

CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING DISTRICT
MAGISTRATE, DISTRICT COURT "B", SEKONDI ON THE 22ND FEBRUARY, 2023

SUIT NUMBER A4/25/2023

BONIFACE QUARCOE

- PETITIONER

V

SARAH KOOMSON

- RESPONDENT

TIME: 8.38 AM

PETITIONER - PRESENT

RESPONDENT - PRESENT

PARTIES UNREPRESENTED

JUDGMENT

The parties have been married for the past 12 years and there is no issue of the said marriage. The Petitioner filed the instant petition on 5/12/2022 praying for a dissolution of the ordinance marriage celebrated between the parties on the 13th of November, 2010 on the ground that the marriage has broken down beyond reconciliation because the Respondent has behaved unreasonably and also committed adultery such that the Petitioner cannot reasonably be expected to live with the Respondent.

In an answer to the petition filed on 18/01/2023, the respondent denies that she has behaved unreasonably and also committed adultery. She averred that it is rather the Petitioner who has behaved unreasonably and has impregnated another woman outside the marriage. She cross-petitioned for the dissolution of the marriage.

Both parties testified in court and none of them called any witnesses. Petitioner tendered **Exhibits A**, the marriage certificate in support of his case.

It is the case of the Petitioner that the Respondent has behaved unreasonably because she has been stealing from him. Petitioner further avers that the Respondent has committed adultery and he cannot cope with that. It is the case of the Petitioner that when the Respondent was caught having a sexual relationship outside the marriage, she packed her belonging and left the matrimonial home. According to the Petitioner, this caused him anxiety, emotional trauma, distress, and embarrassment and because of that, he can no longer live with the Petitioner. It is further his case that the parties have not lived continuously together as husband and wife for over three years, hence the dissolution.

Respondent, on the other hand, denies any form of unreasonable behaviour and says that it is rather the Petitioner who has committed adultery by impregnating a lady by the name of Hannah. Respondent further avers that the Petitioner was not taking good care of her and as a result of that, she was faced with financial challenges. She brought same to the attention of the Petitioner but he failed to assist her. According to her, this caused her a lot of embarrassment and humiliation because her creditors were after her to settle her debts. As a result, she took Petitioner's money to settle some of the debt and when she brought same to the attention of the Petitioner he was upset. Respondent admits packing her things and leaving the matrimonial home not because she

committed adultery but because of the humiliation and embarrassment caused her by the petition. She supports the dissolution.

The issue for determination at the end of the trial thus is **whether or not the marriage between the parties has broken down beyond reconciliation**

The sole ground for the grant of divorce in Ghana is that the marriage has broken down beyond reconciliation. **Section 1 (2) of the Matrimonial Causes Act 1971, Act 367** refers.

To be able to arrive at this conclusion, the petitioner is enjoined to establish that one or more of the facts stated in **section 2(1)** of the said Act have occurred.

Section 2(1) of Act 367 provides that

“For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts. Only the relevant sections will be quoted.

(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;

As stated earlier, the Petitioner grounds the reason for the divorce on Adultery and Unreasonable behavior.

Section 43 of the Matrimonial Causes Act, 1971, (Act 367) defines adultery as “*the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse*”. It has been decided that the type of intercourse required to prove adultery is evidence of some penetration of the female organ by the male organ.

In **Adjetey V Adjetey [1973] 1 GLR 216** it was decided that

“Adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings, it must carry a high degree of probability”

In **Quarthey v Quarthey & Anor [1972] 1 GLR 6, Kingsley-Nyinah J** held that

“A court may act upon an admission of adultery even though there is no confirmatory proof of it, if the court is satisfied that the evidence as to the admission is trustworthy and if the evidence amounts to a clear, distinct and unequivocal admission of adultery”

In the instant case, the Petitioner accuses the Respondent of committing adultery and further says that it was when she was found out that she packed her things and left the matrimonial. The Respondent denied this claim and indicated that it was rather the Petitioner who has committed adultery and is seeking to push same on her. The burden was on the Petitioner to lead evidence to prove his claim of adultery since the Respondent denied same but he failed to do so. Indeed, he even failed to cross-examine the Respondent when she averred that it was rather, he the Petitioner who had impregnated a lady called Hannah. He intimated to the court that he had no questions for the Petitioner. The court did explain the implication of not cross-examining the Respondent but the Petitioner still stood his ground.

