

**IN THE DISTRICT COURT AT ASOFAN SITTING BEFORE H/W NANCY TEIKO
SEARYOH (MRS.) ON THURSDAY THE 18TH DAY OF MAY, 2023**

SUIT NO. A4/02/23

GEORGINA ADWOA AGYEMANG

VRS:

STEPHEN KWASI OFFEI

JUDGMENT

Parties in this Suit were married under the Ordinance at the Taifa Presbyterian Church of Ghana in the Ga North Municipal Area, Greater Accra Region of the Republic of Ghana.

After the celebration Parties cohabited at Ofankor Barrier. The Petitioner is a trader whilst the Respondent is unemployed. There is no issue of this marriage. There has been no previous proceedings in respect of this marriage.

The Petitioner filed this Petition on the 7th February, 2023 praying for the following reliefs;

- a) A dissolution of the Marriage celebrated at Taifa Presbyterian Church of Ghana.
- b) A refund of an amount of Five Thousand Ghana Cedis (GH¢5,000.00) plus One thousand Two Hundred Cedis (GH¢1,200.00) which is the money used for the foundation with interest at a prevailing bank rate from when the loan was taken from the bank till date.
- c) An alimony deemed fit by the Honourable Court.
- d) Cost.
- e) Any other relief(s) deemed fit by the Honourable Court.

The grounds for divorce, per the petition was basically unreasonable behaviours on the part of the Respondent towards the Petitioner.

Case of Petitioner.

It is the case of Petitioner that the marriage had broken down beyond reconciliation because the Respondent was being unreasonable by not supporting the home financially and all efforts to get him to support the home had proven futile. That the refusal of the Respondent to provide maintenance had resulted in verbal abuse and misunderstanding on several occasions. That she had become the husband of the marriage to the extent that she paid the Respondent's medical bills and gave him pocket money daily.

It is her case that the Respondent took steps to dissolve their traditional marriage and asked that they go their separate ways when she refused to give him pocket money for three days.

According to the Petitioner she lost a land she had bought with the foundation she built on it because the loan she took from the bank to pay for the land was used by the Respondent to solve his personal issue and refused to pay back the money. As a result of this she fell ill and her daughter had to drop out of school to help work and pay for the loan and the Respondent till date has refused to pay back the GH¢5,000.00 he used.

Case of Respondent

In his answer to the petition filed on the 13th February, 2023. The Respondent averred that he used to work until armed robbers robbed him. He stated that he gave out money for feeding daily only that the Petitioner did not prepare food at home since both Parties ate outside their home and only prepared food once or twice in a month. He further averred that he had been maintaining the home thus he provided basic needs like soap, water and electricity and that in 2018 his business collapsed since armed robbers robbed him of his money and other gadgets used in operating his business. He admitted the fact that because of that it was the Petitioner who fed him on a daily basis. He stated that all misunderstanding and insults emanate from the Petitioner but not from him. He further stated that he did not go to the Petitioner's Family house to divorce her but rather went to report her misconduct to her Head of Family.

He stated that they lost their land because the surveyor sold it without their knowledge and consent and that they realized the sale later on but then he refunded the GH¢5,000 to the Petitioner. He also denied Petitioner's claim of losing her foundation because of him and said it was sand which was tipped on the land but after the sale, the surveyor paid the cost incurred for tipping the sand on the land to the Petitioner.

He said the only reason the land was sold was that at the time of the surveyor's request for money, the cash was not ready to be given to the surveyor.

Respondent averred that he had been made a woman cleaning the bath house, washing the clothing and doing all the menial work at home. He denied owing the Respondent any money and said he handed over his business, cosmetic shop to the Petitioner but she never rendered account and prayed the Court to dissolve the marriage if that is what will satisfy the Petitioner but the Petitioner should be made to pay alimony to him.

