

IN THE DISTRICT COURT HELD AT BEREKUM ON WEDNESDAY THE 14<sup>TH</sup> DAY OF JUNE, 2023 BEFORE HIS WORSHIP AUGUSTINE AKUSA-AM DISTRICT MAGISTRATE

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SUIT NO. A4/ 20/2022

ESTHER DARTEY OF H/NO. JD. 254 JAMDEDE      ⋮ PETITONER

VRS

MICHAEL AKOFFO DARTEY OF H/NO.      ]  
UNKNOWN NANASUANO-BEREKUM      ⋮ RESPONDENT

Parties present.

Francis Asiedu Esq. for respondent present.

**BACK GROUND:**

The parties got married on 13<sup>th</sup> April, 2019 at the Freeman Methodist Church, Berekum. A marriage certificate MCB/259/0019 as issued to them shows that they married under customary law and not under the ordinance as the petitioner wants this honourable court to believe. Following their marriage, the parties cohabited in Berekum and the marriage was blessed with one child by name Irene Okoffo Dartey who is currently three years old. Not long after the marriage the parties noticed that they were incompatible as behaviours deemed unreasonable were allegedly exhibited by both of them.

**PETITION**

The petitioner, Esther Dartey thus filed the instant petition seeking a dissolution of their marriage on the grounds that the respondent has not been maintaining her and their three-year old daughter since February 2021. The petitioner further submitted that they

are incompatible and that has resulted in their inability to engage in effective communication and sexual activities since June 2020.

Wherefore the petitioner prays the court to dissolve their marriage and order the respondent to give her a fair share of three plots of land she took a loan for him to purchase in 2019. And any other orders the court deems fit to make.

### **RESPONSE TO PETITION**

In response to the petition, the respondent Michael Okoffo Dartey denied the assertion that he had not been maintaining the petitioner and their little child. He submitted that he has always treated the petitioner as a wife but their marriage took a nose-dive when the petitioner's mother conveyed her daughter's personal belongings from their matrimonial home to her place of abode.

Following this incident, he reported the conduct of his mother-in-law to the Amankokwahene to plead for the return of his wife but his efforts were unsuccessful and that there had not been any attempts at reconciling them. Respondent deposed that he took an amount of GH¢4,000.00 from the petitioner to purchase two plots of land at a place called Abi. He denied receiving GH¢7,000.00 from the petitioner as he explained that one plot of land was gifted to him by the stool as a native of the community.

### **EVIDENCE OF PARTIES**

During trial and particularly under cross examination, the petitioner averred that the respondent had always been moody and hardly talked to anyone in the household. She explained that they are incompatible because whereas she loves kissing and more sex, the respondent on the contrary is averse to them and this discomfords her as a wife.

According to the petitioner, most times when they even sit at a common place, their bodies hardly touch each other and this does not augur well for a health relationship.

The petitioner also disclosed that the respondent does not provide housekeeping money and that most times she does whilst the respondent only lends support.

Pw1 in her evidence said that during her stay with the couples, she noticed that the respondent hardly greeted or fraternised with members of the household. She submitted that whereas the respondent is unemployed and likes fufu so much, the petitioner does not like fufu that much. This difference between the parties often brought misunderstandings at home and so she assisted the petitioner to pack out of her matrimonial home.

The respondent mounted a spirited defence and denied all the allegations levelled against him. He averred that he has always treated the petitioner as his wife and has often given her all the love a husband could give to a wife. That it was the petitioner who deserted him at the instigation of pw1 (mother of petitioner). He submitted that he has been having sexual intercourse with the petitioner and after each bout of sex the petitioner would remark "Nana you are too good in bed". On the issue of maintenance, respondent said that they have always had stock of food at home so it is not true that he has not been maintaining his immediate family.

### **ISSUES FOR DETERMINATION**

- 1. The first issue for determination is whether or not the marriage between the parties has broken down beyond reconciliation.**
- 2. Whether or not the reasons adduced by the petitioner are grounded in law to warrant the dissolution of their marriage.**
- 3. Whether or not the respondent received an amount of GHC7,000.00 from the petitioner to buy three plots of land.**

I shall deal with these issues seriatim but before that, it is trite knowledge that he who avers must prove in order to succeed. Thus, section 11 (4) of the Evidence Act, 1975 (NRCD 323) provides that “the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence”.

