

IN THE DISTRICT MAGISTRATE COURT HELD AT NEW TAFO-AKIM ON
THURSDAY 09-02-2023 BEFORE HER WORSHIP JOSEPHINE SARFO (MRS.)

SUIT NO: A4/15/22

MATILDA ABONKRASE BONSU

NEW-TAFO-AKIM

PETITIONER

VRS

JACOB MBUER WUMBEI

RIDGE- ACCRA

RESPONDENT

PARTIES - PRESENT

EBENEZER KWAKU GOHOHO, ESQ FOR RESPONDENT-ABSENT

JUDGMENT

The Petitioner issued out her Petition claiming against the Respondent as follows:

*Dissolution of the Marriage, celebrated on 12th May 2001 between the Parties at the Upper Room
Revival Assemblies of God Church, Kumasi.*

To the Petitioner's Petition, the Respondent filed an Answer and also Cross-Petitioned as follows:

- i. Dissolution of the marriage
- ii. Custody of the children of the household and any other reliefs as the Honourable Court may deem fit.

- iii. Declaration that the House No. EE1311-5167 or House No. TF 3B2 Akim Tafo belongs to the Respondent.
- iv. Declaration that this piece or parcel of land herein is situated, lying and being at “New Road” near New Tafo-Akim and bounded on one side by Kunkum, on one side by Abubakar and unknown persons, belongs to the Petitioner.
- v. Declaration that the two stores-chemical shop and mattress store being operated by the Petitioner belong to the Respondent.
- vi. Declaration that the mattress store known as A.B MAT VENTURES at Akim-Tafo established by the Petitioner belongs to her.

The case of the Petitioner is that the parties got married under the ordinance on 12th May, 2001 at the Upper Room Revival Assemblies of God Church, Kumasi. After the marriage, the parties cohabited at Bechem and later moved to New Tafo-Akim. That the marriage produced three issues namely: Hubert Wumbei-20 years, Joshua Wumbei-18 years and Richard Wumbei-16 years.

The Petitioner asserts that the marriage has broken down beyond reconciliation as the Respondent has deserted her for the past eight (8) years and that the parties have since 2015 not engaged in sexual intercourse or lived together as husband and wife.

Further, the Petitioner asserts that she has been working and managing Respondent’s chemical store for the past 17 years and it was proceeds from this store that she used in fending for the children’s education, health, paid utility bills among others. That despite being married to the Respondent, she only played the role of housekeeping and managing the Respondent’s business without any salary.

Petition further averred that Respondent’s attitude and behavior is such that she cannot reasonably be expected to live with him as he has neglected and caused her much anxiety, distress and embarrassment. That the Respondent’s autocratic behavior has brought

them a great deal of resentment, indifference, devaluing, abuse of power and control such that she can no longer cope with the unbearable situation in the marriage. That since Respondent was transferred to Accra in 2009, he has not allowed her to visit or spend time with him and has for some time now not been visiting home often irrespective of him being on annual leave and whenever he visits, it is for only a short period. That in 2012, Respondent denied a pregnancy she carried causing her to suffer miscarriage on May 5; that her prime ages have been ruined and her dignity damaged due to emotional torture.

The Petitioner also averred that in 2018, the Respondent emphatically told her brother, Isaac Chikpa and head of family, James Yakubu Birkelund in a telephone conversation with them that, he was no more interested in the marriage and wanted the Petitioner out of their matrimonial home. That the Respondent's actions show that he is not interested in the marriage but has refused to initiate divorce proceedings to avoid payment of compensation and has rather subjected her to severe emotional stress, torture, pain and agony.

The Respondent per his Answer to the petition and cross-petition denied having deserted the Petitioner or shirked his responsibilities towards his family and averred that it was rather the unreasonable behavior of the Petitioner that has caused the breakdown of the peaceful marriage between the parties. That the Petitioner has become disrespectful and does not listen to or heed advice. According to the Respondent, he set up two stores, a chemical store and a mattress store and asked the Petitioner to run them and use some of the proceeds from the stores to run the house and pay the children's fees when the children were in primary school and also use part to pay herself a monthly salary. The Respondent asserted that he is single handedly paying for the children's school fees at the Tertiary, Senior and Junior High School levels and that despite having told the

Petitioner to use proceeds from the two stores to maintain the household, he also contributed money towards the maintenance of the household.