Jurisdiction

The Court ensured that it had Jurisdiction to entertain this matter before allowing Parties to lead evidence. Section 31 and 32 of the Matrimonial Causes Act, 1971 (Act 367) stipulates that;

31. "The Court shall have Jurisdiction in any proceedings under this Act where either party to the marriage;

- a) Is a citizen of Ghana; or
- b) Is domiciled in Ghana; or
- c) Has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings.

32. "For the sole purpose of determining Jurisdiction under this Act, the domicile of a married woman shall be determined as if the woman was above the age of twenty-one (21) and not married".

In the case of Hapee V Hapee and Another [1974] 2 GLR 186 – 192. Edusei J. held that;

“The Court shall have Jurisdiction in any proceedings under this Act whether either party to the marriage;

- a) Is a citizen of Ghana; or
- b) Is domicile in Ghana; or
- c) Has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings”.

Procedure for Trial

Parties in this Suit were both not represented by Legal Counsel. At the close of pleadings, the Court ordered Parties to file their Witness Statements. Parties complied with the orders of the Court and went through full hearing. Parties testified by themselves and none of them called any witness in support of their case or to buttress their responses.

In accordance of **Section 2(2) and 2(3) of the Matrimonial Causes Act 1971 (Act 367)**

“Upon a petition for divorce, the Court ought to inquire so far as reasonable into the facts alleged by Petitioner and Respondent to satisfy itself on all the evidence that the marriage between the Petitioner and Respondent has indeed broken down beyond reconciliation.

Thus in the case of **“*Mariam Partey V William Partey [2014] 71 GMJ 98 C.A at pages 119-120*** Kusi Appaih J.A stated thus;

“The only procedure prescribed by law for the dissolution of marriages by the Court is provided by **Section 2(2) and (3) of Act 367**, that the Court must inquire into and be

satisfied on all the evidence led before it that indeed the marriage has broken down beyond reconciliation”.

Issues for Determination.

At the end of the hearing, the issues to be determined to bring finality to the Suit are as follows;

- 1) Whether or not the marriage between Parties has broken down beyond reconciliation.
- 2) Whether or not Petitioner is entitled to her relief of Alimony.
- 3) Whether or not the Respondent should be made to refund a loan amount of GH¢5,000 plus GH¢1,200 (money used for foundation) with interest at the prevailing bank rate from the date of acquisition of the loan till the date of final payment.

Burden of Proof

The burden of producing evidence in a Civil Suit by both sides as well as the burden of Persuasion is one to be determined on the preponderance of probabilities. **Section 12 of the Evidence Act 1975 (NRCD 323)** stipulates as follows;

Proof by a Preponderance of Probabilities.

- 1) Except as otherwise provided by law the burden of Persuasion requires Proof by a Preponderance of the Probabilities.
- 2) Preponderance of the Probabilities “means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than it’s not existence.

The Defendant carries a burden of providing the facts alleged in his defence to the same degree as the burden the Plaintiff carries in proving her claim against the Defendant.

Section 10 and 11 (1) and (4) of the Evidence Act 1975 (NRCD 323) provides;

Section 10

“10: Burden of Persuasion Defined:

1. For the purpose of this Act, the burden of Persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or Court.
2. The burden of Persuasion may require a party
 - a) To raise a reasonable doubt concerning the existence or non-existence of a fact or
 - b) To establish the existence or non-existence of a fact by Preponderance of Probabilities or a Proof beyond a reasonable doubt.

“11: Burden of Producing Evidence defined

1. “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.
2. In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence of reasonable mind could conclude that the existence of the fact was more probable than its non-existence”

The learned Jurist **Maxwell Opoku Agyemang** states at **page 105** of his book; **Law of Evidence in Ghana** thus:

“The general rule is that all facts in issue or relevant to the issue in a given case must be proved. In other words he who avers must prove. This may be done through testimonial evidence, hearsay statements, documentary evidence or production of real evidence. If in a moment of forgetfulness the claimant or prosecutor fails to prove an essential fact, his opponent may well succeed on a submission that there is no case to answer although the evidence was available. Furthermore in the case of *Barkers-Woode V Nana Fitz (2007-2008) 879 at 891 the Supreme Court held per Date –Bah JSC that;*

“The common law has also followed the common sense approach that the burden on Persuasion on proving all facts essential to any claim lies on whoever is making the claim”.

