THE DISTRICT COURT KIBI, EASTERN REGION, HELD ON TUESDAY 14TH MARCH, 2023 BEFORE HER WORSHIP MRS. JULIET OSEI – DUEDU SITTING AS A MAGISTRATE

SUIT NUMBER: A4/02/22

ERIC INKOOM PETITIONER

VRS

COMFORT ANOHIA RESPONDENT

JUDGMENT

This is a matrimonial case in which petitioner per his petition filed on 7th April 2022, prays for the dissolution of the customary marriage celebrated between the parties somewhere, 2019, on the ground of unreasonable behaviour on the part of the respondent.

Respondent who disagrees with the petitioner that their marriage has broken down beyond reconciliation, filed her statement of defence on the 16th June, 2022. Per the facts as set out in her defence, this petition is premised on the fact only that, petitioner is having an extra marital affair with one Mercy which has now been put into the public domain. She has therefore done nothing wrong to warrant the dissolution of the marriage. Respondent thus, prays the court for an alimony of GHC 30,000.00, should petitioner's request be granted and the marriage is accordingly dissolved.

The standard of proof in civil matters without any exception is proof by the preponderance of the probabilities, according to sections 11(4) and 12(1) of the Evidence Act 1975, (NRCD 323.) And on what amounts to proof in law, the Supreme Court speaking through Ansah JSC, in the case of **Abbey & Others V Antwi [2010] SCGLR 17,** reiterated the dictum of Ollenu J (as he then was), in the case of, **Majolagbe V Larbi [1959] GLR 190, @ 192 as follows; "**Proof in law is the establishment of facts by proper legal means where a party makes an assertion capable of proof in some way e.g. by producing documents, description of things, reference to other facts, instances or circumstances and his averment is denied, he does not prove 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."

With respondent's denial of any wrongdoing therefore, it is incumbent on petitioner to produce sufficient evidence in establishing his allegation of unreasonable behaviour against her.

At the trial of this case, parties testified for themselves and called witnesses as well. Petitioner called four witnesses and respondent, one. And at the end of the trial, these issues call for resolution by the court;

1. Whether or not the customary marriage between the parties has irreconcilably broken down by reason of respondent's unreasonable behaviour.
2. Whether or not petitioner has committed adultery.
3. Whether or not petitioner should compensate respondent with GHC 30,000.00.

I will address these issues in turn, with the first one; whether or not the customary marriage of the parties has irreconcilably broken down on account of respondent's unreasonable behaviour. It is the case of petitioner both in his pleadings and evidence before the court that, respondent's uncooperative behaviour is the basis for the instant petition. According to petitioner, he suggested to respondent after their marriage that she assist him in securing a farmland to cultivate a cocoa farm but she refused to do so. Her reason was that, she could not add farming to her trading business. Her uncle also supported her apathetic conduct by informing petitioner that respondent did not enter the marriage for farming purposes. Respondent failed to show love to petitioner's four children he had before the marriage and also insults petitioner even in public on the least or no provocation at all. Respondent denied petitioner sex, seven (7) months prior to coming to court and also refused to cook for him after having provided money for same.

According to petitioner again, respondent leaves the house without informing him of her whereabout and in one of their fights resulting therefrom, bit his left leg. On two other occasions, respondent bit his left thumb and hit him in the eye with a stone. She constantly threatened to kill him in their numerous fights. In all, about ten (10) different attempts at reconciliation were made by the marriage committee of petitioner's church, (Church of Pentecost) with and without the presiding elder of respondent's church, (Apostolic Church Ghana,) but they all failed.

In fact, the evidence of the first to third witnesses of petitioner confirm all the numerous attempts at settling the various quarrels that constantly arose between the parties. All these witnesses were part of the panel at different instances. According to PW1 and petitioner's father, not only did respondent disrespect her husband the petitioner but, she extended same to his wife and respondent's mother – in – law. She abused her on one occasion that, she did not lead an exemplary life, worthy of emulation hence, her failure to live peaceably with her. It is the case of all the witnesses once again that respondent in their last meeting to attempt a reconciliation of the parties, respondent

was rude to the panel and was asked by the pastor to apologize accordingly but she refused to do so.

