

**CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS  
DISTRICT MAGISTRATE, DISTRICT COURT "B", SEKONDI ON THE 1<sup>ST</sup> DAY OF  
MARCH, 2023**

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**SUIT NO. A4/14/2023**

**EVA ASANTEWAH - PETITIONER**

**V**

**FRANK BODOR FINAWAH - RESPONDENT**

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**TIME: 11.40 AM**

**PETITIONER - PRESENT**

**RESPONDENT - PRESENT**

**PARTIES UNREPRESENTED**

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## **JUDGMENT**

By a petition filed on 20/10/2022, the petitioner claims the marriage celebrated between the parties on the 22<sup>nd</sup> of October 1993 has broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent hence Petitioner prays for the following reliefs:

- 1. That the marriage should be dissolved forthwith*

2. *That the court should compel the Respondent to provide shelter for the children*
3. *That Respondent should be compelled to compensate the Petitioner with an amount of GHC20,000.00*

The Respondent filed an Answer on 03/11/2022 denying that he has behaved unreasonably. He cross-petitioned as follows:

- a. *An order for the children to stay with him in Tarkwa in order for Respondent to cater for them and avoid any unnecessary cost on rent*
- b. *An order for Petitioner to pay alimony of GHC30,000.00 to Respondent since Petitioner is the one seeking to dissolve the marriage with no just cause.*
- c. *That the Petitioner be made to bear all the incidentals arising out of this suit.*
- d. *And for any other orders as this Honourable Court may deem fit so to order.*

The parties filed their respective witness statements pursuant to an order of the court and none of them called a witness. Petitioner tendered **Exhibit A** the marriage certificate in support of her case.

## **PETITIONER'S CASE**

Petitioner is a Trader and the Respondent is a driver. They have three children (two adults and one minor child aged 13 years). It is the case of the Petitioner that the parties lived peacefully and everything was well until the Respondent lost his job. Subsequently, life became unbearable and the family began to encounter some difficulties. Petitioner says that her sister came to their aid and assisted Petitioner with some money to cater for the family on two different occasions. Eventually, her sister invited the Petitioner to Accra in pursuit of a job. Petitioner says that with the consent

of the Respondent, she went to Accra in search of a job and also got a job as a driver in a private company for the Respondent but Respondent declined the offer. Later the Respondent left for Tarkwa for a job. The petitioner avers she paid the Respondent a visit one day in Tarkwa and the Respondent informed her he had lost his job. Petitioner says she entreated the Respondent to come to Accra since there was a job for him as a driver and also so that they would all live there as a family but Respondent refused. All efforts to get the Respondent to change his mind proved futile. Petitioner says she is the one who has been solely maintaining the children. Petitioner says that the parties have not had any sexual relationship for the past 4 years. Hence the Petition.

### **CASE OF THE RESPONDENT**

The Respondent on the other hand denies having behaved unreasonably. Respondent avers that the parties have had their ups and downs but that may not be regarded as unreasonable behaviour to necessitate in the dissolution of the marriage. It is the case of the Respondent that their respective families have both assisted the parties financially and in many other forms when things became difficulty. Most especially his sister and his family have been instrumental in the life of their first child. The Respondent avers that the Petitioner left the matrimonial home without his consent and does not know anything about the alleged work of the Petitioner. It is the case of the Respondent that he has been maintaining the children at GH¢500 per month and it is not correct that it is only the Petitioner who takes care of the family. According to the Respondent, it is rather the Petitioner who has behaved unreasonably by leaving the matrimonial home with the children without his consent. Respondent says the Petitioner is disrespectful and verbally abusive and does not deserve the relief she is claiming, thus his cross-petition.

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**

**Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367)** states that the sole ground for granting a petition for divorce in Ghana shall be that the marriage has broken down beyond reconciliation.

**Section 2(1) of Act 367** stipulates the causes a petitioner must establish to prove that the marriage has broken down beyond reconciliation, simply paraphrased as follows: *adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.*

It is material to point out that although the court may find the existence of one or more of the facts specified above, the law does not require the court to decree divorce unless it was satisfied on all the evidence, that the marriage has indeed broken down beyond reconciliation.

It is trite law that the court must enquire as far as is reasonable into the reasons for the divorce and may either grant or refuse to decree a divorce after hearing.

In divorce just like in all civil cases, the degree of proof required by law is that of a balance or preponderance of probabilities. See **Section 12 (1) and (2) of the Evidence Act, 1975 (Act 323)**. In the case of **Adwubeng V. Domfeh [1996-97] SCGLR 660**, the Supreme Court held that *“sections 11 (4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by a preponderance of probabilities – no exceptions were made”*.

