

IN THE DISTRICT COURT HELD AT TESHIE NUNGUA
SITTING BEFORE HER WORSHIP PRISCILLA SOPHIA YEBOAH
ON THE 12TH DAY OF MAY 2023

SUIT NO. GTNDC/A4/68/22

BENEDICTA NYARKO KYEREMEH
OF AMRAHIA – MADINA, ACCRA

}

PETITIONER

VRS

THEOPHILUS OKINE
OF 37 MILITARY
ACCRA.

}

RESPONDENT

PARTIES

PRESENT

COUNSEL FOR PETITIONER CLETUS AKONAB

PRESENT

JUDGMENT

On the 8th of June 2022, the wife petitioner herein caused her Lawyer to issue a petition against the respondent for dissolution of marriage, on grounds that the marriage has broken down beyond reconciliation. Respondent denies responsibility for the breakdown of the marriage.

BACKGROUND

The parties solemnized their marriage under Part Three of the Marriages Act on the 6th day of April 2014 at Donewell Methodist Church Santa Maria in Accra. After the marriage, the parties. Cohabited at Santa Maria the very location where they were married. Petitioner is a Nurse while the respondents as a Military personnel and both are Ghanaians. The marriage is survived by three children, namely Giovanni Jayden Okine (7yrs) Jedidiah Griffin Okine (5yrs) and Jerahmed Wilberforce Okine. There have been no proceedings in this Court or any other Court.

The petitioner grounds this application on grounds of unreasonable behavior on the part of the respondents.

Amongst the incidents cited by petitioner as unreasonable behavior on the part of the respondent includes the following:

- (a) The respondent has been physically abusive.**
- (b) The respondent continuously threatens to kill the petitioner and says that to the hearing of others.**
- (c) That the respondent's conduct has created so much stress and anxiety and as a result, the parties. are living separate and apart because the Petitioner Is afraid of his life Since the respondents. Keeps threatening Petitioner's life.**

- (d) It is also the case of the petitioner that the respondents sometimes forcefully have sex against Petitioner's will after which the petitioner finds it difficult to walk and any time the petitioner complains about it, the respondents resort to beating.
- (e) Petitioner contends further that the respondents has a consistent habit of not sleeping at home coupled with the fact that the respondent has refused to maintain the children since 2021.
- (f) Petitioner says she has endured a lot of abuse which has adversely affected her Health, emotions and mental wellbeing.

On account of the above, Petitioner in addition to seeking divorce also seeks the reliefs endorsed on the petition which are as follows:

- i) The custody of the children to be given to the petitioner with limited access to the respondent.
- ii) Respondent be made to pay 2000 as monthly maintenance and also be made to be responsible for the children school fees.
- iii) Respondents be made to pay alimony ghc10,000 to the petitioner and any orders that this Court deems fit in favour of the Petitioner.

RESPONDENT

On his part, the respondent denies every averment by the petitioner. He insists that petitioner is a victim of gossip and brainwashing by one lady friend Called Florence who has consistently been informing petitioner that the respondent want to kill her.

Respondents further denies being responsible for the petitioners mental and emotional disorder.

According to the respondents, their marital issues came up before his family for resolution but the petitioner insisted on dissolution of the marriage and presented her customary head drinks without the Bible and the ring and alleged she had sold them.

In the view of the respondent the petitioner should rather be blamed of misconduct as she has on numerous occasion prevented the respondent from coming to the matrimonial home by locking the main entrance.

Respondent contends that anytime he visits the house it is in such a mess such that he deserted the matrimonial home by picking only his bag and uniform and left all other belongings in the house.

Respondent further avers that by an agreement between the parties' respondent took a loan to offset the petitioners loan at the time and this has attracted a deduction of

ghc1789. 79 every month in view of that he cannot afford to pay gh2000 as he is paying for the children's school fees.

Finally, respondent says it is not his intention to destroy their marriage but rather the petitioner should be held responsible.