As I have noted earlier, the marriage between the parties was under customary law as evidenced on the face of the marriage certificate. Even though the Matrimonial Causes Act, 1971 (Act 367) generally deals with monogamous (ordinance) marriages, I took inspiration from section 41 which empowers this honourable court to deal with the instant petition subject to the requirements of justice, equity and good conscience.

Where applicable or convenient, I shall therefore make references to Act 367. Section 1 (2) of Act 367 provides that the “sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.” To prove that the marriage has broken down beyond reconciliation, the petitioner ought to inter alia, satisfy the court that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with him. See section 2 (1) (b) of Act 367.

Furthermore, the petitioner has the onus to satisfy the court that both of them after diligent effort failed to reconcile their differences. See section 2 (1) (7) of Act 367.

The petitioner had alleged that the respondent had not been maintaining them until the matter was brought to court. In response the respondent said he had been doing his best because he had been stocking the house with food. It must be stated that the

maintenance of a house goes beyond the provision of food stuffs alone. As stated in the Good Book, man must not live by bread alone.

The petitioner also complained that the respondent is always so moody at home that when they even sit on the same chair, their bodies hardly touch each other. This attitude for the respondent disables her from effectively communicating with him as a husband. Another important issue raised by the petitioner is that whereas she likes more sex, the respondent does not. The respondent unexciting and this means intimacy however denied this assertion and claimed that his sexual prowess has often been commended by the petitioner.

On the evidence, it is undoubtedly clear that petitioner's mother (pw1) and the respondent are at loggerheads. It is also clear on the evidence adduced in court that the petitioner had done all he could to reconcile with the petitioner but his efforts have been fruitless.

Most of the assertions by the petitioner have been challenged by the respondent. It is said of old that "he who feels it knows it" Another version of this saying is that, "he who is lying by the fire knows how much (or how little) the heat torments him." Since it is the petitioner who in this case is feeling the heat and wants to get out of the marriage, I think her testimony is more credible than that of the respondent. In **PRAKA V. KETEWA (1964) GLR 423SC**, the apex court held that where the evidence boils down to oaths of one party and his witnesses against the oaths of the other party and his witnesses,

and the evidence led on an issue is conflicting, the trial court should make up its mind whether to accept one version or the other but reasons should be stated for the preference. See also in Re **ARYEETAY (DECD) ARYEETAY V OKWABE (1988) 2 GLR 444 CA**. In the factual circumstances of this instant case, the testimony of the

petitioner was corroborated by her mother (pw1 herein) who had the privilege of staying with the parties albeit briefly. This makes her evidence more credible than that of the respondent.

On the issue of the amount given to the respondent to purchase three plots of land, I think the petitioner could not provide sufficient evidence to convince the court that she gave the respondent an amount of GHC7,000.00. She had the opportunity to test the averment of the respondent on the issue during cross examination but she failed on that score. I therefore go by the respondent's admission that he received only GHC4,000.00 for the purchase of two plots of land at a place called Abi.

### CONCLUSION

As mentioned earlier, one ground for the dissolution of a marriage is unreasonable behaviour of a party to the marriage. Unreasonable behaviour constitutes cruelty. For failing to maintain the petitioner and the issue to the marriage, coupled with the fact that the respondent was always moody towards members of the household, the conduct of the petitioner could best be described as an unreasonable and the petitioner should not reasonably be expected to continue to endure this cruel behaviour from the respondent. Any marriage where communication is ineffective virtually makes co-habitation impossible.

I took judicial notice of the demeanours of the parties during trial. The impression I got was that petitioner was simple fed up with her three –year old marriage and wanted an immediate end to same. Her facial expression and the manner in which

she answered questions during cross examination showed that she is irreconcilable and wants to go on with her life.

On the totality of evidence adduced in court, I am very convinced that the marriage between the parties has broken down beyond reconciliation.

In the result, I hereby dissolve the marriage and the certificate number MCB/259/2019 is accordingly cancelled.

I further decree as follows:-

- a. The title documents in respect of the two plots of land purchased with petitioner's own money should be given to her. In case the documents are not in her name, the respondent should convey title to her immediately.*
- b. The respondent is ordered to provide an amount of GHC400.00 as monthly maintenance for their child who should be in the custody of the petitioner.*
- c. The respondent should have unfettered access to his daughter.*
- d. The petitioner is entitled to GHC10,000.00 as "Push Off" from the respondent.*
- e. Costs of GHC2,000.00 against the respondent.*

**SGD**

**H/W AUGUSTINE AKUSA-AM ESQ  
(DISTRICT MAGISTRATE)**

e.o







