

**IN THE DISTRICT MAGISTRATE COURT, HARBOR AREA, TAKORADI, HELD ON  
FRIDAY 28<sup>TH</sup> DAY OF JULY, 2023 BEFORE HIS WORSHIP BERNARD DEBRAYH  
BINEY ESQ. ... MAGISTRATE**

SUIT NO. A4/21/2022

**DEBORAH OSEI-TWUM ARLOO ..... PETITIONER**

*H/NO.PT45, KOJOKROM AVE*

*MAPEES, TAKORADI*

VRS

**PHILIP BROWN ARLOO ..... RESPONDENT**

*UNNUMBERED HSE, MOUNT ZION*

*NHIRA HOTEL, TAKORADI*

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**JUDGMENT**

The Petitioner filed a divorce petition in the registry of this court on 9/09/22 and sought the following reliefs;

- a. An order for the dissolution of marriage celebrated between the parties as same has broken down beyond reconciliation due to unreasonable behavior of the Respondent.
- b. An order for grant of custody of the issue to the Petitioner with reasonable access to the Respondent.
- c. An order for the Respondent to maintain the issue with three hundred Ghana Cedis every month, pay school fees and other educational needs of the issue
- d. Any other orders or relief as the court shall deem fit.

In her petition, the Petitioner averred that she got married to the Respondent under the Marriages Act on the 8<sup>th</sup> August, 2018 at Bethel Methodist Church, Nsuta Tarkwa and they have one child. The petitioner further averred that the Respondent behaved unreasonably towards her and committed adultery with another woman out of which has resulted in the birth of a child and finds it embarrassing and intolerable to continue staying with him. The Petitioner finally averred that after diligent efforts been unable to reconcile the parties differences and therefore prayed the court to dissolve their marriage and grant all her reliefs.

Upon the receipt of the petition the Respondent filed an answer to the petition and virtually denied any wrong doing or unreasonable behavior on his part in their marriage. In his answer, the Respondent contended that it is rather the Petitioner who has been in some amorous relationship with another which came to Respondent's attention when he spotted this man's car parked in the house of the Petitioner and confronted him in the house. The respondent concluded that it is rather the Petitioner who has caused him much embarrassment, severe pain anxiety to the extent that if any of the parties ought not to be expected to continue staying with the other as man and wife, it should be the respondent.

### **Legal Issue**

Whether or not the marriage between the parties has broken down beyond reconciliation to warrant dissolution of same.

### **Evidence Adduced In Court**

The Petitioner in her evidence in chief to the court stated that the marriage between herself and the Respondent has broken down beyond reconciliation because of the unreasonable behavior of the respondent. The Respondent emotionally abuses her and has lied to her on several occasions thus causing mistrust between them. The petitioner further averred that the Respondent has raped her on several occasions during the marriage and that the respondent insisted and engaged in anal sex with her despite objections to same. The Respondent insisted and engaged in sexual intercourse with her during her menstruation and she finds this very disdainful, depraved and pervert behavior. The Respondent seldom supports her in the financial management of the home and has refused to contribute towards the upkeep of the child and the Respondent has used dishonest to take several sums of loans from Petitioner without repayment. The Respondent is extremely jealous and has acted in unreasonable ways on his baseless suspicions that he Petitioner was in a relationship with other men and to feed in his suspicions, Respondent stalks her in unhealthy manner based on the baseless suspicions that she was having affairs with other men. The Respondent verbally abused her on several occasions causing her to lose self-esteem. The Respondent has during the subsistence of the marriage consorted with and had sexual intercourse with a lady by name Anastasia which has resulted in him giving birth with this woman. That they have tried diligently

to resolve their differences but all has failed due to the unwillingness of the Respondent to change his behavior. That the Respondent packed and left the house on 27<sup>th</sup> March, 2022 and has caused Petitioner much pain, embarrassment and anxiety and she cannot be reasonably expected to live with him as a husband and therefore pray that the marriage celebrated between them be dissolved and the Respondent made to pay GHC500 monthly maintenance allowance for the child and give custody of the child to her with reasonable access to the Respondent.