As earlier stated, the petitioner grounds his reason for the dissolution on unreasonable behaviour. In determining what constitutes unreasonable behavior, the test to be applied is an objective one. **Hayfron Benjamin J** (as he then was) held in the case of **Mensah v. Mensah (1972] 2 G.L.R. 198** that *“In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova’s Charter. The test is objective”*

The parties both testified themselves and did not call any witnesses. It is the case of the Petitioner that sometime in 1999 six years after the parties got married, the Respondent lost his job and she sought the assistance of her sister who on two occasions remitted them. On the second occasion, her sister remitted her an amount of GHC500 and that was what she used to sell body creams. The Respondent vehemently denies this claim and says that he was never aware that the Petitioner took money from her sister. The Respondent says the capital that was used to sell the cream was funded by him from his own monthly salary and never from the Petitioner’s sister. This is a fact that is capable of proof having been denied by the Respondent. However, after merely mentioning same no further evidence was led to establish this fact.

The Petitioner further avers that she left for Accra in pursuit of a job and that the respondent gave his blessing. Another assertion the Respondent denies. But the evidence shows that the Petitioner and her two children of the marriage have been in Accra for the past 14 years and two of the children are now even adults. The evidence further shows that the Respondent visited the family in Accra once a year and the last time he got in touch or visited was about five years. I find from the evidence that even though the Respondent indicated he was not aware of the move; he condoned the act

which is why he used to visit the family in Accra throughout the period until five years ago. It is further clear from the evidence that the Petitioner used her own resources to purchase a car and turned same into a taxi and encouraged the Respondent to come to Accra to use same to work. However, this gesture was declined by the Respondent who gave the reason that he did not know his bearings in Accra. I find this reason quite flimsy and untenable because at that time the Respondent was not working and was just living in Tarkwa while the family was in Accra. To my mind, if the Respondent was desirous to be with his family, that was a great opportunity to have done so. I take judicial notice that in this day and age, most drivers operating taxis and Uber use Google Maps to find their location and so the reason the Respondent gave was neither here nor there save to conclude that, he had accepted the situation of the family living apart. It is further my view that the refusal of the Respondent to join the family frustrated the Petitioner who eventually took off her wedding ring thinking that would change the posturing of the Respondent but it did not. This gradually affected the relationship between the parties to the extent that they have not lived as husband and wife continuously for over 5 years preceding this Petition. **Section 1(2)(e) of Act 367** stipulates the fifth fact that should be proved to establish the breakdown of a marriage as *“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”*

The test per the learned **William Ekow Daniels** in his book **“The Law on Family Relations in Ghana, 2019 @ page312** is that *there is absence of consortium or cessation of cohabitation”*.(emphasis mine)

From the evidence, the Petitioner lives in Accra and the Respondent is also comfortable in Tarkwa. Indeed, until the petition they had not set eyes on each other. There had been non-cohabitation and no sexual intercourse between the parties for over 5 years

preceding this petition. Besides the above, the evidence is that there have been attempts at reconciliation but the same failed. Undoubtedly, there is sufficient evidence to justify a conclusion that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation having considered all the facts and evidence.

In the circumstances I hereby declare that the marriage celebrated between the parties on the 22<sup>nd</sup> of October, 1993 at the Metropolitan Offices, Sekondi has broken down beyond reconciliation and that same be and is hereby dissolved. *It is ordered that a decree of divorce be granted; the marriage certificate with registration number 196/1993 is hereby cancelled.*

## **DECISION**

1. *The marriage celebrated between the parties on the 22<sup>nd</sup> of October, 1993 be and is hereby dissolved. It is ordered that a decree of divorce be granted; the marriage certificate with registration number 196/1993 is hereby canceled*
2. *Custody of the last child of the parties, Vanessa Finawah (13 years) is hereby granted to the Petitioner with reasonable access to the Respondent*
3. *The Respondent is ordered to pay an amount of GHC500 as maintenance for the children*
4. *The Respondent is hereby ordered to pay the sum of GHC2,000.00 to the Petitioner as a financial provision*
5. *Respondent is further ordered to pay for the medical and educational expenses of the child as and when they fall due.*
6. *There is no order as to cost*

*(SGD)*

*H/W ROSEMARY EDITH HAYFORD (MRS)*

*MAGISTRATE*