The sole ground for the dissolution of marriage in our Jurisdiction shall be that the marriage has broken down beyond reconciliation as per **Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367)**. The facts required to prove that the marriage has broken down beyond reconciliation are set out in Section 2(1) of the same Act as follows;

Proof of Breakdown of marriage

- 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 him.

- c) That the Respondent has deserted the Petitioner for a continuous period of at least two (2) years immediately preceding the presentation of the petition; or
- d) That the Parties to the marriage have not lived as husband and wife for a continuous period of at least two (2) 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 notwithstanding the refusal; or
- e) That the Parties to the marriage have not lived as husband and wife for a continuous period of at least five (5) 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”.

Analysis:

As per the Sections 2(2) and 2(3) of the Matrimonial Causes Act, the general position of the law is that the Court ought to inquire so far as is reasonable into all the facts alleged by the Petitioner and Respondent to satisfy itself on the totality of evidence adduced that indeed the marriage between Parties have broken down beyond reconciliation.

With respect to the ground being unreasonable behavior on the part of the Respondent as pleaded by the Petitioner, what amounts to unreasonable behavior has been held to

depend on the circumstance of each case and must not be behavior which can be termed trivial.

Thus in the case of *Mensah V Mensah [1972] 2 GLR 198*. *Hayfron Benjamin J.* held that;

“In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the Court must consider all the circumstances constituting such behaviors including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice”

Also as per Sarkodee J in *Hughes V Hughes [1973] 2 GLR 342*. “The Petitioner must show that the Respondent’s conduct reached a certain degree of severity. It must be such that no reasonable person will tolerate”

It is therefore the case of the Petitioner that the Respondent does not financially support the home and this has resulted in misunderstanding on several occasions. Even though the Respondent has two Chamber and Halls and seven (7) single rooms he has given out for rent she has become the man in the home taking care of everything including the Respondent’s medical bills and that when she refused to support the Respondent for three (3) days he took steps to dissolve the customary marriage.

In response to the Petitioner’s claims Respondent denied having seven (7) single rooms and two (2) Chamber and Halls which he had given for rent and stated that his business collapsed in 2018 when armed robbers robbed him of his money and other gadgets he was using in operating his business and because of that it was the Petitioner who was feeding him on a daily basis. He further stated that all insults and misunderstanding

emanated from the Petitioner and that he went to the Petitioner's family house to report her misconduct to her head of family and not to dissolve the marriage.

In paragraph 13 of his Witness Statement he stated that he has been maintaining their home financially in respect to some needs like soap, water, electricity and other things. That he had been made the woman in the marriage; cleaning the bathhouse, washing the clothing and doing all the menial work at home and that the Petitioner denies him sexual intercourse unless she so pleases to be intimate with him.

The Petitioner in the considered view of the Court could not establish her claims. Thus she was not able to adduce sufficient evidence to show that the conduct of the Respondent was indeed unreasonable. The Respondent in his Statement of Defence and Witness Statement adduced fresh evidence to prove unreasonable behavior on the part of the Petitioner. He made several allegations against the Petitioner, who did not cross-examine him (Respondent) to debunk any of those allegations.

Thus **Section 11 of the Matrimonial Causes Act** states

"If in any proceedings for divorce the Respondent alleges against the Petitioner and proves the facts required by **Section 1(2) and 2(1)**, the Court may in those proceedings give to the Respondent the reliefs to which the Respondent would have been entitled if the Respondent had presented a separate petition seeking that relief".

In the case of ***In Re Ashalley Botwe Lands; Adjetey Agbosu & Others V Kotey & Others [2003-2004] 1 S (GLR 420 -423)***, the Court held that:

“The rule is that where an averment is made that is not challenged, the one making the averment needs not lead evidence in proof of it. The rationale for this is simply that, no one has an obligation to prove the obvious or what is not challenged”.