The Respondent also asserted that the Petitioner used proceeds from his two stores to set up another mattress store (A.B MAT VENTURES) at Akim-Tafo, Kukurantumi Junction and put up a house secretly without his knowledge. That the bone of contention between the parties is that the Petitioner wanted to travel abroad to seek greener pastures which the Respondent advised her against but she refused and went ahead to initiate the process and that when the Petitioner went to the Royal Norwegian Embassy for visa without his knowledge and was denied same, she became peeved causing her to initiate the instant Petition. According to the Respondent, their families and church elders mediated on the issue of their divorce however the Petitioner has refused to rescind her decision to travel abroad. That he neither prevented Petitioner from visiting him in Accra nor did he deny a pregnancy rather Petitioner had molar pregnancy which caused a miscarriage due to infection. The Petitioner refuses anytime he wants to have sexual intercourse with her and for the past 5 years the parties have not lived together as husband and wife.

The Respondent also prays for among others, the dissolution of the marriage, custody of the children and a settlement of the Petitioner's mattress store and piece of land in her favour.

ISSUES

Emanating from the pleadings and facts of this case, the following issues were set down for trial:

1. Whether or not the marriage between the parties has broken down beyond reconciliation?

2. Whether or not all properties identified by the parties were acquired during the subsistence of the marriage and whichever way how to distribute the said properties?
3. Whether or not the custody of the three issues of the marriage should be granted to either the Petitioner or the Respondent?
4. Whether or not the Petitioner is entitled to alimony?

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. **Under Section 2(1) of the Matrimonial Causes Act, 1971, (hereinafter called Act 367)** the Petitioner would have to satisfy the Court that the marriage has broken down beyond reconciliation.

Section 11(1) of the Evidence Act, 1975 (NRCD 323) provides that, “for the purpose of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue”

In Re AshalleyBotwe Lands; Adjetey Agbosu and others vrs Kotey and Others [2003-2004] SC GLR 420. It was held inter alia at page 425 that;

“(5) the burden of producing evidence in any given case was not fixed, but shifted from party to party at various stages of the trial, depending on the issue(s) asserted and/or denied”.

It was further stated as per **Brobby JSC** at page 425 that;

“.... if the court has to make a determination of a fact or of an issue and that determination depends on evaluation of facts and evidence, the defendant must realise that the determination cannot be made on nothing.... The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court.....”

Section 12 of NRCD 323 further provides that proof must be by a preponderance of probability. “Preponderance of probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.”

This position was affirmed by the Supreme Court in the case of **Adwubeng v Domfeh [1997-98]1 GLR 282** where it was stated that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities.

The Petitioner in this case would have to prove that the Respondent’s behavior is such that a reasonable person in the circumstances and environment of the parties could not be expected to continue to endure. She would also have to convince the Court that she and the respondent have, after diligent effort, been unable to reconcile their differences.

The evidence of the Petitioner is that Respondent has deserted her for the past 8 years and as such the parties have not lived together as husband and wife all these years; have not had sexual intercourse since 2015. The Petitioner asserted that the Respondent failed to give due care and attention to her emotionally and only concentrated on his own self-interest in the marriage. That even though she managed and operated the Respondent’s Chemical and Mattress shops, she was not put on any form of salary structure or financial investment policy whereas the Respondent made it a point to take money from the business to sponsor his work related activities without refunding same. According to the Petitioner, the children’s fees, health and utilities bills were being paid by her with proceeds from these two stores as the Respondent cunningly pushed most financial responsibilities of the children and home on her to shoulder and it was only until the year 2021 that the Respondent begun remitting the children. The Petitioner stated that she only endured the emotional torture and deprivation for the sake of the children however she could no longer continue to endure the maltreatment.

The Respondent also led evidence that it was due to the unreasonable behavior of the Petitioner that has caused the breakdown of the marriage. That the Petitioner is disrespectful, authoritative and not submissive. He attached copies of mobile money transactions as evidence of taking care of both the Petitioner and the children which were received in evidence as Exhibit 2 series. According to him, the Petitioner used proceeds from the two businesses he set up to set up a mattress shop and also build a house. He tendered in evidence copies of a business registration certificate and Land documents on the property which were marked as Exhibit 3 series. That the Petitioner made plans to relocate to either Norway or Britain without his consent and knowledge and when he advised her against same upon getting to know about the Petitioner's intentions, the Petitioner became peeved and subsequently filed this instant Petition. Copies of the travel documents from the Norwegian Embassy were tendered in evidence and marked as Exhibit 4 series. According to the Respondent, the parties have not engaged in any sexual intercourse for the past 5 years.

Section 2 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:

- 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

provided that such 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 notwithstanding the refusal;

- e) That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f) That the parties to the marriage have after diligent effort, been unable to reconcile their differences”.