Respondent denies the allegation of disrespecting petitioner's mother but does not deny the numerous quarrels that ensued between the parties with their accompanying injuries to petitioner. She however explains in her testimony before the court that, the said injuries were all caused in self defence. According to respondent's testimony, they were living peacefully after their marriage about four years ago. Their frequent fights started about a year ago when petitioner went in for another woman. She hit petitioner in the eye with a stone in one of their quarrels because petitioner slapped her on the face twice. Petitioner packed out of their house after that quarrel. She reported the matter to his pastor who sat on same and after a lengthy deliberation with his panel suggested that they separate for three months. They were advised however, to maintain their marital roles to which she obliged and so agreed to cook for petitioner. Petitioner nonetheless, irregularly gave her between GHC 5.00 to GHC 10.00 daily to that effect so she could not cook for him. Though petitioner does not deny giving respondent such meagre sums of money to cook with, he argues that, this was not a good enough reason for respondent's failure to give him food.

It should be noted that, though respondent denied all the numerous allegations of raining of insults and her bad treatment of petitioner, her story changed when she was confronted with a recording on how she rudely denied petitioner of sex. This is what transpired;

Q. when our pastor separated us you denied me sex is that not so?

A. That is not true, I did no such thing.

Q. Should I produce the evidence I have on this fact before you admit same?

A. It is not true, I did no such thing.

Q. Then, listen to this recording. (Petitioner plays the recording of respondent rudely denying him sex before the court.) Are you still denying that you refused to sleep with me?

A. I did deny you sex because for all the period we stayed together as husband and wife you never bought anything for me but you spent your money on other people's wives.

The court per respondent's conduct above, is convinced that she is unworthy of belief. In fact, all the allegations of her disrespected attitude enumerated by petitioner are true. This might have been the cause of their numerous fights. It is therefore surprising that, respondent's only witness and uncle, appears not to be fully aware of all these fights per his evidence on record. Unlike plaintiff's witnesses, who have settled about ten

misunderstandings between the parties, per DW1'S testimony, respondent informed him of the incident in which petitioner slapped her twice and she retaliated by hitting him in the eye with a stone, about a year ago. He was however part of the panel that finally sat on the matter and requested that the parties separate from each other for three months.

It is obvious from the evidence above that the rather short marriage of the parties has been everything but peaceful. It has been full of drama, an emotional roller coaster for both parties. The numerous fights and injuries therefrom are indicative of the parties being at each other's neck at the least opportunity. Much as respondent on the available evidence appears to be the aggressor, petitioner equally lacked the requisite antidote of extreme patience in dealing with her. In the given circumstances, petitioner cannot place the blame squarely at the door step of respondent alone. Is petitioner pretending or genuinely ignorant of the fact that the money he gave to respondent could not in any way prepare any decent meal for the two of them? Again, is petitioner justifying the beating of respondent and thereafter, parking out of the matrimonial home without informing her of his whereabout? I definitely do not think so.

In the case of **Mensah V Mensah [1972] 2 GLR, 198,** the court held inter alia that, in determining the fact of unreasonable behavior with its resultant expectation, the court must consider all the circumstances constituting such behavior including the history of the marriage. It is always a question of fact. And in **Knudsen V Knudsen [1976] 1 GLR, 204,** on the issue of unreasonable behaviour on the part of the respondent, the court stated that, the behaviour of the party which will

lead to the conclusion that, petitioner cannot reasonably be expected to live with the respondent, range over a wide variety of acts. It may consist of one act if it is of sufficient gravity or of persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.

Considering the totality of the evidence on record in the light of the above authorities, this court is satisfied that there are sufficient acts, indicative of unreasonable behaviour but not against respondent alone. The numerous dangerous fights which go beyond the petty squabbles common to every marriage are evidence of the parties' collective contributions no matter how small, to the breakdown of their marriage, after all as the adage goes, it takes two to tango. The hefty slaps among others; visited by petitioner on respondent are unpardonable no matter the offence of the latter. No one party in the given circumstances of this case can be singularly blamable for the current state of the

parties' marriage. Each party contributed their own share of uncooperative or intransigent conduct that has led to the present situation.

On the available evidence therefore, I find as a fact that the customary marriage celebrated by the parties about four years ago has in fact broken down beyond reconciliation.

I now turn my attention to the issue of whether or not petitioner is guilty of adultery. It is the case of respondent that the parties enjoyed a peaceful marriage until petitioner started an extra marital affair with one Mercy, his church member. This has been respondent's song throughout the whole trial. According to her, she was so informed of the said affair by the women's fellowship leader of petitioner's church and PW3 in this case. PW3 however denied this fact during cross – examination by respondent. This is what transpired;

Q. Are you not the cause of all these misunderstandings between us by informing me that, my husband has a paramour in your church?

