

IN THE DISTRICT COURT
AGONA SWEDRU - A.D. 2023
BEFORE HIS HONOUR ISAAC APEATU

Civil Suit No A4/18/2023

2nd February, 2023

MARGARET OTABIL

...

Petitioner

VERSUS

JERRY BISMARCK ASAMOAH

...

Respondent

JUDGMENT

The petition which originated this action was filed by the petitioner-wife of the marriage for dissolution of the marriage among other reliefs. It was filed on 13th January, 2023 and same served on the respondent. From a brief look at the petition, it is stated that the marriage was celebrated on the 1st day of July 2016 at the St. Anthony Catholic Church, Agona Swedru. After the marriage. The parties cohabited in Agona Swedru in the apartment of the petitioner. There appears to be no issue in the marriage although mention was made to the effect that both parties had children before the marriage. The petitioner claims that the marriage has broken down beyond reconciliation. She thus filed this suit seeking an order for dissolution of the marriage.

In accordance with Order 18 rule 1(3) of the District Court rules, C.I. 59, the Petitioner attached the grounds of her petition for dissolution of the marriage to her petition. The Petitioner deposed in her petition that the marriage between her and the Respondent has broken down beyond reconciliation. She averred that from the onset of the marriage, the respondent did not live up to expectation. He did not maintain her and even though she hoped that things would improve, it did not. She alleged that the respondent has for the past five (5) months refused to have sex with her. That he attacks her with slaps and insults at the least provocation. She alleged that on 14th December 2018, she came home to meet the respondent with a soothsayer performing rituals in the house. On 7th September 2022, she saw seven stones wrapped in a cloth and placed directly under the side of her mattress. That upon enquiries, respondent admitted that he put them there.

Petitioner alleged that the respondent has taken to spreading false information about her that she is a cheap flirt who flirts around which false publication has come to the knowledge of her staff members causing her much embarrassment. She alleged that these false allegations coupled with the fact that the respondent has denied her sex and the other allegations point to the fact that the marriage has broken down beyond reconciliation. She therefore prayed in her petition for dissolution of the marriage.

The petition together with attached documents was duly served on the Respondent as mandated by procedure. On receipt of the processes, the respondent filed an Answer to the petition. He denied most the averments made by the petitioner in her petition. He denied the assertion by the petitioner that he has not been maintaining her claiming that he has been maintaining them since they married. He asserted rather that it was the petitioner who has not been cooking for him and that food which are purchased are

left to rot because petitioner feels reluctant to cook. He denied the assertion that he has denied the petitioner sex alleging rather that it was the petitioner who has denied him sex and goes about flirting with other men and infected him with sexual transmitted diseases. He alleged that the petitioner has resorted to flirting with other men on their matrimonial bed. He alleged that the petitioner meets up with her sex partners under the pretext of work duty outside. He thus prayed that the marriage be dissolved.

The general rule of law is that the court before whom a matrimonial case is brought was under a duty to inquire so far as it reasonably could, into the charges and counter charges alleged by parties in a divorce suit as this one. But the onus of proof is on the petitioner to prove all allegations made against any such respondent and where a respondent made a counter allegation, he/she in accordance with section 14 of NRCD 323, bears the onus of proof to establish those allegations. And in discharging the onus on the petitioner, it was immaterial that the respondent had not contested the petition; he/she must prove the charges and, flowing from all the evidence before the court, the court must be satisfied that the marriage had irretrievably broken down. See **Danquah v. Danquah [1979] G.L.R. 371; Donkor v Donkor [1982-83] GLR 1158.**

The onus therefore, of producing evidence that the marriage has broken down beyond reconciliation, as in all matrimonial causes, is on the party against whom a finding of fact would be made in the absence of further proof i.e. the petitioner: see Section 17(a) and (b) of NRCD 323. In the task of proving breakdown of the marriage, it is important to underscore the authority that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

The burden of producing evidence has thus been defined in Section 11 (1) of NRCD 323 as follows;

“11 (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party”.

And it bears stating that the burden of proof is also not static but could shift from party to party at various stages of the trial depending on the obligation that is put on that party on an issue. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 as follows:

“14 Except as otherwise provided by law, unless it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting”.

In accordance with the general rule of procedure as stated above, the Petitioner had the burden of proving all the averments she made against the respondent on the standard of preponderance of probabilities. If she succeeds in establishing her averments by evidence, the onus will then shift to the Respondent to lead some evidence to rebut same.