The effect of this is that the facts alleged by the Respondent were true and same accepted by the Petitioner. In **Quagraine V Adams [1981] GLR 599, CA**, it was held that

“where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by the failure to cross-examine”. See also **Browne V Dunn (1894) 6 R 67, HL**

Keen Adrian (2008), in his book **“The Modern Law of Evidence” (seventh Edition)**, **Oxford, New York, 195**, stated thus

“A party’s failure to cross examine however, has important consequences. It amounts to a tacit acceptance of the witness’s evidence in chief. A party who has failed to cross-examine a witness upon a particular matter in respect of which it is proposed to contradict his evidence-in-chief or impeach his credibility by calling other witnesses, will not be permitted to invite the jury or tribunal of fact to disbelieve the witness’s evidence on that matter.”

Applying the above principles to the instant case, clearly, the failure of the Petitioner to cross-examine the Respondent amounted to a tacit acceptance of the evidence of the Respondent that he has impregnated a lady called Hannah and, on that score, I find that it is rather the Petitioner who has committed adultery and the Respondent finds it intolerable to live with him.

The evidence further shows that the parties have not lived together as husband and wife for over three years. The learned **William Ekow Daniels** in his book **“The Law on Family Relations in Ghana, 2019 @ page312** state that

“The test to determine whether or not the parties are not living as husband and wife has no relation to the physical state of things such as houses or households, but rather it is to be considered from the point of view of whether there is absence of consortium or cessation of cohabitation”.

Darling J stated in **Rex V Creamer [1919] 1 KB 564** that

“In determining whether a husband and wife are living together the law has to have regard to what is called consortium of the husband and wife. A husband and wife are

living together, not only when they are residing together in the same house, but also when they are living in different places, even if they are separated by the high seas, provided the consortium has not been determined"

In the instant case, there is no denying the fact that the Respondent moved out of the matrimonial home in 2018 and the parties have not lived together as husband and wife for over three (3) years. In other words, they have not had any sexual encounters for that period and also the communication between the parties is equally not effective.

It is trite law that the court will only dissolve a marriage on the above ground (that is, the parties having not lived together as husband and wife continuously for two years) only when there is consent from the Respondent.

Section 1 (2) (d) of the Matrimonial Causes Act 1971, Act 367 provides that for the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court

*"(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, provided that the consent shall not be unreasonably withheld**, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph despite the refusal;*

In this case, consent is not being withheld by the Respondent at all because she also cross-petitioned for the dissolution of the marriage. In terms of reconciliation the evidence is that the families of both parties and the Reverend Father stationed at the church where the marriage took place have tried to settle the parties' differences to no avail. In the circumstances having analyzed the fact and evidence I have no doubt in

my mind that the marriage celebrated between the parties on the 13th of November, 2010 has broken down beyond reconciliation as a result of the adultery rather committed by the Petitioner and not the Respondent.

Accordingly, I decree that the ordinance marriage contracted between the parties herein on the 13th of November, 2010 *at the Church of St. Peter, New Takoradi* be and is hereby dissolved.

DECISION

1. *The marriage contracted between the parties herein on the 13th of November, 2010 at the Church of St. Peter, New Takoradi has broken down beyond reconciliation and same is dissolved. It is ordered that a decree of divorce be granted; the marriage certificate with registration number NT/124/5/2010 pursuant to licence no. 2-5-1977 is hereby cancelled.*
2. *There is no order as to Costs*

(SGD)

H/W ROSEMARY EDITH HAYFORD (MRS)

MAGISTRATE