

IN THE DISTRICT COURT HELD AT OSINO ON FRIDAY THE 26<sup>TH</sup> JANUARY  
2023 BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI

DISTRICT MAGISTRATE

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CASE NO. . A4/04/23

HAWA SEIDU  
OF ANYINAM

.....

PETITIONER

VS

KINGSLEY SEFA KWABI  
OF KWAHU PEPEASE

.....

DEFENDANT

**JUDGEMENT**

**Reliefs Sought:**

- A. An order for dissolution of ordinance marriage between petitioner and respondent
- B. Alimony of GHC50, 000 to petitioner and maintenance of the child, Aseda Owarewaa Kwabi
- C. Petitioner to maintain custody of the child
- D. Costs

**Brief Facts**

The petitioner against the respondent, seeking the reliefs aforementioned, initiated the instant petition for divorce.

Notwithstanding several adjournments for the parties to attempt an amicable settlement, considering the relatively young marriage, it was not successful.

Thus, the court conducted a hearing to ascertain and determine the issues that have necessitated the petition on its merits.

The petitioner is a nurse and respondent a physician assistant. Both have been married for 3 years at the time the instant petition was filed, and have a daughter of two years old, namely Aseda Owarewaa Kwabi.

Both petitioner and respondent cohabited for 10 months following the marriage but have been living separately in rented apartments for a considerable period now due to the location of their respective employments.

According to the petitioner, respondent packed out of their matrimonial home citing proximity to his work. Additionally, respondent has been misbehaving and gets angry at the least provocation and does not make time for petitioner and their daughter.

Respondent does not perform his conjugal obligations thereby denying petitioner of that right.

Petitioner says respondent entertains women that she suspects are respondent's girlfriends with whom he has amorous relationship to their matrimonial home.

Petitioner says she has complained about respondent's conduct and there have been several attempts to resolve the issues to no avail. Respondent denied that he has any issues in his marriage to petitioner when asked by petitioner father (father-in-law).

Petitioner is convinced that respondent is no longer interested in her and the marriage because he is no longer in love with her, hence seeks the reliefs aforementioned.

According to PW1, an uncle of the petitioner, he intervened when the couple started having issues and he was informed about it. Upon an invitation to respondent, which he attended with two of his aunties, respondent apologized and showed remorse for his actions and inactions that have caused pain to the respondent. However, 5 months later,

petitioner complained about the same issues and indicated her intent to leave the marriage. Some of the issues complainant complained about are; lack of communication, meeting other ladies in respondent's house when she visits unannounced, calls and confrontations from and with respondent's girlfriends respectively, failure to live as a couple for more than 10 months etc. Thus, the family allowed the petitioner to decide what to make of her marriage, and thereby support petitioner if she wants dissolution of her marriage to respondent.

Responding to the petition, respondent admitted that they married in 2020. The couple had a misunderstanding that was settled by PW1 somewhere in 2022 and they have lived happily as a couple after that settlement. Respondent says petitioner denied his children of a previous marriage from visiting and celebrating Christmas with them even though she was off duty.

On petitioner's birthday, he sent her romantic message, reassuring her of his love, but was unhappy with petitioner's response. Respondent says he expected petitioner to apologize but to no avail. Since 05-01-23 petitioner has failed to cook, wash, or called to check on him even though he remitted her consistently. Petitioner also stopped wearing her wedding ring.

Respondent says his uncle later informed him that petitioner had complained to him about women coming to visit and leaving their toothbrushes behind. On 05-04-2023, petitioner arrived in a taxicab, parked her belongings into it, and left. Respondent says he arranged with his family members to meet petitioner's family, only to be served a writ of summons. Respondent says he has no idea why petitioner has left her matrimonial home and stopped wearing her wedding ring.

DW1 is respondent's father. According to DW1, he received a call from his head of family; one Opanin Twum that petitioner had lodged a complaint about respondent.

