

**CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS  
DISTRICT MAGISTRATE, DISTRICT COURT "B", SEKONDI ON THE 8<sup>TH</sup>  
FEBRUARY, 2023**

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**SUIT NUMBER A4/65/2022**

**MRS. JOYCE KONADU APPIAH - PETITIONER**

**V**

**ERIC KWASI APPIAH - RESPONDENT**

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**TIME: 11.40 AM**

**PETITIONER - PRESENT**

**RESPONDENT - PRESENT**

**PARTIES UNREPRESENTED**

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## **JUDGMENT**

The parties are both police officers and they have been married for the past 7 years. There are three issues of the said marriage. After the marriage, the parties cohabitated at the Sekondi Police Barracks until the Petitioner left the matrimonial sometime in 2021. The instant petition was filed by the Petitioner on 16/06/2022 and she is praying for a dissolution of the ordinance marriage celebrated between the parties on the 19<sup>th</sup> of

June, 2015 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. The particulars of unreasonable behaviour gleaned from the petition are as follows:

1. Respondent is very abusive (verbally and physically)
2. Respondent does not maintain the family
3. Respondent threatened to kill the Petitioner
4. No effective communication between the parties
5. Respondent is in an amorous relationship with another woman

In an answer to the petition filed on 27/07/2022, the respondent denies any act of unreasonable behaviour and adultery. He averred that it is rather the Petitioner who is rude and is fond of threatening him and also abusive. That the Petitioner has caused him emotional trauma, distress, and embarrassment. He cross-petitioned for the following:

1. Dissolution of the marriage
2. Payment of GH¢600.00 as maintenance and other expenses
3. Reasonable access to the children of the marriage

Both parties testified in court and none of them called any witnesses. Petitioner tendered the following Exhibits in support of her case.

1. **Exhibits A**, the marriage certificate
2. Exhibit B, Official Receipts of payments

3. Exhibit C, Medical form from DOVVSU

The Respondent also tendered the following Exhibit in support of his case

1. Exhibit 1 series (1 – 1G), official receipts for the payment of drugs
2. Exhibit 2, 2A and 2B Official receipt from Tessark International School
3. Exhibit 3, 3A, 3B and 3C, Print out of MTN momo transactions

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.

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**

It is the case of the Petitioner that the Respondent has not been regular with the payment of maintenance of their three children and that she has had to do that by herself. The petitioner avers that since February 2022 the Respondent has ceased to maintain the children. The Respondent on the other hand stated that sometime in March 2022 when he sent the maintenance to the Petitioner, she refused to take the money as a result of which he also failed to continue with the payment. However, when the petition was instituted, he has paid all arrears regarding the maintenance of the children. Respondent tendered **Exhibits 3, 3A, 3B and 3c** in support of this claim. These are MTN momo. transfers from July, August, September, and October 2022 showing various sums between GH¢1,005.00 – GH¢1,010.00. This clearly shows that some form of maintenance was paid to the Petitioner. Indeed, in open court in January 2023 when the Petitioner denied ever receiving money from the Respondent, the MTN momo transfer of an amount of GH¢1500 was shown as proof. Exhibit 4, showing an amount of GH¢1,500 was tendered as proof. The Petitioner did not deny or give reasons why she refused to initially take the maintenance from the Respondent in March 2022 but there is overwhelming evidence that the same has been paid. What seems to be outstanding is arrears for the month of December 2022. The Respondent did not dispute this and indicated in open court that he would pay the said amount to the Petitioner. Petitioner further alleged that the Respondent does not also pay the school fees of the children of the marriage. The Respondent challenged this claim and further tendered **Exhibits 2, 2A, and 2B** as proof that he has paid same. The said exhibits are official receipts from Tessark International School, the school the three children attend. The date on each of the three receipts is 26<sup>th</sup> July 2022 and on each is written full fees from April - July 2022. From said exhibits, it appears the Respondent paid the school fees after the petition was filed. The petition was issued from the Registry of the court on the 16<sup>th</sup> of June, 2022 and the payments were made on the 26<sup>th</sup> of July 2022. This indeed

confirms the averment of the Petitioner that the Respondent failed to pay the school fees of the children of the marriage until the petitioner was filed. I find the failure of the Respondent to pay the school fees of the children unreasonable on his part. In terms of the medical expenses, **Exhibit 1 series** shows that the Respondent has been paying for same. In any case, the evidence is that any payment made is refunded by the police service and so the status quo will remain.

