

IN THE DISTRICT COURT HELD AT SOMANYA ON THURSDAY THE 16th DAY  
OF

NOVEMBER 2023 BEFOIRE HIS WORSHIP MICHAEL DEREK OCLOO

SUIT NO. A4/02/2022

JOYCE AGBEWOLEY

PETITIONER

VRS

ALBERT KISSI

RESPONDENT

PARTIES

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PRESENT

### JUDGEMENT

The petitioner commenced the action for an order for the dissolution of the marriage between her and the Respondent and cancellation of the marriage certificate No. CMC/04/08 and License No. DMC/096/08.

The Petitioner is a teacher and the Respondent is an Electronic technician. The case of the Petitioner is that they had a customary marriage which was converted to Ordinance marriage at the Presbyterian Church of Ghana, Akuse. She added that there is no child in the marriage. Petitioner further stated that they jointly put up a three-bedroom self-contained apartment at Akuse, bought two (2) acres of land at Natriku-Akuse and a taxi as well as a container store and a fish farm at Marine, Akosombo. She added that she took loans from the bank and Teachers association to support the Respondent to undertake the said initiatives of which she has receipts and documents to prove same. She added that they have been married for eleven years and during which she has been the major financier in taking care of the matrimonial home as the Respondent in most cases refuse to discharge his financial responsibilities.

According to the Petitioner, the Respondent has engaged in extra-marital affairs to the extent that on two (2) occasions she met the Respondent with one of his

numerous girl-friends by name Ruth in the matrimonial home and she reported same to DOVVSU Akuse who invited the respondent and advised him to desist from such act. She added that the said Ruth insults her (Petitioner) anytime she meets her in town. She further stated that the respondent became sexually weak which made their sex life unsatisfactory and a medical examination revealed that the respondent was suffering from low sperm count but he refused to take the medication prescribed by the doctor. She stated that at a point in time the Respondent stopped sleeping in the matrimonial home with several excuses which affected her emotionally. Furthermore she left the matrimonial home due to the respondent's Acts of infidelity, maltreatment and financial irresponsibility. She further stated that several meetings have been held between the two (2) of them, family elders of both sides, Pastors especially Pastor James Agbenorhe with the view to resolve the matter but to no avail.

In the Respondent's witness statement he stated that he and his brother jointly bought the land at Natriku and he started building on same before he Started a concubinege relation with the Petitioner who was by then a student at Ada Teacher training College. He added that he acquired the container and was plying his trade as an electronic technician in same before he started the concubine relation with the Petitioner after which they got married. He further stated that he sponsored the petitioner to complete the Ada Teacher Training College before marrying her. He then put up the building to about 60% complete and they moved into same as married couples. According to the respondent, he sponsored the petitioner to obtain Diploma in Business Management at the University of Cape Coast through the Distant Learning Programme at Koforidua and also a Diploma and 1<sup>st</sup> Degree in Education at the Winneba University of Education and after obtaining such qualification the Petitioner started to show gross disrespect to the Respondent including denying him sex and leaving a note at home for the respondent telling him that she was travelling for about 2 to 3 days especially during weekends. It is the case of the Respondent that he used the money he earned from his work to foot the bills in the matrimonial home, opened a

daily susu account for the Petitioner to cater for her personal needs and even sponsored the Petitioner's distance education courses to upgrade herself in her teaching career. He added that he bought a taxi which broke down at a time and the Petitioner gave him GHC2,000.00 to fix but refunded same to the Petitioner when an issue came up and he later sold the taxi. He denied owning any fish farm or land anywhere.

In conclusion he stated that the Petitioner has not been stable in the marital home and has at all these times denied him sex until 9/8/2020 when she packed her belongings and vacated the matrimonial home at a time that he (Respondent) was sick and had gone to his mother's house.

In the Evidence at DW1 Vida Norviewu, DW2 Peter Nukpetsi and DW3 Isaac Teye Adodoadgi they all confirmed that the Petitioner has vacated the matrimonial home.

The legal issues for determination by the court are:

1. Whether or not the marriage has broken down beyond reconciliation.
2. Whether or not the properties mentioned were jointly acquired.

Section 2 of the Matrimonial Causes Act 1971 (Act 367) provides that for the purpose of showing that a marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts:

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

(c) 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.

(f) That the parties to the marriage have after diligent effort, been unable to reconcile their differences.

The Petitioner stated that the Respondent was having amorous relations with other women but the respondent denied same. During cross-examination of the Petitioner by the respondent the following ensued:

Q: Can you tell the court the name of the women you claim I was having extra marital affairs with.

A: Yes it started with Phylis then Ruth Bonney and Bernice Awuku.