As is trite knowledge, the Matrimonial Causes Act, 1971 (Act 367) regulates divorces and other matrimonial causes in this country. Under section 1(2) of Act 367, a Court shall not grant a petition for divorce unless the marriage is proven to have broken down beyond reconciliation. As I have established above, the onus of such proof is on the party who alleges that the marriage has broken down beyond reconciliation. But under Section 2(1) of Act 367, for the purposes of showing that the marriage has broken down beyond reconciliation, a petitioner for divorce shall satisfy the Court of one or more of the following facts:

- a. that the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent;
- b. that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;
- c. that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- 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;
- e. that the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or
- f. that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

It has been held in a line of cases including **Donkor v Donkor [supra]** that the Matrimonial Causes Act, 1971 (Act 367), did not permit spouses married under the Marriage Ordinance, Cap. 127 (1951 Rev.), to come to court and pray for the dissolution of their marriage just for the asking. And that the petitioner in such a case for dissolution of marriage must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act (above), not only by pleading them but also by proof for the purpose of showing that the marriage had broken down beyond reconciliation. The court explained further that Section 2 (3) of the Act, provided that even if the court found the existence of one or more of those facts it should not grant a petition for divorce unless it was satisfied that the marriage had broken down beyond reconciliation.

Having stated the principles of law above, what did the petitioner do to prove that the marriage has broken down beyond reconciliation? The Petitioner gave evidence in a bid to prove break down of the marriage. She however did not call any witnesses in proof of her case. The nub of petitioner's case is to the effect that she got married to the respondent on 1st July, 2016 at the St. Anthony Catholic Church, Agona Swedru. After the marriage. The parties cohabited in Agona Swedru in the apartment of the petitioner. That from the time they got married, the respondent did not maintain her. That all interventions made to get him to maintain her yielded no fruits. That the respondent has for the past five (5) months denied her sex. That the respondent is violent and attacks her with slaps and insults at the least provocation. That the respondent is a ritualist. That once she returned from work to meet the respondent with a soothsayer performing rituals in the house. That they called her to join them and they explained to her that the ritualist was there to help them have a child. On 7th September 2022, she saw seven stones wrapped in a cloth and placed directly under the side of her mattress. That upon enquiries, respondent admitted that he put them there.

Petitioner alleged that the respondent has taken to spreading false information about her that she is a cheap flirt who flirts around which false publication has come to the knowledge of her staff members causing her much embarrassment. That the respondent has been instigating hatred against her by going to her workplace to tell the other nurses that she has been embezzling their money. That the nurses had to call her to account for all monies they had with her. She alleged that the respondent has been accusing her of being a flirt and once assaulted someone who whom she had gone to Cape Coast with. That these false allegations coupled with the fact that the respondent has denied her sex and the other allegations point to the fact that the marriage has broken down beyond reconciliation.

After the petitioner closed her case, the Respondent was called to give evidence in accordance with procedure. Respondent gave evidence but called no witnesses in proof of his claims. The nub of respondent's case is that after they got married in 2016, the petitioner enrolled in school. After she completed, she told him that she had been enlightened. From that time onwards, she would go out late in the night on the pretext of going to work. That once she was at home and received a call. She informed him that she was needed at work. When she left, he followed up to her workplace around 10pm but did not see her there. When he said he followed her, she insulted him. He said the petitioner once wanted to let one Mr. Arhin to come home to visit them. When he objected, the petitioner insulted him. That she was always seen with one Silas who she would meet behind their house. That he chanced upon them once and complained bitterly. However, she traveled and spent the night with the said Silas. When they returned, he saw them and seized the luggage of the said Silas. He alleged that the petitioner does not cook. She leaves food which they buy to rot without cooking them. That the petitioner has denied him sex for six months but accused him of being impotent.

The parties have made their cases before the court. Having established the respective cases and responses put before the court, my next task in this judgment is to find out the issue(s) emanating therefrom. Upon a careful scrutiny of the pleadings and the respective cases, I am of the opinion that the only issue which needs to be determined in this case is whether or not the marriage between the parties has broken down beyond reconciliation. But as has been stated above, to arrive at this finding, the court ought to determine whether any of the grounds as above stated were relied on and proved. I shall therefore determine whether the petitioner's assertions fit into any of the grounds stated under section 2(1) (a) to (f) of Act 367. If not, I shall find out if any

of respondent's assertions against the petitioner were also proved. This is because, the law is settled that in a petition for divorce, any other established fact has to support a finding that the marriage has broken down beyond reconciliation. And any of the grounds upon which divorce is founded as laid down under section 2(1) of Act 367 must only go to prove breakdown beyond reconciliation. So was the evidence led by the petitioner able to establish the omnibus ground i.e. that the marriage has broken down beyond reconciliation?

From the petition and the evidence on record, the petitioner's main ground based on which she seeks a dissolution of this marriage is mixed up and not well delineated. Even though she did mention some of the facts stated under section 2(1) of Act 367 as those she relies on to prove breakdown of the marriage, it took a bit of scrutiny to find them. She nevertheless appears to have grounded her petition on the fact of unreasonable behaviour and what appears to be their lack of compatibility leading to irreconcilable differences. In my evaluation of the evidence, I find that the parties got married in July 2016, a period of seven years. There is no child of the marriage but as I stated above, both parties appear to have given birth before the marriage. On the first ground of unreasonable behaviour, the petitioner alleged that the respondent assaulted her in the marriage and gave an instance where he assaulted her when she questioned him as to why he was spreading misinformation about her. She also alleged that respondent failed to maintain her during the marriage and was into rituals. She also alleged that the respondent has denied her sex and has been accusing her of being a cheap flirt.