The Petitioner further accuses the Respondent of committing adultery for which reason she alleges that the Respondent verbally and physically abused her when she complained. It is the case of the Petitioner that she had to leave the matrimonial home to go and leave with her mum to deliver their last child. While she was away the Respondent brought into their matrimonial home another woman. Petitioner says that all the people within the barracks told her that her husband had married another woman since he was leaving with the said woman. Petitioner said that caused her a lot of embarrassment and anxiety. She confronted the Respondent but he denied same. However, upon arriving at their matrimonial home she found the pictures of the said lady displayed in their matrimonial home. She also found her dresses in their room. Petitioner says that she picked the number of the said lady from the Respondent's phone and the said lady by the name Stella confirmed that she was in a relationship with the Respondent and that the Respondent had informed her that she was divorcing him that was why she also came to live in the said house. I must say that the Respondent did not deny this claim at all but to him once the Petitioner has not met him red-handed having sexual intercourse with another woman she cannot sustain her accusation.

**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 this instant case, proving direct sexual intercourse might be difficult, however, from the evidence if a man displayed another woman's picture in his matrimonial home and also had the said woman's dresses in their room without proffering any reason why those items are there, the probable conclusion one will draw it that there is an amorous relationship going on between himself and the other person.

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 this case, there is a high degree of probability that there exists an amorous relationship between them. In any case, the lady herself confirmed to the Petitioner that she moved in because she was informed by the Respondent that the Petitioner was divorcing him, an assertion the Respondent did not deny.

In **Quartey v Quartey & 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"*

Even though the admission of a relationship did not explicitly come from the Respondent himself but it is from the person he was involved with, I should not have any doubt then. It is my humble view that is a clear, distinct and unequivocal

admission and therefore I do not doubt that the Respondent committed adultery. I so find.

On the issue of the assault on the Petitioner, there is evidence of a medical form (**Exhibit C1**) that was issued to the Petitioner. On the said form, the Medical Officer stated that the "Petitioner alleges that she was assaulted by her husband" I do not find on the said exhibit a conclusive diagnosis of assault on the Petitioner. The Respondent alleges that the Petitioner was able to get the medical form easily because she is stationed at the DOVVSU unit and not because he indeed assaulted her. He further avers that when the issue came up the Petitioner reported the matter at the Police Headquarters and that two police officers were detailed to investigate the matter and there was no adverse finding against him. If there had been an adverse finding that had corroborated the averment of the Petitioner, he would have been sanctioned. But because there was nothing against him that was why to date, he has not been sanctioned, and to that extent, the Petitioner cannot insist on that. As I earlier indicated the medical form does not specifically confirm that there was an assault, the Petitioner also did not call any witness in the midst of the denial by the Respondent. In the absence of any concrete proof of assault, I fail to make a finding of one.

There is further evidence that there is no effective communication between the parties and that the Petitioner has even moved out of the matrimonial home for the past one and a half years. The evidence is that the families of both parties have made numerous efforts to reconcile the parties but have failed. Indeed, the Petitioner has returned the customary drinks to the family of the Respondent based on which the customary marriage has been dissolved. I realized also that there was serious interference from the father of the Petitioner. Even when the matter was in court, I had cause to rebuke him when a complaint was made about him verbally assaulting the Registrar of the court.

From the foregoing, I do not have any doubt that the marriage celebrated between the parties on the 19<sup>th</sup> of June, 2015 at the District Court Akim Oda has broken down beyond reconciliation and thus same be and is hereby dissolved. I proceed to make the following orders:

## **DECISION**

1. *The marriage contracted between the parties herein on the 19<sup>th</sup> of June, 2015 at the District Court, Akim Oda has broken down beyond reconciliation and same be and is dissolved. It is ordered that a decree of divorce be granted; the marriage certificate with registration number MC/DC/AO/32/15 pursuant to licence no. RC/DC/AO/131/15 is hereby cancelled.*
2. *The Petitioner is hereby granted custody of the three children of the marriage with reasonable access to the Respondent.*
3. *The Respondent is ordered to maintain the three children at GHC300.00 each per month (totaling GHC900.00)*
4. *Respondent is further ordered to pay the educational and medical expenses of the three children as and when they fall due.*
5. *The accommodation of the three children will be borne by the Petitioner*
6. *Petitioner is also ordered to take care of the snacks and diapers of the children of the marriage*
7. *The Respondent is further ordered to pay the December maintenance arrears of GHC1,500 to the Petitioner*
8. *There is no order as to Costs*



(SGD)

*H/W ROSEMARY EDITH HAYFORD (MRS)*

*MAGISTRATE*