Opanin Twum told him that he had tried to call respondent to see how they could resolve the misunderstanding to no avail. DW1 said he arranged to meet the couple for an amicable resolution since it was a trivial matter as far as he was concerned but could not avail himself.

### **Issues for determination**

Whether or not the marriage between petitioner and respondent has broken down beyond reconciliation

William E. Offei describes customary marriage as a union between a man's family and a woman's family. This is to the extent that even though the union is between a man and a woman who have agreed to live together as husband and wife, the consent of the respective families is essential for a couple to get married under customary law. It is also a contract between the man and the woman. Thus, a breach of promise to marry is actionable depending on circumstances that he elaborates in this book.

Under common law marriage however, Halsbury, defines marriage as a contract between a man and a woman by which they mutually promise to marry one another, the promise of each being the consideration for the promise of the other. (Family Law in Ghana, William Offei, Fifth Edition)

In the instant case, the parties married in 2020 per the evidences adduced. Thus, the marriage was in its third year at the time the instant petition was filed. Section 9(1) of Act 367 states that; a petition for dissolution of marriage may not be presented to a court before the expiry or within two years of the marriage, except under exceptional circumstances stated at section 9(2)(5) of that Act.

In accordance with section 8(1) and (2) of Act 367 and in a bid to promote reconciliation, the instant court advised the parties to attempt an amicable settlement considering the relatively short period that they have been married. In good faith, the court's adjournments were intended to promote reconciliation, but to no avail. It is also worth to add that during the hearing the window of opportunity for reconciliation was open to the parties for an amicable resolution. The object of the court was that, with time tempers will calm down and the parties will continue to live as a married couple. All they were required to do was to announce to the court that the petition has been withdrawn because they have resolved their differences. The respective witnesses who testified during hearing informed the court of all the attempts at resolving the misunderstanding and reconcile the parties to no avail. Even though respondent was willing for a resolution to sustain the marriage, petitioner was not interested. When granted the opportunity, none initiates a discussion.

As one of the grounds, that the petitioner wants the marriage dissolved is the adulterous behavior of respondent. The reasons cited by petitioner even though substantial, are not conclusive of adultery by respondent. Indeed, the calls from respondent's girlfriends, meeting other women in respondent's house, finding different and more than one toothbrush in respondent's house, and assorted foods in respondent's house are substantial grounds for one to suspect foul play. However, the fact that respondent has been adulterous must be proved as a matter of fact. Respondent must be seen in the act of sleeping with another woman to prove that allegation. To borrow the holding in a criminal case, a multitude of suspicion does not constitute proof. However, in a civil case such as the instant one where the decision of the court is based on the preponderance of the balance of probabilities, the weight of the evidence must be so strong that the court can only infer one conclusion.

Additionally, petitioner has stated the unreasonable behavior of respondent of moving out of their matrimonial home to live close to his work at a different jurisdiction, denying her conjugal rights and virtually deserted her. Petitioner says she has not lived with respondent as a married couple for ten months even though respondent denies this allegation. Petitioner also alleges that even though respondent remits her it is not consistent and inadequate. From the evidences adduced before this court, it is evident that the parties had not lived together as a couple from 05-01-23 to 05-04-23. Indeed, the period is less than six months of the respondent's unreasonable behavior and desertion and not in accordance with section 4 and 5 of Act 367 for the court to conclude that respondent has deserted the petitioner.

Even though petitioner informed the court that they have not lived together as a couple for ten months she has failed to prove that with any evidence of dates. Before petitioner moved her belongings from respondent's house.

Desertion is the separation of one spouse from the other with the intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse, but the physical act of departure by one spouse does not necessarily make that spouse the deserting party.

"Desertion is not the withdrawal from a place but from the state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state. The state of things may be termed for short 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion. It is the quality of permanence, which differentiates desertion from willful separation without reasonable excuse. There must be a forsaking and abandonment of the other spouse, a total repudiation of the

obligation of marriage; a willful breaking of conjugal rights". (Page 210, Family Law in Ghana- William E. Offei, Fifth Edition)

There could also be constructive desertion, where one spouse compels the other to leave the matrimonial home by his conduct.