The evidence before this Court has established that the parties have not lived together as husband and wife for more than five years now. Each of them has accused the other of serious harassment and I can easily gather from their respective case that there is a serious friction in the marriage such that the continuity of the union will not augur well for either party. More so, the evidence before this Court establishes that all efforts to reconcile the parties have proved futile. I hereby declare the marriage as having broken down beyond reconciliation. I accordingly decree the dissolution of the ordinance marriage contracted between the parties on 12/05/2001.

Having come to the conclusion that the marriage between the parties has broken down beyond reconciliation, the Court will now consider the distribution of the property acquired during the marriage. I refer to **Article 22 of the 1992 Constitution of Ghana** which provides that:

- 1. A spouse shall not be deprived of a reasonable provision out of the Estate of a spouse whether or not the spouse died having made a will.*
- 2. Parliament shall as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.*
- 3. With a view to achieving the full realization of the rights conferred to in clause (2) of this article,*

- a. *Spouses shall have equal access to property jointly acquired during the marriage.*
- b. *Assets which are jointly acquired during the marriage shall be distributed equitably between the spouses upon dissolution of the marriage.*

Akin to Article 22 (3) is Section 20 (1) of Act 367 which empowers a court in an action for dissolution of marriage, to settle property rights of the parties on a “just and equitable” basis. The section provides as follows:

“The court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the court thinks just and equitable”.

In **MENSAH V MENSAH [1998-99] SCGLR 350**, the Supreme Court speaking through **Bamford Addo JSC** (as she then was) at page 355 held:

“the principle that property jointly acquired during marriage becomes joint property of the parties applies and such property should be shared equally on divorce; because the ordinary incidence of commerce has no application in marital relations between husband and wife who jointly acquired property during marriage.”

The following properties were identified as belonging to either the Petitioner or the Respondent in the course of the trial:

- a. The matrimonial, House No. EE1311-5167 or House No. TF 3B2 Akim Tafo;
- b. A Chemical Store(JAMET) established by the Respondent;
- c. A mattress store established by the Respondent;
- d. A mattress shop (A.B MAT VENTURES) established by the Petitioner;
- e. The house located at New Road Tafo (Holly Family junction) built by the Petitioner/ A piece or parcel of land situated, lying and being at “New Road” near

New Tafo-Akim and bounded on one side by Kunkum, on one side by Abubakar and unknown persons.

It is a hackneyed principle distilled from several case law that the property acquired during marriage becomes joint property of the parties and such property should be shared equally on divorce. The properties identified as belonging to either the Petitioner or the Respondent were properties acquired during the subsistence of the marriage and therefore falls into the joint property category. The Respondent alleged that it was proceeds from the businesses he had set up that Petitioner used in putting up a mattress shop and buying a parcel of land and putting up a building thereon. The Petitioner denied this allegation and rather stated that it was monies from her pen friends in the UK which she used in setting up the mattress shop and buying the land and averred that the Respondent's claim was unfounded. The Respondent beyond the bare assertion of accusing the Petitioner of diverting funds from the Chemical and Mattress shops was unable to produce any evidence to prove same. Nonetheless since the evidence before this Court has established that all the properties enumerated above were each acquired during the subsistence of the marriage, I will in fairness and on the equality is equity principle, settle the properties each party acquired and holds in the name in favour of that party. In consequence of this the following properties are settled in favour of the Petitioner:

- a. The Mattress shop (A.B MAT VENTURES)
- b. The house located at New Road Tafo (Holly Family junction) built by the Petitioner/ A piece or parcel of land situated, lying and being at "New Road" near New Tafo-Akim and bounded on one side by Kunkum, on one side by Abubakar and unknown persons.

whereas the following properties are settled in favour of the Respondent:

- a. The matrimonial house H/No. EE1311-5167 or House No. TF 3B2 Akim Tafo
- b. JAMET Chemical Store
- c. The Mattress store set up by Respondent.

PAYMENT OF COMPENSATION

The Petitioner has prayed the Court for adequate compensation. **Section 19 of Act 367** states that, *“the Court may, whenever it thinks just and equitable award maintenance pending suit or financial provision to either party to the marriage, but no order pending suit or financial provision shall be made until the court has considered the standard of living of the parties and their circumstances”*. Factors to be considered in awarding financial provision include the following: the income earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future; the financial needs, obligations, and responsibilities each of the parties has or is likely to have in the foreseeable future; and the standard of living enjoyed by the family before the breakdown of the marriage. The age and duration of the marriage and the existence of children. The Court must also take into consideration the ability of the spouse who will be required to make the payment.

