

**IN THE DISTRICT COURT HELD AT NEW ABIREM ON TUESDAY 4TH APRIL,
2023 BEFORE HIS WORSHIP BENJAMIN B. ATTABRA. DISTRICT MAGISTRATE.**

SUIT NO. A4/8/21

TIME; 09: 30AM

FENNING OSEI GABRIEL

VRS

ABIGAIL OFORIWAA

Petitioner Present

Respondent Present

BY COURT;

JUDGMENT

The petitioner brought this action against the respondent for dissolution of ordinance marriage contracted between them at Presbyterian Church of Ghana Akyem Nsutam in the year 2017. An order of the court granting custody of Zebulun Osei Fenning to him. And a monthly maintenance of GHC500.00 for the two children and also be responsible for their medical bills etc.

Petitioner's case was that after his marriage to the Respondent in the year 2017, they have been blessed with three children namely; Zebulun Osei Fenning 10years, Mildred Akomeah Fenning 6years and Gabriel Osei Fenning 2years. Petitioner contends the respondent does not respect him as a husband. Whenever there is misunderstanding between them, the respondent will start cursing him that he would get involved in an accident and many more. Petitioner intimated further that Respondent travelled once without informing him for about three days. Again, she often sleeps outside until the following day. Petitioner avers he has made several reports to respondent's parents and elders of their church and attempts at settlement always failed. At a point in time the parents of the Respondent requested he returned their daughter to them. However, he resolved to enjoy the marriage as it were for the sake of the children. Plaintiff contends, he had an information to the effect that the respondent was cheating on him. When he confronted her, she denied it that it was untrue. Meanwhile, there were ample evidence to effect.

The respondent's defence was that she comes from Akyem Nsutam but resident of Nkawkaw following a court order of separation. Respondent argued she was in a relationship with the Petitioner for five years after which she gave birth to their first son. Two years in their relationship he was commissioned in the Ghana Police Service as she worked in a chop bar with the Petitioner's mother. That when Petitioner was posted to Akyem Ntronang she followed him there. Later on she got pregnant for the second child. Upon delivery, they went for the marriage ceremony. Two weeks to their marriage, she got to know that petitioner had impregnated somebody else. She questioned him and he said it was not true. But they proceeded to have their marriage done. Upon their return to their station, the lady got delivered of a baby and the petitioner went to name the baby. Following this event, she decided not to marry again but she was advised and changed her mind. They both stayed because of the children. Six months later Petitioner collected her GH¢1000.00 to give a friend for something for him to refund later. Respondent stated Petitioner later got posted a photo on Facebook. She enquired and it was the child he had with his paramour. Petitioner said he has lost interest in her because he has been told she is a witch. Following this allegation the petitioner withdrew from her. Petitioner stopped sleeping at home. As at now he has two kids with the woman. When the court ordered for separation, she made frantic efforts to reach the petitioner for settlement but to no avail. And for the sake of the children she wants to remain in the marriage. But as Petitioner insists that the court dissolve the marriage and the petitioner pushes her off with a sum of GH¢50,000.00. The reason being that she has lived with the petitioner for a period of eighteen years now with four children. Again, the petitioner should provide her with accommodation and custody of Zebulon.

Issues to be determined by the court were; whether or not the marriage between parties had broken down beyond reconciliation?

Whether or not petitioner to be granted custody of Zebulon?

What is the reasonable amount to be awarded the Respondent as a push off?

In the course of the hearing, petitioner testified and was cross examined by the respondent. Respondent also opened her defence and was cross examined by the petitioner.

The law governing property settlement thus Section 20 of Matrimonial Cause Act 1971 (Act 367) Provides:

1. "The court may order either party to the marriage to pay to the other party such sum of money or to convey to the other party such movable or immovable property as

settlement of property right or in lieu thereof or as part of financial provision as the court thinks just and equitable.

2. Payments and conveyances under this section may be ordered to be made in gross or by instalments”

The circumstances under which the court may exercise this power has been settled by the Supreme Court in the case of *Riberio V. Riberio* (Civil Appeal No. 7/89 of 12 Dec, 1989). The facts are that the parties were married for 27 years and the marriage was blessed with four children. The wife was during the coverture or the subsistence of the marriage a full-time house wife. The husband acquired ten houses including two in London and had a substantial bank balance. Twenty-two other children of the husband were brought up by the wife. The wife petitioned for divorce and applied for lump sum payment and one of the houses, C153/5 Ring Road, known as “Haulage House” along the Ring Road, Accra for her to live in.

The High Court awarded her 150.00 (one hundred and fifty thousand cedis) lump sum payment and the “Haulage House”. The husband’s appeal to the Court of Appeal was dismissed, a further appeal to the Supreme Court was dismissed and an application for review of the Supreme Court judgment was dismissed. The Supreme Court took the opportunity to examine previous local and foreign decisions and the identical provision in English law in the United Kingdom and then held that the court had power.

