

**IN THE DISTRICT COURT HELD AT ABURI, EASTERN REGION ON THE 22ND DAY
OF DECEMBER 2023 BEFORE HER WORSHIP RHODA K. DONKOR (MRS)**

SUIT O: A4/1/2023

LYDIA ANINWAA } PETITIONER

VRS

MARK AFARI AMOAKO } RESPONDENT

JUDGEMENT

PARTIES: PRESENT

RACHEL MCCARTHY ESQ. FOR PETITIONER – PRESENT

EUGENE ASIEDU OFFEI FOR THE RESPONDENT – PRESENT

The Petitioner filed this Petition against Respondent praying the court for:

(a) An order of the court for the dissolution of her ordinance marriage with the Respondent.

(b) Any other reliefs the court may grant her.

The Respondent Cross-Petitioned for the dissolution of the marriage and payment of alimony to Respondent.

The case for the Petitioner in both her pleadings and evidence is that, she got married to the Respondent under part III of the marriages **Act, 1884-1985 (CAP 127)** on 18th day of May 2019 at the Emmanuel Methodist church, Moseaso. The marriage did not produce any issues. That during the pendency of the marriage the parties never lived together as a couple, as the

Respondent lived in Akropong in the Eastern Region and she lived in Burma Camp, in Accra. According to Petitioner, somewhere in 2020, she had a surgery, and after the surgery, the Respondent refused to have any intimate relationship with her. That one occasion, the Respondent also beat her mercilessly and her brother who happened to witness the incident confronted him before he could open their door for her to escape. Soon after, she was sent on duty tour to Labanon on peacekeeping mission which the Respondent consented to. However, throughout her duty tour in Labanon, on her peacekeeping mission, the Respondent refused to call her and also refused to pick her calls and reply to her text messages. The Respondent has also failed and neglected to maintain the Petitioner as a wife. That all attempts at reconciliation has proved futile and the parties have not lived as a man and wife for the past four years. It is the Petitioner's further case that, the Respondent has behaved in such a way that she cannot reasonably be expected to live with the Respondent, as the Respondent caused her anxiety, distress and embarrassment and that the marriage has broken down beyond reconciliation.

The Respondent on his part in his answer to the Petition and evidence, supported the dissolution of the marriage contracted under the ordinance on 18th day of May 2019 at the Emmanuel Methodist church, Moseaso with the Petitioner. The Respondent in his case stated that he has not neglected his responsibilities as a husband and that he has discharged his responsibilities as a husband to the best of his abilities, satisfying the Petitioner's emotional and financial needs. He contended that this Petition has been brought by the Petitioner as a face saving exercise to avoid shame and the disgrace that she has brought to herself, the Respondent and his family. He further said, the Petitioner whilst in the course of their marriage was committing adultery at his blind side with her fellow Military man at Burma Camp. And because of that, the Petitioner blocked him and never called or answered his calls. That the Petitioner's adulterous life has resulted in Petitioner giving birth for the said man in June, 2023. That because the Petitioner has committed adultery and has given birth with another man, she has made up all these stories against him to paint him a bad man. As a

result of the adultery committed by the Petitioner, he finds it extremely intolerable to live together with her as a man and a wife and that the marriage be dissolved.

The Petitioner and the Respondent each testified and relied on their written witness statement filed before the court and the copy of their marriage certificate tendered by the Petitioner in court marked Exhibit 'A' as their evidence in chief to the court.

The Parties also filed terms of settlement for the dissolution of the ordinance marriage between them and for the payment of GHC10,000.00 by the Petitioner to the Respondent as legal expenses incurred by the Respondent.

At the close of the trial, the Counsel on both sides filed their written address as **Section 1(2) of the matrimonial causes Act, 1971 (Act 367)** provides the sole ground for the dissolution of marriage under part III of the marriages **Act, 1984 – 1985 (CAP 127)** to be that the marriage has broken down beyond reconciliation.

Section 2(1) of Act 367 provides the facts constituting the breakdown of marriage beyond reconciliation.

That the marriage between the parties has broken down beyond reconciliation, the Petitioner said, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with Respondent as per **section 2 (1)(b) of the Act** while Respondent under **section 2(1)(a)** of same Act says the Petitioner has committed adultery and he finds it intolerable to live with the Petitioner as husband and a wife.

It is settled law that, the Plaintiff or the Party who in his pleadings or writ raises issues essentially to the success of his assumes the onus of proof. See **FAIBI VRS. STATE HOTEL CORPORATION (1968), SLR 1471**.

The Respondent who has also Cross-Petitioned herein, ought to produce evidence of facts and circumstances from which this court can be satisfied that what he avers is true.

The summary of the Petitioner's case is that, right from the beginning of the marriage, the Respondent was unreasonable and cruel to her and that has caused her much trauma fear, distress and anxiety and she cannot reasonably be expected to live with him as husband and wife.

The Respondent has strongly denied the averment, yet the Petitioner has failed to produce evidence to prove her averment. **In Majolagbe Vrs. Larbi and others (1959) SLR 195**, it was held that when a party makes an averment which is capable of positive proof and which averment is denied by the opponent, the party cannot prove it by merely repeating the averment on oath. It is clear on the evidence that the Petitioner has failed to adduce evidence to substantiate her claim of unreasonable behavior on the part of the Respondent.

Section 43 of the matrimonial causes Act, 1971 (Act 367) defined adultery as

“the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse”.

In Adjetey Vrs. Adjetey (1973) GLR 216, it was stated that, adultery must be proved to the satisfaction of the court and must carry a high degree of probability because adultery is a serious offence.

In proof of this fact as the basis for the breakdown of the marriage, Counsel for Respondent put the following questions to the Petitioner

Q. Do you have a child

A. Yes

Q. Is the Respondent the Father of your child

A. No

Q. Do you have a child before getting married to the Respondent

A. No

In the case of Quatey Vrs. Quartey and Anor. (1972) 1 GLR6, confession may be used to established adultery.

From the responses of the Petitioner in the Cross Examination I am inclined to hold that the Petitioner has confessed to the adultery, which confession was voluntary and therefore, the discovery of the adultery by the Respondent has made life intolerable for the Respondent to live with the Petitioner as a wife.

In the light of the above analysis, the marriage between the Petitioner and Respondent has broken down beyond reconciliation

On the issue of alimony, Section 20(1) of Act 367 provides that “the court may order either Party to the marriage to pay to other party as sum of money or convey to the other party movable or immovable property as settlement of property right or in lieu therefore as part of financial provision, that the court thinks just and equitable.

Taking into account the facts of the case and circumstances of this case, the Respondent is entitled to alimony against the Petitioner for the adultery committed by the Petitioner.

On the whole of the evidence, the court finds that the marriage between the Parties has broken down beyond reconciliation. The marriage contracted between the Petitioner and Respondent under part III of the marriages Act, 1884-1985 (CAP 127) is hereby dissolved and the original certificate of the marriage with license No. 6375549/37/19 is concealed.

The terms of settlement filed by the Parties on 29th day of November 2023, awarding GHC10,000 to the Respondent against the Petitioner as legal expenses incurred by the Respondent is adopted as the consent Judgment of the court.

A lump sum of GHC3,000.00 by way of alimony is awarded to the Respondent against the Petitioner.

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H/W RHODA K. DONKOR (MRS)

DISTRICT MAGISTRATE

22ND DECEMBER, 2023