In order to determine the issues regarding maintenance and shared responsibilities this Court ordered the parties to file financial disclosures and same was done. Petitioners disclosures are marked as Exhibits "A" Series and that of the respondent marked as Exhibits "1-5" for the Courts appreciation and determination.

ISSUES

The issues for resolution are as follows:

- Whether the marriage is broken down beyond reconciliation and if so on what grounds
- Who takes up what responsibilities and why
- Whether petitioner is entitled to custody and alimony of ghc10,000.

In Ghana the law on divorce is controlled by the Matrimonial Causes Act of Ghana, Act 367, 1971. Some of the specific provisions regarding divorce are as follows

Section 1(2) "the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation.

Notwithstanding the sole ground aforesaid, the petitioner is also obliged to comply with section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that section. These grounds include:

"2 (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 the adultery the petitioner finds it intolerable to live with the respondent;*
- b. that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;*
- c. that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;*
- d. that the parties to the marriage have not lived as husband 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 the 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 despite the refusal;

- e. that the parties to the marriage have not lived as husband 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."*

The petitioner in this case has set out to prove s. 2 (1) (b) and (f).

Fact 2 (1) (b) states " that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent.

In the addition, by s. (2) (1) (f) the Petitioner must further demonstrate to the court that the parties are unable to reconcile their differences. Also section 2(3) enjoins the court that although 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.

Also on issues of proof, **Section 11of the evidence Act (NRCD 323)** provides thus:

"For the purposes of this Decree, the burden of producing evidence means the obligation of a party to **introduce sufficient evidence** to avoid a ruling against him on the issue. (emphasis mine) *In Dzaisu& others v, Ghana Breweries Ltd [2007-*

2008]SCGLR 539. *In that case, it was argued that since the plaintiffs averred that the defendant employed two streams of workers categorized as regular or permanent workers both of whom did the same jobs and performed the same duties as that of those categorized as regular as permanent staff. The plaintiffs merely asserted that averment as made in their pleadings without adducing evidence in support thereof. The Supreme Court held that the plaintiffs failed under NRCD323, S.14 to discharge the onus of proof on them. Also in the case of in **Klah vrs Phoenix Insurance Co. Ltd. [2012] 2 SCGLR 1139,** the court repeated what amounts to proof in law as stated in **Majolagbe vrs Larbi [1959] GLR 190** that: “Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true”. Also, by the provision of section **11(1) of NRCD 323,** the party who will lose the case or claim in the absence of such evidence bears the burden of proof or of producing evidence.*

“Since the allegations of fact pleaded in support of plaintiff’s reliefs were all stoutly denied, the onus was squarely on the plaintiff. This is so in every civil case where the averments are denied.

*This position has been settled by law and in numerous judicial decisions such as . In **BANK OF WEST AFRICA LTD V ACKON [1963] 1GLR176SC, ABABIO V, AKANSI [1994-95] GBR PART11 74 and DUAH V. YORKWA [1993-94]1GLR 217CA.** where the Court held*

“Indeed, the plaintiff apart from pleading his root of title, mode of acquisition and overt acts of membership, if any, must prove that he is entitled to declaration sought”.

Respondent indicates there was an attempt by the families of the Respondent’s but same have proved unsuccessful as Petitioner insisted on dissolution of their marriage.

Respondent again admitted in her Witness Statement that the petitioner’s conduct and her poor home management forced her to desert the matrimonial home.

Petitioner on the other hand relies on fact 2 (b)and (f).

a. Fact 2 (b) *that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;*

g. Fact 2 (f) *that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.”* Respondent denies the allegation of unreasonable behavior grounded on verbal and physical assault.

The rule of Evidence therefore imposes a duty on the Petitioner to prove the averments.

In my opinion, apart from the mere averments made in the witness box, Petitioner failed to prove his case of unreasonable behavior more especially when the Respondent denies same. There is no cogent evidence to buttress Petitioner’s claim of verbal, sexual and physical Assault against her. For instance, who witness the verbal and physical assault, was there a formal complaint to a third party or even the police?

