

IN THE DISTRICT COURT HELD AT OSINO ON THURSDAY THE 13TH JULY
2023 BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI, DISTRICT
MAGISTRATE

SUIT NO. A4/01/23

ESTHER TEYE PETITIONER
OF BEGORO

VS

ERNEST KWAKYE RESPONDENT
OF BEGORO

JUDGEMENT

Reasons for Dissolution

1. Respondent has refused to exercise his conjugal rights for over two years which led to total breakdown of the marriage beyond reconciliation
2. Parties have been living separately at Accra and Odumase-Begoro respectively
3. The petitioner has not been maintained by the respondent for two years now
4. That the customary marriage has been dissolved in May 2022 and parties have parted ways

Reliefs Sought

1. An order for dissolution of the ordinance marriage between the parties
2. Reasonable access to the two children be granted to the petitioner
3. Any order or such further orders the court may deem fit to make

Per section 1(1) and (2) of the Matrimonial Causes Act (Act 367)

Petition for Divorce:

(1) A petition for divorce may be presented to the court by either party to a marriage.

(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Per Section 2 of Act 367;

(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.

(2) On a petition for divorce it shall be the duty of the court to inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

(3) Notwithstanding that 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.

By court,

Upon reading the petition for divorce and upon listening to the submissions of the petitioner on one hand and upon listening to the submissions of the respondent on the other hand, I have no doubt that the marriage between petitioner and respondent has broken down beyond reconciliation.

From the evidences adduced by the parties, the marriage suffered a breakdown following respondent's suspicion of the petitioner's infidelity. As a result, petitioner moved to Accra to enable tempers to cool down. However, petitioner is currently pregnant for and cohabiting with another man that she met in Accra, even though the marriage between petitioner and respondent subsisted.

It is evident from the evidences adduced that respondent is willing to accept the petitioner back to their matrimonial home, but the petitioner has indicated that it is too late for that, considering her condition to wit, about seven months pregnant for another person.

Notwithstanding that, respondent has not objected to the petition and has not demanded any compensation from the petitioner.

Petitioner has not made any claims of alimony from the respondent

Respondent has agreed to the dissolution of the marriage between him, and petitioner.

Respondent has also agreed to grant reasonable access to petitioner to their two children.

Access:

1. On vacations and holidays if the duration is reasonable
2. When the petitioner is on visits to Begoro on weekends, the children shall spend that weekend with petitioner
3. The children shall visit the petitioner in Accra, if the duration of the holiday is reasonable. The cost of transportation and safety of the children to and fro shall be the responsibility of the petitioner
4. On every occasion that petitioner has access to the children, it shall not affect their education or course of attending school

The respondent shall continue to cater for the welfare and education of the children, including provision of food, clothing and shelter.

Petitioner has agreed to contribute reasonably to the welfare of the children.

Thus education:

- School fees - Respondent
- School uniforms and sandals or shoes - Respondent
- School Books - Petitioner
- Snacks - Petitioner @ GHC2.00 each

By consent of the petitioner, Custody of the two children shall remain in the respondent

Even though petitioner deposed that the customary marriage has been dissolved already, and now left with the ordinance to follow same fate, I find that absurd because once the marriage was converted to an ordinance marriage, the customary marriage ceased to exist. Therefore, it is erroneous to dissolve a customary marriage converted into ordinance marriage. At best, I can describe it as only showing respect to custom because there was a customary marriage initially, otherwise nobody can be held to dissolve a marriage customarily before doing same per ordinance.

Based on the above, and on the strength of the evidences adduced, I am convinced beyond reasonable doubt that the marriage between petitioner and respondent has broken down beyond reconciliation.

Accordingly, I grant the petition for dissolution of the ordinance marriage as prayed by the petitioner in accordance with order 32, r.1 (1) of C.I.59, 2009 and section 41(2) of the Matrimonial Causes Act, Act 367 of 1971.

-SGD-

**HIS WORSHIP
AYAGIBA SALIFU BUGRI,
MAGISTRATE**