

IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 22ND DAY OF
NOVEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.),
DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/08/23

STACEY NAFISATU COKER

PETITIONER

VRS

DANIEL NII AMOO

RESPONDENT

PETITIONER IS PRESENT AND REPRESENTED BY KOFI AGYENA AGYEMAN
ESQ.

RESPONDENT IS PRESENT AND SELF REPRESENTED

JUDGMENT

The petitioner filed a petition in this court on 17th October, 2022 seeking the following
reliefs;

1. An order for the dissolution of the marriage celebrated between the parties.
2. An order for the respondent to pay the petitioner GHC50, 000.00 as alimony or financial settlement.
3. An order granting custody of the children of the marriage to the petitioner with reasonable access to the respondent.
4. An order for the respondent to pay an amount of two thousand Ghana Cedis monthly as maintenance for the children of the marriage.
5. An order for the respondent to pay for the educational needs of the children of the marriage.

Respondent filed an answer on 24th October 2022 and cross petitioned for the dissolution of the parties' marriage, payment of GHC15, 000.00 as financial settlement to petitioner, custody of the issues of the marriage granted to petitioner with reasonable access granted to him. He prays to maintain the children with the sum of GHC1,000.00 per month in addition to paying their school fees and medical bills.

At the end of pleadings, the issues set down for determination by the court are as follows;

1. Whether or not the marriage contracted between the parties has broken down beyond reconciliation
2. Whether or not custody of the issues of the marriage should be granted to petitioner with reasonable access to the respondent.
3. Whether not petitioner is entitled to financial settlement.

THE CASE OF THE PETITIONER

At the hearing, the petitioner told the court that parties got married under the Ordinance on 14th April, 2018 at the Dunwell Methodist Church at Santa Maria in Accra and have two issues of the marriage namely Jayden Quacoopome Amoo aged 3years 8 months and Salomey Okaikor Amoo aged 1 year 4 months. According to the petitioner the parties' marriage has broken down beyond reconciliation because parties have irreconcilable differences and as a result have not lived as husband and wife for the past two continuous years.

She added that all attempts by their families to reconcile them have been unsuccessful and prays for divorce and grant of her ancillary reliefs.

THE CASE OF THE RESPONDENT

The respondent reproduced the evidence of the petitioner as follows;

That parties got married under the Ordinance on 14th April, 2018 at the Dunwell Methodist Church at Santa Maria in Accra and have two issues of the marriage namely Jayden Quacoopome Amoo aged 3years 8 months and Salomey Okaikor Amoo aged 1 year 4 months. According to him, the parties' marriage has broken down beyond reconciliation because parties have irreconcilable differences and as a result have not lived as husband and wife for the past two continuous years.

He added that all attempts by their families to reconcile them have been unsuccessful. He informs the court that he consents to the dissolution of the marriage and prays the court to grant same.

Parties filed terms of settlement of the ancillary reliefs on 18th November 2022 accordingly the only issue before the court was whether or not the marriage of the parties has broken down beyond reconciliation.

BURDEN OF PROOF

By section 11(1) of the Evidence Act, 1975 NRCD 323 the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue and by the authority of **Duah v Yorkwa [1993-94] 1 GLR 217**, it is the plaintiff and therefore the petitioner who has the duty or obligation to lead evidence in order to forestall a ruling being made against him.

ISSUE ONE

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.

Under Section 2(1) Act 367 for a marriage to be deemed to have broken down beyond reconciliation which is the only reason under Ghanaian law for the grant of a petition for divorce it is stated that;

(1) 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 such adultery the petitioner finds it intolerable to live with the respondent; or

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

(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; or

(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.

The respondent declined the invitation to cross examine the petitioner when he was invited to do so.

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”.

During cross examination of the respondent he confirmed that he has duly paid the sum of GHC15,000.00 as financial settlement to the petitioner.

Applying the facts and the evidence led in this matter to the test under section 2(1) of the Matrimonial Causes Act 1971, Act 367, I find that the parties’ marriage has broken down beyond reconciliation due to irreconcilable differences between them. I therefore proceed under section 47(1)(f) of the Courts Act 1993 (Act 459) to decree that the marriage between Stacey Nafisatu Coker and Daniel Nii Amoo celebrated at the Dunwell Methodist Church at Santa Maria in Accra is hereby dissolved. A certificate of divorce is to issue accordingly.

The terms of settlement of the parties filed on 18th November 2022 is adopted as consent judgment and made a part of the full judgment of this court.

I make no order as to costs.

**H/W RUBY NTIRI OPOKU (MRS.)
(DISTRICT MAGISTRATE)**