

**CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, ESQ. SITTING
AS DISTRICT MAGISTRATE, DISTRICT COURT "B", SEKONDI ON 28TH
NOVEMBER, 2022**

SUIT NUMBER A4/54/2022

FAUSTINA MENSAH - PETITIONER

V

FRANCIS EGYIR - RESPONDENT

TIME: 12.16PM

PETITIONER - PRESENT

RESPONDENT - PRESENT

JUDGMENT

Petitioner filed the instant Petition on the 27th of April, 2022 against the Respondent for the dissolution of the marriage celebrated between the parties on the 21st of November, 2008 at the Metropolitan Offices at Sekondi. There is one issue of the said marriage. The Petitioner prays for the following reliefs:

1. *That the said marriage be dissolved forthwith*

2. *That custody of the child be granted to Petitioner while reasonable access should be given to the Respondent*
3. *Respondent be made to maintain the child at GHC250.00 per month.*

The Petitioner grounds her reason for the dissolution on the unreasonable behaviour of the Respondent. In his answer filed on 12/9/2022, the Respondent admits the marriage between the parties has broken down but denies it is as a result of his unreasonable behaviour. He cross petitions as follows:

1. *Dissolution of the marriage relationship forthwith*
2. *Custody of the only be granted to him with reasonable access to the Petitioner.*

THE CASE OF THE PETITIONER

It is Petitioner's case that the Respondent is extremely jealous and insecure and does not want the Petitioner to have anything to do with the opposite sex even with church members. Petitioner says the respondent has been verbally and physically abusing her as a result the parties have been separated for the past three years. It is further the case of the Petitioner that the Respondent is irresponsible and does not take care of their son.

CASE OF THE RESPONDENT

The Respondent on the other hand admits that the marriage between the parties has broken down beyond reconciliation but not because of him but rather as a result of the petitioner's extramarital affairs. It is the case of the Respondent that the Petitioner has been having extramarital affairs with other men and the father of the Petitioner who had been saving her from embarrassment and humiliation has now passed on and the Petitioner cannot stop her adulterous behaviour that is why she has filed for the divorce.

At the end of the trial, the issues that came up for determination thus are

1. **Whether the marriage has broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent**
2. **Whether or not the Petitioner has committed adultery**

Per **section 1(2)** of the **Matrimonial Causes Act 1971 (Act 367)** the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Petitioner, per **section 11 of the Evidence Decree 1975 (NRCD 323)** had to persuade the Court to believe that the marriage had indeed broken down beyond reconciliation by proving at least one of the acts listed under section 2(1) of the Act.

Per **section 2(3)** of the Act, although the Court finds the existence of one or more of the facts specified under section 2(1), the court shall not grant a petition for divorce unless it is satisfied on all the evidence that the marriage had been broken down beyond reconciliation.

The parties both testified themselves and did not call any witnesses.

The petitioner testified that for the past four years there has not been any effective communication or any sexual encounter between the parties. That the Respondent has been verbally abusing her calling her a prostitute any time she communicates with the opposite sex. Petitioner says that she is a teacher but does petty trading by selling drinks at their church, the Respondent calls her prostitute when she communicates with church members especially the male church members thereby always embarrassing her. The Respondent throughout the trial does not deny calling the Petitioner a prostitute. He is very convinced that the Petitioner has been having extramarital affairs. According to the Respondent he had tolerated the Petitioner because of the numerous pleas from

his father-in-law when he was alive. It was his father-in-law who pleaded with him not to divorce the Petitioner citing adultery, since it would cast a dent in his image as a church leader. That even though he had evidence of the Petitioner's adulterous behaviour he still stayed in the marriage. It is the respondent's case that after the death of his father-in-law he came to meet the Petitioner with another man in their matrimonial bedroom and that broke the camel's back. During the cross-examination of the Petitioner on the 2nd of November, 2022, the Petitioner denied this claim. But confirms some salient points that would help the court to decide the issue of whether or not Petitioner committed adultery.

Q. Do you remember when I came to see the said man, I enquired from him whether he was aware you were a married woman and he answered yes. I further asked him what he was doing in my room around that time and the man became furious do you remember?

A. It is not correct

Q. Do you remember you told me to stop and the man tried to run away? I held him but you threw a coffee table to hit my eye head and I got injured (the respondent shows the mark in open court)

A. That is correct

Q. Do you remember thereafter I informed your parents and your parents came to plead on your behalf

A. That is correct.

From the above, in one breath Petitioner denies that someone came over to the matrimonial home. And in another breath, she admits that she tried to stop the Respondent from running after the man and she even threw a coffee table that hit the

Respondent. Petitioner further admitted that her parents were informed and they came to plead on her behalf. The question that begs for an answer is what was a man doing in the parties' matrimonial bedroom at that ungodly hour?