In paragraph 25 of the Respondent’s Witness Statement he stated thus

“The Respondent further finally says that as the Petitioner desires for divorce same can be granted by the Court to her”

Eventhough the Petitioner could not establish her claim of unreasonable behavior, The Respondent was able to lead fresh evidence to prove unreasonable behaviour on the part of the Petitioner. The Court having inquired into all matters and on the totality of evidence both Parties examined and upon a careful observation of the demeanor of Parties during trail, is not in doubt that the marriage between the Parties has irretrievably broken down beyond reconciliation. The Court therefore holds that the Parties should not be compelled to stay in the relationship.

The next issue for determination is whether or not the Petitioner is entitled to her claim of Alimony or Financial settlement.

In granting Financial settlement orders in Matrimonial matters the Courts apply **Section 19 & 20 of the Matrimonial Causes Act, 1971 (Act 367)** which gives the Court powers to order either Parties,

“19 to pay to the other a sum of money or convey property (moveable or immovable) as settlement or as part of financial provision that the Court thinks just and equitable”.

The Act per Section 19 categorically states that no order for financial provision shall be made until the Court has considered the standard of living of the Parties and their circumstances,

Thus in the case of *Re marriage of Fleener* 247 N. W. 2d 219 (Nov 17 1976) the Court held that;

“Payment of alimony is not an absolute right. It depends upon the circumstances of each particular case”.

In determining what is just and equitable within the context of the Matrimonial Causes Act, the Court is enjoined to take due regard of all the circumstances of the case.

Also in *Boafo V Boafo [2005 – 2006] S (GLR 705-714)* the Supreme Court speaking through *Date-Bah JSC* held as follows;

“The question of what is “equitable” in essence, what is just reasonable and accords with common sense and fair play is a pure question of fact, dependent purely on the particular circumstances of each case”.

As to whether or not the Respondent should pay alimony to the Petitioner, the Court has taken into consideration the circumstances of the Respondent and his standard of living. This was made evident in paragraph ‘14’ and ‘15’ of his Witness Statement thus;

“In the year 2017 to ending of 2018, Respondent says that his business collapsed due to armed robbers robbing him of his money and other gadgets used in operating his

business and he was unable to give housekeeping money starting from 2019, thereby it was the Petitioner who was feeding him on daily basis”.

Also in paragraph 8 of the Petitioner’s Witness Statement she also states thus;

“The Petitioner says she has become the husband of the marriage and gives daily pocket money to the Respondent to the extent that when he falls sick the Petitioner has to pay for Respondent medical bills”.

Apart from making mention in her petition Paragraph 8 (c) that the Respondent has two (2) Chamber and Halls and Seven (7) single rooms he has given out for rent, the Petitioner did not adduce any further evidence to prove her claim.

The Respondent in paragraph 20 and 21 of his Witness Statement adduced evidence to the effect that;

“20.....that I tried to put up some additional rooms so that my mother who does not have a place to stay can have a roof over her head but I was in lack of funds so I could not complete the building and had to give the rooms to tenants who were ready to complete it and occupy it till their tenancy expires”.

“21.....that I do not have money from the rent. But in 2021, I took rent advance and gave GH¢4,000 out of the money to my wife to support her business. Also in 2022, I again gave my wife GH¢3,600 but in all those she said I have not done anything and does not appreciate me”.

Brobbey J. (as he then was) in the case of *Duah V Yorkwats (1993 – 1994) 1 GLR page 217 at page 224* stated thus “in our jurisprudence, if two Parties go to Court to seek

redress to a dispute it is Plaintiff who initiates the litigation and drags Defendant into Court. If both parties decide to lead no evidence, the order which will be given will necessarily go against Plaintiff.

Therefore it is Plaintiff who will lose first, who has the duty or obligation to lead evidence in order to forestall a ruling being made against him”.