This Court cannot put any weight on Petitioner's claim as it establishes no credible evidence. I therefore dismiss petitioner's claim of unreasonable behavior for want of credible evidence.

2. DISERTION

Respondent alleged that he deserted the Matrimonial home because anytime he came home the house was in a mess therefore he was compelled to take some of his belongings and went to live at the office which his boss is aware.

Desertion is when one spouse separates from the other with an 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. However, the physical act of departure by one spouse does not necessarily make that spouse the deserting party.' **Rayden divorce (10th ed).p.194. There must be a forsaking and abandonment of the other spouse: a total repudiation of the obligation of a marriage and willful breaking off of conjugal relations.**

As grounds for divorce the desertion must exist according to s.(2) (1) (c) of Act 367, 1971 for a period of two years immediately preceding the presentation of the petition. In the instant case, the Respondent, even though abandoned his Matrimonial home I am not convinced that he deserted the matrimonial home with the intention to cause to be ceased all matrimonial and Conjugal relationship. This is because, he left his belongings

in his wardrobe and was residing at the office which cannot be permanent and this information was not challenged by the petitioner.

In my opinion the two (2) years continuous abandonment which is a condition precedent has not been met.

I shall therefore conclude that this marriage cannot be dissolved on account of desertion.

IRRECONCILIABLE DIFFERENCES

There is clear evidence of irreconcilable difference. This is manifested in the failed attempt by the families of the parties to settle the issues confronting the parties. The parties despite attempt by the third parties to ensure reconciliation failed to let the marriage work as each rather resorted to live separate and apart. Respondent admits that the marriage is riddled with a lot of misunderstandings and he also agrees that the marriage should be dissolved.

The parties are at ad-idem that they have failed to resolve their issues and want divorce.

Since the parties upon diligent efforts have failed to reconcile their differences, I hold that this marriage has broken down beyond reconciliation on account of fact 2 (1) (f).

I therefore shall cancel the marriage certificate and grant the application for dissolution of the marriage. The marriage is hereby dissolved on grounds of irreconcilable difference.

MAINTAINANCE

As stated above in view of the contention of roles the parties were ordered to file financial disclosures.

The petitioner filed her three consecutive month pay slip from December to February and same was admitted as exhibit " A". Respondent on his part filed the following:

- i) His bank statement showing the loan deduction as Exhibit 1
- ii) Tenancy agreement for July 2016, March 2019, March 2021
- iii) Loan agreement with the deductions of ghc1,7
- iv) Receipts of the children's school fees and feeding fees.

From the exhibits admitted in support of the evidence adduced the conclusions are as follows:

The respondent is already in charge of the children's fees and other educational expenses as well as accommodation. Having realize that the respondent already performs the above roles I shall not disturb the current

arrangement in place as in my opinion it is a fair arrangement. To set the records straight, respondent is forthwith, made responsible for the following:

- a) Payment of all educational expenses of the children
- b) Medical expenses
- c) Payment for the rent renewal of the family when they fall due till the children completes tertiary education or until the petitioner re-marries whichever comes first.
- d) Petitioner is forbidden from co-sharing the apartment with any partner be it male or female.
- e) Petitioner is made responsible for the children's feeding outside schooling hours, clothing and all incidental necessities of life.

CUSTODY

Respondent did not challenge custody of the children as requested by the petitioner. In view of this custody is granted to petitioner with reasonable access to the respondent.

ALIMONY

Petitioner as part of her reliefs requested ghc10,000 as financial settlements. Petitioner failed to substantiate her claim or show cause why she deserves the amount. I have reconciled the fact that since 2021 the respondent has not remitted the family, I shall

grant the financial settlement of ghc10,000 to the petitioner as it is a fair demand and in the interest of justice and good conscience.

Respondent is therefore ordered to pay ghc10,000 as financial settlement to the petitioner.

Each party shall bear his own cost.

(SGD)
H/W PRISCILLA SOPHIA YEBOAH
DISTRICT MAGISTRATE