

IN THE DISTRICT COURT, HELD AT GOASO COURT ON THE 26TH APRIL, 2023
BEFORE HER WORSHIP MAGDALENE THOMPSON DISTRICT MAGISTRATE

SUIT NO. A4/3/23

DIANA FOSUAA

PETITIONER

VRS

DOMINIC AMOH

RESPONDENT

PETITIONER PRESENT

RESPONDENT PRESENT

LAWERENCE ADOMA ESQ. FOR THE RESPONDENT PRESENT

NO LEGAL REPRESENTATION FOR THE PETITIONER

JUDGEMENT

This is a proceeding under the Matrimonial Causes Act, 1971 (Act 367).

The parties have been married for eleven (11) months at Sunyani, after the marriage the Petitioner moved to Kukuom and they have been visiting each other randomly. There is no issue in the marriage.

On the 16th November, 2022 the Petitioner filed legal proceedings seeking a divorce. The Petitioner prayers were formulated in the particulars of her petition as follows:

- (1) An order for the dissolution of the Ordinance marriage between the parties as there has been no consummation for eleven (11) months of marriage
- (2) An order for the Respondent to pay GHc15,000.00 as a push package for their 11 month of marriage.

The Respondent filed an answer and prayed for the following relief:

That the Ordinance marriage contracted between the Petitioner and the Respondent be dissolved.

Dotse JSC in **GLADYS MENSAH V. STEPHEN MENSAH [2012] 1 SCGLR 391** quoted Lord Denning in his book, **"LANDMARKS IN THE LAW"** Butterworths, 1954, writes at page 176 *"on change in attitude of the British people to Divorce"* as follows: *".....There is no longer any binding knot for marriage. There is only a loose piece of string which the parties can untie at will. Divorce is not a stigma. It has become respectable. One parent families abound."*

The learned Supreme Court Judge stated that the above quotation can equally be said to be applicable to the Ghanaian society as well.

THE PETITIONER'S CASE

The parties got married through the Ordinance Cap 127 on 27th November, 2021 and during the wedding night they decided to have sexual intercourse but the Respondent manhood/penis could not penetrate with many efforts they both exhibited all to no avail. According to the Petitioner anytime that they wanted to have sex the penis cannot penetrate and this has continued for some time and the Petitioner then informed her mother about the situation and the mother encouraged the Petitioner to exercise restraint as it is a marriage pressure. But according to the Petitioner this continued for some time and she took the pain to consult a pastor who is a herbalist for treatment for the Respondent but the Respondent refused to use the medicine that he is alright and has no problem with his manhood.

She contended that she has made all effort for the Respondent to consummate the marriage but all to no avail and when she pushed further for sex the Respondent will desert the bed and would to the kitchen at dawn around 3.00am to cook wakye just to avoid sexual intercourse. She further contended that the Respondent started to burn some items in the night just to prevent him joining the Petitioner on bed to make sex and upon persistent demand for sex the Respondent denied her for the past eleven months of marriage and also refused to eat her food. She then informed the Respondent family about the sex problem and the mother of the Respondent confirmed same and added that

many ladies who came into the life of the Respondent for marriage have all left due to the sex condition. According to the Petitioner the family members including Rev. James Amoh invited the Respondent to advise him to apply some medication if he has a sexual weakness but he ignored them and said that not even his family member can tell him what to do with his unfortunate condition for he sees it as no problem.

According to the Petitioner friends and family members invited him and talked to him to do something about his predicament but he refused to adhere to all advice. In that circumstance the father of the Petitioner was compelled to send some drinks to cause the dissolution of the customary marriage. She told the court that she doesn't like the GHc15,000.00 alimony but rather a costs of GHc6,000.00. The Petitioner then closed her case.

THE RESPONDENT CASE

It is the Respondent case that he got married to the Petitioner on 27th November, 2021 at Methodist Church Twimea Koase, Techiman under the Ordinance Cap 127 and thereafter they cohabited together as man and wife at Sunyani. According to the Respondent the marriage has broken down beyond reconciliation due to Petitioner's behavior that he cannot reasonably be expected to live with her as husband and wife. He stated that on their first day of making love the Petitioner was not satisfied because her expectation of sex was not met because he experienced premature ejaculation on their first honeymoon.

He then realized that the Petitioner's sexual demand was very high and he cannot meet her sexual desire and this made him to become anxious anytime they wanted to have sexual intercourse. He further stated that the Petitioner unusual comments before sex actually kills his sexual desire as and when they wanted to have sex. According to him the Petitioner started to abuse him that he is impotent. He again maintained that the Petitioner intimated him that if he is unable to satisfy her sexual desire she will then have sex outside her matrimonial home. He stated that the comment of the Petitioner demoralized him and he became afraid to approach or go closer to the Petitioner for sex and again told his family that he the Respondent is impotent.

On the 7th of March, 2022 the Petitioner left the matrimonial home and occasionally called him on phone to abuse him verbally. He is testifying to the court that he is not impotent as Petitioner alleged since he had had sex with the Petitioner for seven (7) consecutive times with the few months he has been with the Petitioner and he has also realized that

the Petitioner's sexual expectation is too high and he cannot meet that demand and therefore pray for the dissolution of the marriage. Respondent then closed his case.

The legal issues that fall for determination are as follows:

- a. *Whether or not the marriage has broken down beyond reconciliation*
- b. *Whether or not there has been consummation of the marriage*

Section 14 of the Evidence Act, 1975 (NRCD 323) which regulates the reception and evaluation of evidence provides as follows: "..... Except as otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim or defence he is asserting".

Before I examine the evidence adduced at the trial, it is pertinent to set out the relevant sections of the **Matrimonial Causes Act, 1971 (Act 367)** as follows:

Sections 2(1) (b),(d) & (f) and (3) of Act 367 provides as follows:

"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 fact:

(b) that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent;

(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.

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

(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."

In **MENSAH V MENSAH [1972] 2 GLR 198**, Hayfron-Benjamin J. (as he then was) held that: "... it is therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough..."

In the present suit, even though the Respondent in his evidence adduced that he has been having sexual intercourse with the Petitioner for seven (7) times only that the Petitioner's sexual expectation was too high for him to meet her demand. On the other hand the Petitioner was also adducing that the Respondent was unable to maintain erection to him penetrate the vagina. According to the Petitioner upon several occasions that the Respondent had an erection he was unable to penetrate and she informed both her parent and that of the Respondent parent but Respondent refused to listen to their advice to seek medication attention.

In the instant case the marriage has broken down beyond reconciliation as per **section 2 of the Matrimonial Causes Act, 1971 (Act 367)** where the Respondent has failed for eleven (11) months to have quality sex with the Petitioner's and that the Petitioner sees not to continue the marriage anymore because the Respondent is impotent and he is wasting her time and not that the Petitioner's sex expectation was too high

In the circumstance I hereby declare the Ordinance marriage between the Petitioner herein referred to as Diana Fosuaa and the Respondent herein referred to as Dominic Amoh duly dissolved and order that the Respondent should GHc6,000.00 as compensation to the Petitioner.

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HW MAGDALENE THOMPSON
DISTRICT MAGISTRATE