### **Evaluation of Evidence, Analysis, and Finding of Facts.**

The court found as a fact that the parties to the marriage have separated living together since 27/03/22. Each party did not call a witness and the evidence adduced as a whole basically amounted to the narration of the petitioner. The court also found as a fact that all attempts at reconciling the parties has proved futile. The evidence adduced further revealed that the child in the marriage is currently in the custody of the petitioner. That the Respondent committed adultery which has resulted in the birth of a child.

### **Law and Application.**

Section 1 of the Matrimonial Causes Act, 1971 (Act 367) with the heading “Petition for Divorce” provides as follows: *“(1) a petition for divorce may be presented to the court by either party of the marriage.*

*(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation*

Section 2 of Act 367 with the heading “Proof of breakdown of Marriage” provides in subsection (1) (f) as follows:

*“(1) for the purposes 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) Adultery.*

*(b) Unreasonable behavior*

*(c) Desertion*

*(d) Failure to live together as husband and wife (2 years)*

*(e) Failure to live together as man and wife(5 years )*

*(f) Inability to reconcile differences after diligent efforts”*

Section 2(2) of the MCA supra enjoins a court to enquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent. The section further states that a court shall not grant a petition for divorce unless it is satisfied on all the evidence that the marriage has broken down beyond reconciliation.

When a petitioner proves one of the facts mentioned under section 2(1) of MCA he or she may be deemed to have proved that the marriage has broken down beyond reconciliation.

Section 2(3) of the same law, directs a judge to conduct an inquiry to determine whether in truth the marriage has broken down beyond reconciliation and if upon the enquiry the judge is satisfied then and then only should divorce be decreed.

Accordingly, I am enjoined by law in the instant case, to determine whether the petitioner has been able to prove one or more of the facts listed above in her present petition to prove that their marriage is broken down beyond reconciliation. It is only upon satisfactory prove of these facts that the court can decree dissolution of this marriage between the parties.

From the totality of the evidence adduced, it is clear that parties have been unable to reconcile their differences after diligent effort. This honorable court referred parties to court connected ADR and in their terms of settlement filed on the docket of this case, the parties agreed that the marriage be dissolved. The petitioner alleged that the respondent does not contribute in the financial management of the home including the upkeep of the child and this allegation was not denied by the respondent save the general traverse of almost everything in the petition. The Petitioner further established through her testimony in court that, they have since March 2022 separated and the Respondent has been living elsewhere apart from their matrimonial home and as a result they have not been having any sexual intimacy. This was not challenged by the Respondent, infact by his answer to the petition, the Respondent admitted to this piece of evidence. It was again established that Respondent committed adultery with one Anastasia as a result of which a child has been born, the Respondent was in court when the Petitioner gave her evidence in chief but was quite on all these statements of the Petitioner. Proven issues of separation of marriage coupled with commission of adultery by a spouse are among factors that are considered to be indicators of marriage that is broken down beyond reconciliation. These issues have been proved in the instant

case as having occurred in the marriage of the parties and it is my view that, it points to the fact that the marriage between the parties has actually broken down beyond reconciliation. Apart from the petitioner's aforementioned assertion, she further indicated that the Respondent does not contribute in the financial management of the home and does not provide for the upkeep of the child and since the respondent did not deny same, the court will take the assertion of the petitioner to be the truth. Since the best interest of the child is of utmost importance to the court, section 45 of the Children' Act, 1998 (Act 560) cannot be glossed over.

With regards to the maintenance of the child, the parties agreed on a maintenance sum and the duties of the respective parties towards the child and this voluntary agreement by the parties dated July 7, 2023 will not be disturbed by this court.

In conclusion therefore, the court hereby dissolves the ordinance marriage between the parties since the evidence clearly shows that the marriage has broken down beyond reconciliation.

Furthermore, custody of the child (**Paul Brown Arloo**) is granted to the Petitioner with reasonable access to the Respondent.

With regards to the maintenance and other ancillary issues that were resolved at CCADR (Mediation) the court adopts the agreement of the parties dated 7<sup>th</sup> July, 2023 as consent judgment of the court and order the Respondent to pay GHC 300.00 every month to the Petitioner through her mobile money accounts number 0246495406 as contribution towards the upkeep of their child. This amount shall however be subject to review as and when the need arises.

Cost will not be awarded in favor of either party.

SGD  
H/W BERNARD D. BINEY  
(MAGISTRATE)