitioner is seeking custody of the children of the marriage Prisca Mensah 15years and Kingsley Mensah 11years respectively. Respondent in his evidence agrees custody of the children of the marriage be given to the petitioner and reasonable access to him. In the circumstance, the court hereby grant custody of the children of the marriage to the petitioner and reasonable access to the respondent.

The respondent can go for the children during weekends but to make sure to return the children latest by 2pm on Sundays to enable the children prepare for school. Similarly, he can go for them during school vacations but he is to make sure to return the children when school resumes to enable them go to school.

Since there is no evidence of income of the respondent before the court, the court will award what is reasonable. In the circumstance, the respondent is ordered to maintain the two children GH¢1000.00 each month and to pay the school bills and medical expenses of the children as and when the need arises.

The petitioner sought for 4years arrears that she has spent on the children however she failed to proof to the satisfaction of the court how much he has spent on the children for the past 4years as such same cannot be granted by this honorable court.

There will be no order as to cost to foster goodwill between the parties.

(SGD)

CATHERINE OBIRI ADDO ESQ:

(MAGISTRATE)

REPRESENTATION

PARTIES APPEARED PRO SE.