When the Petitioner mentioned the names of the ladies with whom she claimed the respondent was having amorous relations with, the Respondent did not do further cross examination to ascertain the veracity or otherwise of the assertion. In the case of QUAGRAINE V ADAMS (1981) GLR 599 C/A. It was held that:

“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:

By his failure to cross examining on the said averment the Respondent will be deemed to have acknowledged same.

Also during cross examination of the respondent by the Petitioner the following transpired.

Q: I am putting it to you that you have low sperm count and sexual weakness challenge and you kept same from me.

A: I did not hide anything from you.

Q: I am putting it to you that Dr. Joannah referred you to a low sperm count specialist at Koforidua Government hospital for examination and treatment.

A: That is true.

It is clear from the above that the respondent had sexual weakness and low sperm count challenge and was referred to a specialist for treatment. It is also clear that the respondent kept this challenge from the Petitioner. By this conduct, the Petitioner cannot reasonably be expected to live with the Respondent.

Also it is evident that family elders of both parties, Pastors and friends have attempted settlement without success as such the Petitioner has vacated the matrimonial home. The parties are therefore leaving separately. It is therefore appropriate to state that the Petitioner and the respondent have been unable to reconcile their differences after diligent effort.

The Petitioner vacated the matrimonial home on 9/8/2020 which means that both parties have not lived as man and wife for a continuous period of at least 2 years. The relocation of the Petitioner can be construed as desertion.

Also the respondent has consented to the dissolution of the marriage per his cross petition..

It is my finding after considering all the evidence adduced that the marriage has broken down beyond reconciliation.

I now turn my attention to the properties in contention. The Petitioner stated that they jointly acquired two (2) acres of land at Natriku-Akuse but it came to light that it was rather two (2) plots of land. The respondent contended that he bought the said land and started putting up the 3 – bedroom apartment before he married the Petitioner. The Petitioner maintains that they were married at the time the land was purchased and added that she took a loan from which she contributed GHC1,500.00 towards

the purchase of the land and contributed some amount to assist the Respondent to buy building materials. The parties were in agreement that due to litigation about the ownership of the said two (2) plots of land same was resold and the respondent solely paid the purchase price.

Also it was established that the said 3-bedroom building is uncompleted and the parties fixed one room and stayed in same till the petitioner vacated same.

In terms of the container store the respondent stated that he prepared same and was plying his trade in same before he married the petitioner but the petitioner said she supported the Respondent in moulding same. She however stated that she had no witnesses and receipts to prove same.

Furthermore it was established that the Respondent bought the taxi with an assistance of GHC2,000.00 from the Petitioner which was later refunded to the petitioner. Also the respondent has sold the taxi.

On the issue of the fish farm the respondent contended that he started the said project in partnership with two (2) of his friends before marrying the petitioner. The petitioner maintained that she gave an amount of money to the respondent to buy feed for the fishes but said she has no witnesses to prove same.

It is clear from the foregoing that the period and contributions for the acquisition of the properties are in contention. The respondent claims they were acquired before the marriage but the Petitioner holds a contrary view. This issue of uncertainty brings to the fore a challenge relating to principles espoused in decided cases regarding the distribution of property which were specifically based on jointly acquired properties during the pendency of a well defined and recognised marriage and not on concubinage relations. These principles span from the cases of *Quartey v Martey* (11959) GLR 377, *Yeboah v Yeboah* (1974) 2 GLR 114, *Clerk v Clerk* (1981) GLR 583 through *Mensah v Mensah* (1988-93) SC GLR 350, *Boafo v Boafo* (2005-2006) SC GLR

705, Mensah v Mensah (2012) 1 SC GLR 391 to Arthur (No.1) v Arthur (No.1) (2013-2014) I SC GLR 543, Arthur (No. 2) v Arthur (No.2) (2013-2014) SC GLR 569.

In the instant case the parties were not emphatic as to whether or not the properties in issue were jointly acquired during the pendency of the marriage.

It is also important to consider the fact that the petitioner blamed the respondent for the childless marriage of eleven (11) years on account of low sperm count but the petitioner was unable to provide medical evidence to prove that she passed the fertility test.

In conclusion and having established that the marriage has broken down beyond reconciliation I hereby declare the ordinance marriage between Joyce Agbewoley herein referred to as the Petitioner and Albert Kissi herein referred to as the Respondent duly dissolved and order as follows:

1. That the Respondent shall pay alimony of GHC5,000.00 to the Petitioner.
2. That the Respondent shall pay GHC5,000.00 to the Petitioner in respect of one room of the uncompleted 3-bedroom building

MICHAREL DEREK OCLOOD

DISTRICT MAGISTRATE

16/11/2023