The Petitioner in this case has been in the management of the family’s businesses for about 17 years now. She was not put on any structured salary as revealed by the evidence before this Court. The Respondent with the Petitioner at the helm of affairs had the peace of mind to focus on building his career as a Certified Registered Anaesthetist. The Respondent also conceded during cross-examination that the nature of his job required that he travelled intermittently but he was able to stay with the family sometimes for a week or two or even month. Thus for the greater period of the marriage, the Petitioner

had to take care of the home in terms of cooking, washing and nurturing of the children of the marriage. The parties have also been married for close to 21 years.

The position of the law is that *“Common sense and principles of general fundamental right would require that a person who was married to another, and had performed various household chores for the other partner like keeping the home, washing and keeping dirty laundry generally clean, cooking and taking care of the partner’s catering needs as well as those of visitors, raising up of the children in a congenial atmosphere and generally supervising the home such that the other partner had a free hand to engage in economic activities, must not be discriminated against in the distribution of properties acquired during the marriage when the marriage was dissolved. The reason was that the acquisition of the properties had been facilitated by the massive assistance that the one spouse had derived from the other”.* as per Dotse JSC in *Mensah v Mensah* [2012] 1 SCGLR 391

Although the above principle relates to property settlement, it is however applicable in this instance. I thus deem it fair and just to award the Petitioner compensation in the circumstances and I accordingly order Respondent to pay a lump sum of GHC 10,000.00 as compensation to the Petitioner.

CUSTODY OF THE CHILDREN

The Respondent is praying for custody of the 3 children. The **Children’s Act, 1998 (Act 560)** defines a child as a person below the age of eighteen years. Since two out of the three children, Hubert, 20 years and Joshua, 18 years do not fall below the age of 18, I will focus on the custody of the last child, Richard, 15 years in this judgment. **Section 22 of Act 367** empowers the Court to make any orders consequential to the child’s welfare which relates to custody, right of access, education and maintenance. **Section 2 of Act 560** also

provides that the best interest of the child shall be the primary consideration by any Court, person, institution or any other body in a matter concerned with the child.

The case of **Braun v Mallet [1975] GLR 81** is instructive in this regard. The Court in that case stated as follows:

“The welfare and happiness of an infant is of paramount consideration. In considering matters affecting the welfare of an infant, the courts must look at the facts from every angle and give due weight to every relevant material.”

The court further emphasized in that case as follows:

“The natural right of the mother of a young child to its custody and the fact that the mother of an illegitimate child had a prima facie right to its custody in preference either to the reputed father or any person and, the fact that Thomas and the mother needed each other. The affection of a mother for her child must be taken into account, and poverty per se was no reason for depriving a mother of custody when her character had in no way been impeached.”

In deciding what is in the best interest of the child, the conduct of the parents and in this case the pattern of life set up by them during cohabitation are some of the important factors to be considered. The evidence before the Court shows that Respondent worked elsewhere during cohabitation while the children lived with the Petitioner elsewhere. The Respondent presently works in Accra; it is no fault of his that he should very often be out of the home as the nature of his job so demands. His family only see occasionally leaving the children in the care of their mother. I do not think that the Respondent will have time for the children as he is still working in Accra. The Petitioner on the other hand lives and works in New Tafo where she has consistently lived with all the children since the family relocated from Bechem. The children no doubt are attached to her and to deprive them of her love and attention might affect them emotionally. In view of the foregoing and

having regard to the fact that the character of the Petitioner has in no way been impeached, I will exercise my discretion and award custody of Richard Mbuer Wumbei, 15 years to the Petitioner with reasonable access given to the Respondent. The Respondent shall maintain each child with GHC 350.00 per month in addition to their educational and health needs. The two older children have been included in the award of maintenance because they are still in school and will need to be catered for until such time that they become gainfully employed.

DECISION

I find from the evidence led before this Court that the marriage between the parties has broken down beyond reconciliation. I therefore decree that the marriage be dissolved. The marriage between the parties is hereby dissolved.

I proceed to make the following consequential orders:

1. The properties each party acquired during the subsistence of the marriage and holds in the name is settled in favour of that party.
2. The Respondent is to pay to the Petitioner GHC10,000.00 as financial settlement.
3. Custody of Richard Wumbei, 15 years is awarded to Petitioner with reasonable access granted to the Respondent.
4. The Respondent shall maintain each child with GHC 350.00 per month in addition to their educational and health needs.
5. I will make no order as to costs. Each party to bear the own costs.

SGD

H/W JOSEPHINE SARFO (MRS.)