Now, even though the petitioner made the above allegations, the respondent denied most of them. As already stated above, he denied denying the petitioner of sex and the other range of allegations. However, petitioner did not lead further evidence in proof

of her allegations which had been denied. Be that as it may, there is an abundance of evidence to show that the parties did not gel well as married couples. It is clear to see that all was not well in the marriage. As I have stated above, the petitioner made a plethora of allegations against the respondent including assaults on her, accusations of flirting with other men, ritualism etc. It was not surprising that the respondent came up with his own allegations. He also alleged that the petitioner was a flirt and chanced upon her with some of her sex partners. He made a lot of allegations himself against the petitioner.

Despite the fact that the petitioner failed to lead further evidence in proof of her allegations which default equally applies to the respondent, what clearly appears from the facts in evidence is that there are irreconcilable differences that exist between the parties to this marriage to such an extent that it is more likely than not that they cannot continue to live as husband and wife. As I stated above, the parties have been married for just over seven (7) years. However, I find that there are real differences between the parties which from the pieces of evidence, appear to have started right from the onset. These differences which I find from the evidence, has led to persistent quarrels and fighting between them leading to complaints to the police. Third parties have been involved in the marriage making the respondent feel insecure. Both parties admit that there have been quarrelling and fighting between them. Both do not trust each other.

As I have already stated above, a party could ground a petition for dissolution of marriage by proving the fact that there exist irreconcilable differences between them and that the parties to the marriage have, after diligent effort, been unable to reconcile their differences as provided in section 2 (1) (f) of the Act. It was held in the case of **Mensah v Mensah [1972] 2 GLR 198** that in order to establish this head or guide line three things are requisite:

- (a) There should exist differences between the parties.
- (b) They should have made diligent efforts to reconcile these differences,
- (c) They should have been unable to effect the reconciliation of the differences.

It was further held by the court that section 2 (1) (f) of the Act did not require that there should be disputes between the parties; it only required that there should be differences. It explained that a dispute is a difference but not all differences are disputes and that the inability of a spouse to have an issue is not a difference even though there may be a difference between the spouses as to how to remedy the situation. The court went on to state that the differences must be between the parties and that a litigation between the wife's family and the husband's family would not be a difference between the wife and the husband, although it may lead to one. The fact that the husband belonged to the Justice Party while the wife supported the Progress Party did not mean that there were irreconcilable differences. It again stated that the differences should be such as would make it impossible for the marriage to subsist.

It should be remembered, that evidence of the differences is being proffered to show the breakdown of the marriage. Differences which cannot possibly affect the subsistence of the marriage are not sufficient. Evidence of petty quarrels and minor bickering which are but evidence of that frailty which all humanity is heir to is not sufficient. The differences must be real and not imaginary; they should be so deep as to make it impossible for the parties to continue a normal marital relationship with each other.

In this case, I find that there are serious differences between the parties in the marriage. I find from the evidence that the parties have been at each other's throats for long periods in the marriage. There is the general admission that the atmosphere that

existed in the home was not too cozy. They fought a lot. The respondent has relocated from the matrimonial home since January 2022 due to the persistent fighting and mistrust between them. In such a situation of mistrust, chaos and rancor, I do not think that the court ought to attempt to reconcile what cannot be reconciled. It is not worth the effort to want to reconcile these parties as husband and wife. There is no love between the two. I think that the parties should not be condemned into going back into the marriage. It will certainly not work again. Any attempt to want to reconcile them will be to promoting further quarrels and animosity between the two. Looking at the situation between the parties, I cannot make a decree for them to go and stay under one roof. To do that will be turning my back on reality. It is no wonder that both parties are living in their separate stations without any form of communication.

The upshot of the above is that the differences between the Respondent and the petitioner have been widened the more that the parties to the marriage have, after diligent effort, been unable to reconcile their differences. And that is a valid ground to grant their request for dissolution of the marriage. I have read carefully the evidence as presented by the parties. I am of the firm conviction that the Petitioner was able to prove breakdown of the marriage based on section 2(1) (f) of Act 367. There are irreconcilable differences between the respondent and the petitioner which militate against any thought of reconciling the two. On the totality of the evidence on record, I am satisfied that the marriage has broken down beyond reconciliation. I will therefore grant the prayer for dissolution on account of the petitioner and pronounce a dissolution of the marriage between the respondent and the petitioner. The marriage between the parties is hereby dissolved.

There are no joint properties between the parties herein. There are also no children in the marriage. In the result, and based on the available evidence assessed on a balance of probabilities and the relevant law, the Petitioner succeeds in terms as follows:

The marriage between the Petitioner and the Respondent contracted under the Marriages Act, 1884-1985, Cap 127 is dissolved and the marriage certificate cancelled accordingly.

Given the circumstances under which the parties lived in the marriage and how the marriage came to an end as is borne out by the evidence on record, I am not inclined to make any order for cost. Parties shall bear their own costs.

HIS HONOUR ISAAC APEATU
DISTRICT MAGISTRATE