In **Adjetey V Adjetey [1973] 1 GLR 216** it was decided that

“Adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings, it must carry a high degree of probability”

The evidence is that the Respondent who works as a security man usually returns from work in the early morning. On this fateful day, he decided to come home early around 11.30pm. When he got to his matrimonial bedroom the Petitioner and another man were seated in a compromising position. According to the Respondent she lifted the Petitioner's provocative nighty and she was not wearing any underwear. There was an altercation between the parties where the Respondent confronted the man and sought to chase him out. This infuriated the Petitioner who threw their coffee table at the Respondent and hit him leaving a scar. The Respondent might not have met the Petitioner and the said man in the sexual act but the description of the scene above lends credence to a high probability of the Petitioner having committed adultery. In the **Adjetey** case quoted above, it said that *the act must carry a high degree of probability*. I find that the action of the Petitioner having another man in the parties' matrimonial bedroom at that ungodly hour close to midnight in a compromising position and her subsequent action of protecting the said man and fighting with the Respondent clearly is a sign of adultery. No man would tolerate that. I glean from the evidence that the Petitioner is seeking dissolution because according to her the Respondent prevents her from talking to the opposite sex and she wants that freedom. The parties clearly have

trust issues, of course as a result of the encounter of meeting another man in their matrimonial bedroom.

There is evidence that the parties have also not lived together continuously as husband and wife for over 3 years and the Petitioner has even moved out of the matrimonial home. The learned **William Ekow Daniels** in his book **“The Law on Family Relations in Ghana, 2019 @ page312** state that

“The test to determine whether or not the parties are not living as husband and wife has no relation to the physical state of things such as houses or households, but rather it is to be considered from the point of view of whether there is absence of consortium or cessation of cohabitation”.

Both parties have testified that they have not had any sexual intercourse for over three (3) years. It is trite law that the court will only dissolve a marriage on the above ground (that is, the parties having not lived together as husband and wife continuously for at least two years) only when there is consent from the Respondent. See **Section 1 (2) (d) of the Matrimonial Causes Act 1971, Act 367**.

In the instant case, the Respondent is not withholding consent at all. In his evidence at paragraph 17 of his witness statement, this is what he said

“17. Respondent is therefore pleading to the honourable court to grant Petitioner’s plea for the dissolution of this marriage...”

There is also evidence that family members of the parties have tried on several occasions to reconcile the parties without any success. Much as the sanctity of marriage must be preserved, parties cannot be made to stay together where this is a total lack of trust. Consequently of the two, and based on the evidence adduced, I find that it is

rather the petitioner who has behaved in a manner that the respondent cannot reasonably be expected to live with her, Accordingly, I decree the ordinance marriage celebrated between the Petitioner and the Respondent on the 21st of November, 2008, be and is hereby dissolved.

The Petitioner is seeking for refund of school fees and book arrears of GH¢3,890.00 in respect of their only child. Respondent does not deny this claim but says that he failed to pay the school fees because the Petitioner changed the school of their child without recourse to him. However, he showed in open court evidence of an amount of GH¢485.00 that he had already paid and indicated that he was ready to pay the balance of GH¢3,405.00 since he is the father of the child. The court will not belabor this issue and accordingly order that the balance of the school fees and book arrears of GH¢3,405.00 be paid to the Petitioner.

CUSTODY

Both parties are seeking custody of the only child. **Section 2(1) of the Children's Act 1998 (Act 560)** provides that

"The best interest of the child shall be paramount in a matter concerning a child."

Lord Nichollis of Birkenhead stated

"as in all cases concerning the upbringing of children, the court seeks to identify the course which is in the best interest of the children. Their welfare is the court's paramount consideration."

In the instant case, the only child of the parties, Samuel Papa Yaw Egyir is a minor, 12 years of age and he has been with the Petitioner at least for the past three years. In my

humble view, it would not be in the best interest of the child to change his environment having grown so used to the same. Besides, considering the nature of the Respondent's job as a night security person, it may not permit him to spend time with the child compared with the Petitioner who is a teacher and is always available. Apart from the above, **Section 45(1) of Act (supra)** further enjoins the court in considering the interest and importance of the child being with the mother in matters of custody. The said section stipulates as follows:

"A family Tribunal shall consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access"

Having considered the totality of the evidence it is my considered view that it would be in the best interest of the child to be with the Petitioner. I, therefore, grant custody of Samuel Papa Yaw Egyir (12 years) to the Petitioner with reasonable access to the Respondent. Summary of decisions below

DECISION

1. *The marriage contracted between the parties herein on the 21st of November, 2008 at the Metropolitan Offices, Sekondi has broken down beyond reconciliation and same be and is hereby dissolved. It is ordered that a decree of divorce be granted; the marriage certificate with registration number 418/2008 pursuant to license No. SAEMA 418/2008 is hereby cancelled.*
2. *The Petitioner is granted custody of the only child of the marriage Samuel Papa Yaw Egyir (12 years) with reasonable access to the Respondent once a weekend within a*

*month from Friday 6.00 am to Sunday 6.00 pm and also during holidays and vacations.
Respondent shall give prior notice of his intention to visit the child.*

3. *The Respondent is ordered to maintain the child of the marriage with an amount of two hundred Ghana cedis (GhC200.00) per month*
5. *The Respondent is ordered to pay the school fees and medical expenses of the only child as and when they fall due.*
6. *Petitioner is also ordered to take care of the books and clothing of the child*
7. *There is no order as to costs*

(SGD)

H/W ROSEMARY EDITH HAYFORD (MRS)

MAGISTRATE