

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 6TH DAY OF DECEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/14/2023

GRACE AMPONSAH-ASANTE

PETITIONER

VRS

JOSEPH KORANTENG ABANKWA

RESPONDENT

PETITIONER IS PRESENT AND REPRESENTED BY FRANCIS MENSAH WENDLE HOLDING BRIEF FOR YVONNE AMEGASHIE.

RESPONDENT IS PRESENT AND SELF REPRESENTED.

JUDGMENT

The petitioner filed a petition for divorce on 29th June, 2022 against the respondent for the following reliefs:

- a. Dissolution of the ordinance marriage contracted between the parties as having broken down beyond reconciliation.
- b. Custody of the issue of the marriage to be granted to the petitioner with reasonable access to the respondent whilst respondent is compelled to maintain the issue of the marriage including but not limited to payment of school fees and medical bills as and when payments fall due.

On 2nd November 2022, parties were referred to the court connected ADR for possible settlement of the ancillary reliefs and on 15th November, 2022, the mediator Josephine Tetteh forwarded terms of agreement of the parties dated 15th November 2022 back to the Court.

The Court proceeded to hear the divorce petition.

THE CASE OF THE PETITIONER

The Petitioner testified by herself and called no witness.

It is the case of the petitioner that parties got married under the ordinance at the Registrar General's Department on 1st August 2017. It is the further case of the Petitioner that after the celebration of the marriage, she joined her husband who was ordinarily resident in China and they are blessed with one issue of the marriage namely Adansie Koranteng Abankwa aged 4 years of age. She added that Parties relocated to Ghana after the onset of the COVID 19 pandemic.

According to petitioner, the marriage has broken down beyond reconciliation by reason of the unreasonable behaviour of the Respondent which is womanizing and excessive intake of alcohol. It is petitioner's case that respondent brings alcoholic drinks, electronic cigarettes and women into the matrimonial home and she is scared that her four year old son will pick up the behaviour of respondent.

Petitioner stated that anytime she brings up the issue of respondent's womanizing or excessive drinking of alcohol, it generates into misunderstanding and parties stay under the same roof without communicating with each other for close to two or three months.

Petitioner added that she is scared of contracting sexually transmitted diseases as respondent has not shown any intention of putting an end to womanizing.

She stated that all attempts at reconciliation by friends and relatives have not yielded any fruits. Petitioner prays the court to dissolve the parties' marriage and grant her reliefs.

THE CASE OF THE RESPONDENT

Respondent informed the court that he grants his consent to the dissolution of the parties' marriage.

It is the case of the respondent that parties got married through the ordinance in Ghana and cohabited in China after the marriage. It is the further case of the respondent that petitioner got pregnant after three months of joining him in China so he single handedly worked to support the matrimonial home.

According to him, he introduced petitioner to importation of goods and trading. When the COVID 19 pandemic struck, he decided to allow petitioner come to Ghana with the child whilst he stays behind to work however things became very difficult so he compelled to relocate to Ghana.

Respondent admitted that he drinks alcohol however it is not as excessive as petitioner wants the court to believe and that petitioner has always known that he drinks alcohol but has never complained about same until she came to court.

Respondent again admitted that he has been womanizing save that the purpose was to seek a replacement in the event where the petitioner moves out of the marriage. He added that petitioner proved him right when he came home one day and noticed that she had packed out of the matrimonial home

ISSUE SET DOWN FOR DETERMINATION

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

BURDEN OF PROOF

It is trite that sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

In **NARTEY V MECHANICAL LLOYD ASSEMBLY PLANT LTD [1987/88] 2 GLR 314 at 344**, **Adade JSC** reiterated the position of the law cited supra by stating:

“A person who comes to court no matter what the claim is must be able to make a case for the court to consider otherwise he fails.”

In **ABABIO V AKWASI IV [1994-1995] GBR 774, AIKINS JSC** delivered himself thus;

“The general principle of law is that it is the duty of a plaintiff to prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins if not he loses on that particular issue.”

THE COURT’S ANALYSIS AND OPINION

Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2 (1) of Act 367 explains 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 the consent shall not be unreasonably withheld and where the court is satisfied that it has been withheld the court may grant a petition for divorce under this paragraph despite the refusal
- (e) That the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition
- (f) That the parties after a diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also 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.

His Lordship Dennis Adjei J.A stated this position of the law in **CHARLES AKPENE AMEKO V SAPHIRA KYEREMA AGBENU (2015) 99 GMJ 202**, thus;

“The combined effect of sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a court to dissolve a marriage, the court shall satisfy itself that it has been proven on the preponderance of probabilities that the marriage has broken down beyond reconciliation. That could be achieved after one or more of the grounds in Section 2 of the Act has been proved.”

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent.

At page 315 of the book, "The Law on Family Relations in Ghana by William Cornelius Ekow Daniels, the learned author states as follows;

"In cases involving behaviour, the burden of proof will lie on the petitioner to prove that the respondent has behaved in such a way that he cannot reasonably be expected to live with the respondent. It will be a good defence for the respondent to seek to prove that he has not behaved wholly or in the manner alleged. This defence will go to the establishment of the truth of the statement concerning the behaviour. The second defence will relate to the question whether the extent of respondent's behaviour is that the petitioner cannot reasonably be expected to live with the respondent."

From the evidence, the respondent admitted that he womanises however the purpose was to seek a replacement should petitioner leave the matrimonial home.

I find that the marriage between the parties has broken down beyond reconciliation due to the unreasonable behaviour of the respondent.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Grace Amponsah-Asante and Joseph Koranteng Abankwa celebrated at the Principal Registrar of Marriages Office in Accra on 1st August 2017 is hereby dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

The Terms of Agreement of the parties dated 15th November 2022 is hereby adopted as consent judgment and made a part of the final judgment of this court.

I make no order as to costs.

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H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE)