

IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 8TH DAY OF
NOVEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.),
DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/64/22

LAWRENCIA OTOO

PETITIONER

VRS

SAMUEL ODURO

RESPONDENT

PETITIONER IS PRESENT AND REPRESENTED BY ITA TETTEH ESQ.

RESPONDENT IS PRESENT AND REPRESENTED BY YVONNE ADJADI ESQ.

JUDGMENT

The petitioner filed a petition at the registry of this court on 22nd June, 2022 seeking the following reliefs;

1. Dissolution of the ordinance marriage between the parties
2. Custody of the only issue of the marriage to be granted to the petitioner with reasonable access to the respondent
3. An order for the respondent to pay a monthly maintenance of GHC400.00 to the petitioner for the upkeep of the child
4. An order for the respondent to pay for the child's school fees, medical bills and all other educational expenses of the child as and when it falls due
5. An order directed at the respondent to pay a reasonable lump sum to the petitioner for all the years of marriage
6. An order to recover the documents of petitioner's land purchased in 2018 before the marriage

7. An order for the respondent to pay the legal fees of the Petitioner
8. Any other order(s) that the honourable court may deem fit.

Respondent filed an answer to the petition on 8th July 2022 and prayed for the dissolution of the marriage on the fact that petitioner deserted the matrimonial home in May 2020 without his consent leading to the breakdown of the marriage.

At the end of pleadings, the following issues were set down for determination by the court;

1. Whether or not the marriage between the parties has broken down beyond reconciliation
2. Whether or not custody of the only issue of the marriage should be granted to the petitioner with reasonable access to the respondent
3. Whether or not petitioner is entitled to financial settlement from respondent
4. Whether or not petitioner is entitled to recover land documents from the respondent

THE CASE OF THE PETITIONER

It is the case of the petitioner that parties got married under the ordinance on 25th May 2019 at St. Peter and Paul Catholic Church near west hills mall in Accra. She tendered the marriage certificate with license number G.S.M.A./M1/093/19 as evidence of the parties' marriage and same was admitted and marked as Exhibit A. Parties have one issue of the marriage namely MaryAnn Nana Ekua Oduro aged two years.

It is the further case of the petitioner that the respondent has behaved in such a way that she cannot reasonably be expected to live with him as his wife.

According to the petitioner, respondent has emotionally abused her severally and refused to maintain her as a wife for the past two years. She testified further that respondent only

started maintaining the child sometime in April 2022. She added that respondent caused her to constructively leave the matrimonial home for her own safety and peace of mind sometime in 2020 through his persistent threats that he will kill her.

She prayed the court to grant her reliefs.

THE CASE OF THE RESPONDENT

It is the case of the respondent that parties have been married under the ordinance since 2019.

It is his further case that parties cohabited at SCC Weija and are blessed with one issue of the marriage namely MaryAnn Nana Ekua Oduro aged two years.

According to the respondent, petitioner abandoned the matrimonial home on her own volition unceremoniously in May 2020.

He added that before abandoning the matrimonial home, petitioner neglected her wifely and motherly duties.

He stated that he never abused petitioner either physically or emotionally. He testified further that sometime in November 2020, petitioner returned the customary drinks to his family and has denied him access to the only issue of the marriage even though he maintains her and sends her provisions.

He tendered in evidence copies of MTN transactions and same were admitted and marked as Exhibit 1 series. He added that on days when he does not have money in his mobile money wallet, he sends money through mobile money merchants.

According to him, he has been paying school fees and educational incidentals of the only issue. He tendered in evidence receipts of school fees, school uniform and other incidentals. Same were admitted in evidence and marked as Exhibit 2 series.

He prayed the court to dissolve the parties' marriage, grant him access to the only issue of the marriage on weekends and school vacations and order the petitioner to bear 50% of all costs incurred in raising the child.

BURDEN OF PROOF

It is trite that the burden of proof will generally lie on the party asserting the affirmative of an issue, the absence of the defendant notwithstanding.

Section 11 of the Evidence Act, 1975 NRCD 323 provides;

For the purposes 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.

Section 14 of NRCD 323 also provides that in a trial, the burden of proof may shift but unless and until it is shifted, a party has the burden of persuasion as to each fact, the existence or non-existence of which is essential to the claim or defence he is asserting.

This principle of law is reiterated in the case of **RE: ASHALLEY BOTWE LANDS; ADJETEY AGBOSU & OTHERS V KOTEY & OTHERS [2003-2004] SCGLR 420** where Woode JSC (as she then was) at page 444 stated;

It is trite learning that by the statutory provisions of the Evidence Decree 1975,(NRCD 323) the burden of producing evidence in any given case is not fixed, but shifts from a party to party at various stages of the trial depending on the issues asserted and or denied.

THE COURT'S ANALYSIS AND OPINION

Issue one: whether or not the marriage between the parties has broken down beyond reconciliation.