Again, in *Schneider V Schneider 286 111 App. 575.4 N.E 2d 123 (Oct 13 1936)*. The Court stated as follows:

“We know of no case that holds the wife is entitled to alimony as a matter of right regardless of whether the divorce has been granted because of her fault..... it is generally held in the absence of statutory provisions that when the husband obtains the divorce on account of misconduct of the wife the latter will not be entitled to alimony. There are no children and the wife continues to be employed after the marriage and no reason appears why she cannot be self-supporting. We are of the opinion the facts in the case do not justify the allowance of alimony to the wife”.

With the foregoing observations having inquired deeply into all the evidence and from the facts of the case, it is therefore the opinion of this Court that the Petitioner is not entitled to alimony. It is the view of the Court that the Petitioner did not however lead sufficient evidence to prove or establish the financial stand of the Respondent.

In determining whether or not the Respondent should be made to refund loan amount of GH¢5,000 plus GH¢1,200 (money used for foundation on the land with interest at the prevailing bank rate from the date of acquisition of the loan till the date of final payment The Petitioner in her Witness Statement paragraph 10 – 12 stated that the

Respondent used the loan of GH¢5,000 she took to pay for a land to solve his personal issue and refused to pay back the money to her and due to that she lost the land and foundation she had built to another person. All the efforts to get the Respondent to pay back the GH¢5,000 has proven futile.

The Respondent in paragraph 23 of his Witness Statement admitted that he used the money but later paid the money back to his wife. Below is snippet of what transpired during cross-examination of the Petitioner by the Respondent with respect to the issue of the loan.

Q: You said you took a loan for me to buy land but I did not pay for the land and so the land was taken away from you. I am asking you if I did not pay that money to you.

A: He did not pay that money to me but I have forgiven him for the debt.

Q: You said you have forgiven me the debt but I know I have paid that debt and you took a new loan to buy a new land. So if you are saying I did not pay the loan how did you acquire a new loan for me to purchase a new land?

A: I wanted to test him to know whether he could give me my heart desires. He did not pay. The money he gave me was used to prepare food.

Q: I was working at the time so I was giving you money for feeding and maintenance so you cannot say that the money I gave you was for feeding.

A: it was what I was using as chop money.

Q: Have you forgotten that I had a balance of GH¢1,500 to pay to you so I gave you my cosmetic shop to work and pay for a year and after the year of payment of

GH¢1,500 whatever profit we got should be used as housekeeping money even though you had your own shop I added my shop to it because of that.

A: That is not true because he sold the shop to me.

Q: How much did I sell it to you?

A: GH¢600.00

Q: I told you to run the shop for a year to pay your debt but after that we should use the profit for housekeeping. I did not say I wanted to take the business from you. Is that not so?

A: That is not true.

Q: Did I take the business from you?

A: He did not take the business from me.

Apart from the Cross-examination of the Petitioner by the Respondent to prove he had paid the money, the Petitioner herself stated in paragraph 16 of her Witness Statement thus;

“In my divorce petition, Petitioner stated that the Respondent should refund an amount of GH¢5,000 and GH¢1,200 being money owed to her by the Respondent. But Petitioner prays to the Court that she does not want to recover this money anymore”

Eventhough the Court found that the Respondent had already refunded the money through Cross-examination, the Petitioner prayed the Court in her Witness Statement that she no more wanted a refund of the loan amount.

Disposition

1. Upon the totality of evidence adduced, the Court is satisfied that the Marriage celebrated between Parties herein has broken down beyond reconciliation. It is hereby decreed that the marriage celebrated under the Marriage Act at the Taifa Presbyterian Church of Ghana be and is hereby dissolved. Divorce decree granted.
2. That the Petitioner is not entitled to Alimony as prayed in her reliefs.
3. That the Respondent need not refund the amount of Five Thousand Ghana Cedis (GH¢5,000) loan and plus One Thousand Two Hundred Ghana Cedis (GH¢1,200) which is money used for the foundation with interest at prevailing bank rate.
4. There is no order as to cost, the Parties are to bear the cost of their respective costs.

.....
H/W NANCY T. SEARYOH (MRS.)
(MAGISTRATE)