A. I never told you anything.

And when respondent was cross – examined on the issue this is what she said;

Q. You said I have committed adultery can you name my paramour to the court? A. Yes, she is called Mercy.

Q. I don't know any such Mercy at Potroase as you are saying so can you be specific?

A. Mercy, the only hairdresser at Potroase.

Q. Do you know that, this Mercy you are talking about is married?

A. Yes, I do.

Q. Have you ever caught the two of us having sex before?

A. No, I have not, but you went with her to Odumase for a church programme without informing me about it. You took a lot of photographs together and when I saw them, I reported the matter to the women's fellowship leader and PW3 in this case, who initially denied any affair between the two of you. She subsequently, came to inform me that upon observing the two of you for some time, she was convinced that you were having an affair. Your behaviour also changed around that time. Before then, after supper each day, we would sit together, converse till we fall asleep. After that incident however, you always left the house after supper and returned between 12 midnight and 1am.

Q. All that you are saying now, why is it that when we went to the pastor you did not inform him that it was PW3 who told you about the alleged affair?

A. It was because she asked me to be discrete about it when she so informed me.

Q. Did Maggie (PW3) ever tell you that she saw Mercy and I at any place or in any compromising situation?

A. No she did not tell me anything of that sort.

The above only establishes that, respondent's unflinching assertion that petitioner has committed adultery is all based on a hearsay to which, the publisher warned her against disclosure and equally denied same before this court. Beyond this, there is no other evidence to substantiate respondent's claim. In saying this, this court has not lost sight of the fact that direct evidence on adultery is not easy to find. Thus, the superior courts have held that, the act of sexual intercourse need not be proved in establishing this marital offence. It can safely be inferred from the circumstances surrounding the case if they are in tandem with such inference. The presence of disposition and opportunity may therefore lead the court to conclude that adultery has been committed. Opportunity alone is not enough.

In the case of **Adjetey V Adjetey [1973] 1 GLR, 216,** the court stated, that adultery is a serious offence to allege against a person. As such, it must be proved to the satisfaction of the court and must carry a high degree of probability. The standard of proof of adultery is thus based on the principle that, in proportion as the offence is grave so ought the proof to be clear. Hence, in **Dennis V Dennis [1955] 2 ALLER 51,** where Mrs. Dennis tried to have sex with another man but penetration could not take place, the court held there was no adultery.

Applying these authorities to the case under consideration, it can also be said that there is not enough evidence, conclusive of the commission of the offence of adultery by the petitioner in this case. All that respondent has by way of proof is a mere suspicion which can never legally, establish this scarlet marital wrong no matter how strong it might be. Since there is no sufficient evidence indicative of the presence of both disposition and opportunity also, it will be unsafe to infer that petitioner has committed adultery.

Now to the final issue of whether or not petitioner should compensate respondent with GHC 30,000.00. Respondent in both her pleadings and evidence before this court prays the court for a compensation or alimony of GHC 30,000.00, should petitioner persist with his request for the dissolution of the marriage. In actual fact, that is the basis of respondent's claim. According to respondent, the compensation of GHC 30,000.00 came from her family when they met petitioner's family for the dissolution of the marriage.

Her family said that if petitioner says he does not want the marriage again then he should compensate her with the stated amount. Thus, the only basis for the compensation, is petitioner's refusal to continue with the parties' toxic relationship designated as a marriage. By this demand therefore, respondent and her family intended to force petitioner back into the marriage. Respondent's assertion during cross – examination that she assisted petitioner in cultivating his cocoa farm is clearly an afterthought to which the court attaches no value.

What respondent and her family should know is that, nobody can force another person or manipulate them to remain in a relationship they don't want to be. After all, respondent is partly responsible for whatever is pushing petitioner out of the marriage. It therefore lies foul in her mouth to assert that she has done nothing wrong to warrant the dissolution of the marriage. All her intransigent behaviour fueled by her baseless accusation of adultery against petitioner are wrongdoings warranting the dissolution of the marriage. On the totality of the evidence therefore, I find as a fact that, there is no reasonable basis for the

compensation of GHC30,000.00 respondent is asking for. It is only an arbitrary demand the court cannot give effect to.

The above notwithstanding, since the evidence on record clearly establishes that, petitioner for some time now has either not or insufficiently maintained respondent, it is only fair that some money is paid by him to cater for those lapses. On this basis, I will award respondent the sum of GHC 2,000.00, as alimony.

In sum, I hereby enter judgment in this case in favour of petitioner and accordingly grant the instant divorce petition. It is hereby ordered that the customary marriage celebrated by the parties about four years ago be dissolved and same is hereby dissolved. Petitioner is hereby ordered to pay the sum of GHC 2,000.00 to respondent as an alimony. Upon consideration of the circumstances of this case, there will be no order as to costs.

SGD

H/W MRS JULIET OSEI – DUEDU ESQ
DISTRICT MAGISTRATE
14/03/2022