### **Section 5—Desertion of Respondent.**

(1) For the purposes of section 2 (1) (c), in determining whether the period for which the respondent has deserted petitioner has been continuous, the court shall disregard any period or periods not exceeding six months in the aggregate during which the parties resumed living as man and wife.

(2) For the purposes of section 2 (1) (c) the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

### **Section 7—Failure of Parties to Live as Man and Wife.**

For the purposes of section 2 (1) (d) and (e), in determining whether the period for which the parties to a marriage have not lived as man and wife has been continuous, the court shall disregard any period or periods not exceeding six months in the aggregate during which the parties resumed living as man and wife.

The above notwithstanding, section 9(1) and (2) states; —Restriction on Petitions Within Two Years of Marriage.

(1) Subject to subsection (2), no petition for divorce shall be presented to the court within two years from the date of the marriage.

(2) The court may, on application, allow the presentation of a petition for divorce within two years from the date of the marriage on the ground of substantial hardship suffered by the petitioner or depravity on the part of the respondent.

In the instant case respondent has not denied that petitioner has suffered a BP, which she attributes to the marital issues between the couple. Indeed, respondent has admitted that he visited petitioner a couple of times at the hospital to assure her of his commitment to their marriage and to resolve their issues.

It is evident that that continuous referral of petitioner to her BP meant that it caused her substantial hardship hence her persistence to prevent a recurrence of the trauma suffered at the time. Additionally, from the unbaiting behavior of the respondent, the likelihood of a recurrence is imminent if care is not taken. It is apparent that petitioner's emotions have taken a better side of her, which affects her health.

#### **Section 6—Consent of Respondent.**

(1) For the purposes of section 2 (1) (d) the court must be satisfied that a consent to divorce has been given by the respondent only after the respondent has been given such information as will enable him to understand the consequences of his consent.

(2) Where the only fact specified in section 2 upon which the petitioner relies in support of his petition is that mentioned in section 2 (1) (d), the court may, on application by the respondent at any time before the decree is made, dismiss the proceedings if it is satisfied that the petitioner misled the respondent, intentionally or unintentionally, about any matter which the respondent took into account in deciding to consent to the grant of a decree



There is no evidence that the instant petition has been presented by any form of misrepresentation, fraud or malice. To the extent that more hardship will be caused to the petitioner in terms of her health and depravity of her conjugal rights due to respondent's continuous relationship with different ladies, it is the opinion of this court that enough grounds have been established for the court to conclude that the marriage has broken down beyond reconciliation. Moreover, respondent has granted consent to the instant petition upon failure of the court to reconcile him and petitioner.

The court is convinced that the marriage between petitioner and respondent has broken down beyond reconciliation and none of the parties is enthused to attempt reconciliation.

Accordingly, the instant marriage is dissolved in accordance with section 41(1) of Act 367 and order 32, R.1 (1) of C.I.59 of 2009...

As admitted by the respondent, respondent shall be responsible for the child of the marriage in the following:

- a) Medical bills
- b) Education/School fees
- c) Clothing
- d) Shelter
- e) All expenses in respect of the child

Petitioner shall maintain the custody of the child, whilst respondent shall have access to the child on holidays and vacations, whichever is convenient for the respondent or both. Respondent may visit the child at her school with prior notice to the petitioner. Sharing of property acquired together and during the subsistence of the marriage.

**By Court:** Maintenance to be maintained at GH¢400 for one year to wit end of 2024, and varied thereof. A plot of land at Nkawkaw to be shared equally.

**By Court:** Respondent has promised to settle Petitioner at the appropriate time in lieu of alimony.

**By Court:** Alimony of GH¢10,000 ordered for Petitioner.

**HIS WORSHIP  
AYAGIBA SALIFU BUGRI,  
DISTRICT MAGISTRATE**