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 and the fact that she cannot be reasonably be expected to live with him as a wife.

To succeed under the fact of unreasonable behaviour, the petitioner must first establish unreasonable conduct on the part of the Respondent and secondly, she must establish that as a result of the bad conduct, she cannot reasonably be expected to live with him.

At page 123 of the book, “At a glance! The Marriages Act and the Matrimonial Causes Act Dissected by Mrs Frederica Ahwireng-Obeng, the learned writer on unreasonable behaviour stated;

“Unreasonable behaviour has been defined in English law as conduct that gives rise to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger”. The above statement reiterated the position of the law in **GOLLINS V GOLLINS [1964] A.C 644**

She added that the principle of law is that, the bad conduct complained of must be grave and weighty and must make living together impossible. It must also be serious and higher than the normal wear and tear of married life.

During cross examination of the petitioner, the following information was elicited;

Q: In your witness statement, you indicated at paragraph 12 that the respondent only started maintaining the issue in April 2022 however there are mobile money transactions details which show that prior to this date you have given, the respondent had been sending you money for the upkeep of the issue is that not true?

A: Yes he maintained the issue to a certain point and did not continue.

Q: You allege emotional abuse as one of your reasons for leaving your marriage. Can you tell this court when the alleged abuse started?

A: before I left the house, we had a discussion about money issue. When we left from Takoradi to Accra, we were not having enough money on us so we visited a father from church at home and when we were leaving, he gave GHC300.00 to the child. When we came home, he took the money and kept it. The next day, he went out to buy food for the child. When he came back, I asked him how much was left as I needed to buy pampers for the child. Then he got angry and said that we the Ga's do not know how to say thank you if your husband goes to the market and come back. Then I told him it was only pampers I am asking for and then he said that if I like, I should open my mouth again, then I asked him, what have I done then he said I should put the child down and then I said no and he hit me. Then his friend was around so he came and asked, Mr. Oduro, what has she done? Then he took him out. When they came back the baby was at my

back. Then he asked again that I should put the baby down. Then he beat me. And the friend came to separate us and I left the room. I went to a mother in a choir and he called Sammy to come. This happened a year after the marriage.

Q: After reporting to the choir mistress, did you make a report to the police?

A: I did not make a report to the police

Q: Why is that?

A: The marriage was too young for me to report my husband

At paragraph 7 of respondent's answer to the petition, respondent stated that he never beat the petitioner even in the face of extreme provocation. The respondent having denied the allegation of the petitioner, she had a burden to lead credible evidence to prove her claim yet petitioner failed to call the friend of the respondent or the choir mistress who are material witnesses to give evidence with regards to the physical abuse meted out to her by the respondent.

The means of effecting proof was explained in **MAJOLAGBE V LARBI [1959] GLR 190**, where Ollenu J. (as he then was) held that:

"Proof, in law is the establishment of fact by proper legal means; in other words, the establishment of an averment by admissible evidence. Where a party makes an averment and his averment is denied, he is unlikely to be held by the court to have sufficiently proved that averment by his merely going into the witness box, and repeating his averment on oath, if he does not adduce that corroborative evidence which (if his averment be true) is certain to exist."

Applying the law cited supra to the evidence before this court, I find that the petitioner has been unable to prove unreasonable behaviour on the part of the respondent.

After the testimony of the respondent, petitioner refused to cross examine the respondent.

In **FORI V AYIREBI [1966] GLR 627**, it was held by the Supreme Court at page 647 as follows:

“The law is that where a party makes an averment and that averment is not denied, no issue is joined on that averment and no evidence need be led. Again when a party gives evidence of a material fact and is not cross examined upon it, he needs not call further evidence to that fact.”

This principle of law was re-echoed in **QUAGRAINE V ADAMS [1981] GLR 599, CA**, where it was held thus;

“Where a party makes an averment and his opponent fails to cross examine on it, the opponent will be deemed to have acknowledged sub silentio, that averment by the failure to cross examine” .

From the totality of the evidence before this court, I find that the marriage between the parties has broken down beyond reconciliation due to the desertion of the petitioner from the matrimonial home.

DECISION

Having held that the marriage between the parties has broken down beyond reconciliation, the petition for the dissolution of the Ordinance Marriage between the parties is granted under Section 47 (1)(f) of the Courts Act 1993, Act 459. It is further decreed that the Ordinance Marriage between Lawrencina Otoo and Samuel Oduro celebrated at the St. Peter and Paul Catholic Church in Accra on 25th May, 2019 is hereby legally dissolved and a certificate of divorce is to issue accordingly.

The Terms of Settlement of the parties filed on 8th November 2022 is adopted as consent judgment and made a part of the final judgment of this court.

I make no order as to costs.

H/W RUBY NTIRI OPOKU (MRS)