“to order (the husband) to convey to the (the wife) such (house/building) as part of financial provision as the court thinks just and equitable”.

Again in the case of *Mary Oparebea V. Samuel Ansong Mensah* Suit No. 1608/88 judgment of the High Court dated 14th December, 1989 the wife from time to time during her 218 years of marriage helped the husband in looing after his business whilst he was away. She was not paid anything for her services. On her application for property settlement on divorce it was argued on behalf of the husband that according to Akan custom a wife is not entitled to be recompensed for her serviced. The trial judge in rejecting this argument said:

“The customer itself is based on an old concept of Akan family in which most family chores and labours were shouldered without questions by the wife. In the practice of that custom it was and perhaps still is in some remote rural areas, common sight for the wife, in going to the farm for instance, to bear a child at her back, carry the farm basket with farm seedlings or farm meal on the head, and at the same time struggle to convey on one or both hands some of the farm implements like cutlass required to cut or map foot paths

to the farm. This straining woman is invariably followed or led by the able-bodied husband who nonchalantly comforts himself by smoking a pipe or holding at best a gun, or a cutlass and no more-and this is so when the woman is pregnant with a child or when the man visibly appears much stronger than the laboring wife.

Down on the farm it is the woman who cooks the farm meal for the man to eat while at the same time participating in the farm labours such as weeding almost as much as the man. Back from the farm one sees the same dismal treadmill of the wife carrying foodstuffs in a basket on her head but not the man. The man accompanies the wife empty handed or by carrying relatively little foodstuffs that could be conveyed by the hand. In the house, the same back-breaking fag continues. The woman cooks the meal for the household, bathes children; prepares the bathroom for the man and all these while will be done when the man gloats over or gossips by the roadside or idles under some popular entertainer spot in the village till he is politely invited to come home to enjoy the end products of the wife's labours. Even in the rural communities it is regarded as socially demeaning for the man to carry a basket on his head with foodstuffs or assist in the household chores. He surely will begin pejorative names. It is significant to point out that the farm on which the couple labours for many years belong to the man and invariably when he dies it goes to the successor. Society has founded upon this system and demonstrates its depreciation of it by first endorsing inroads into the principles on succession and ownership with gradual provision favouring conveyance of some of these properties to the downtrodden wife"

His Lordship held "that this custom is outmoded, irrelevant to modern circumstances, seeks to permanently disdain the status of the Akan married woman, is totally out of tune with the realities of modern life and does not deserve to be followed". His Lordship further went on to hold that: - "for 28 years that the petitioner assisted the respondent in his business, the petitioner is entitled to be remunerated".

The trial judge gave the petitioner the Tesano House which she occupied and in which she invested money by making extensions to it. The husband had a house at Tesano, Kokomlemle, North Labone, Nkaw, Atiebie and North Ridge which was converted into North Ridge Hotel.

He also owned plots of land at McCarthy Hill, Abeka, Kotobabi and Takoradi. He had accounts in several banks.

In the instant case the Respondent requested the sum of GH2,000.00 in lieu of services rendered as a house wife for the period of marriage. Petitioner though agreed to settle

her with a sum of GH400.00 the court adjudge same to GH 1.200.00. having regards to the enormous role of woman in a man's life most importantly a pastor of a church and the standard of living at Winneba to establish herself. The Court hereby declares that ordinance marriage contracted between parties on 21/12/2008 duly dissolved. In the interim, let the petitioner maintain the children with the GH60.00 per month subject to review as and when needed by the Family Tribunal when they empanel. Respondent is to leave the marital home forthwith with the children. There is no order as to cost.

The court upon considering the evidence adduced before it is of the view that the centre cannot hold and that the marriage has broken down beyond reconciliation. In view of that the court hereby declare the ordinance marriage contracted between parties on the 25/3/17 as dissolved.

The court earlier order for naming of the last male child with the respondent was conducted in court today following back and forth all in an attempt to convince her to avail the son and to be present at the ceremony. Following the naming of the son Kwadwo Jeremiah Yeboah Fenning.

Regarding the application for custody of Fenning Zebullun, the social enquiry report presented by the probation officer of the department of Social Welfare and Community Development submitted made a recommendation to the effect that custody to be granted petitioner hence the court accordingly granted to the Respondent. For the other children custody is hereby granted the Respondent and access granted the Petitioner.

As to property settlement, the court is of the view that the Petitioner at the moment is supporting the Respondent and the children and will have to continue shouldering the responsibility till the children are independent. That does not mean the Respondent should be left to just go empty handed. In view of that a sum of GH¢10.000.00 in lieu of property settlement is hereby awarded the Respondent. Marriage is hereby declared as dissolved. Maintenance of GH¢1000.00 is subject to review by the panel as and when the need be.

(SGD.) B.B. ATTABRTA ESQ.

MAGISTRATE