

**IN THE DISTRICT COURT 2, TAMALE  
HELD ON WEDNESDAY 31<sup>ST</sup> MAY, 2023  
BEFORE HIS WORSHIP D. ANNAN ESQ.**

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**SUIT NO. A4/01/23**

**BETWEEN**

**ERICA NAANA BOAMAH**

**- PETITIONER**

**AND**

**ISAAC KWAKU NIMO**

**- RESPONDENT**

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**JUDGMENT**

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**INTRODUCTION**

1. This judgment relates to dissolution of marriage.
  
2. The parties herein married under the Marriage Ordinance, 1951 Rev. (CAP 127) on 10<sup>th</sup> April, 2010 at the Bethel Methodist Church, Tamale in the Northern Region of Ghana. Both parties are Ghanaian citizens and resident at Tamale. The Petitioner is a Teacher with the Ghana Education Service while the Respondent is a Laboratory Technician at SDA Hospital, Tamale. There are two issues of the marriage: Derrick Nimo, 11yrs and Aaron Adom Nimo, 9yrs. There are two adjoining plots acquired

during the marriage: on one plot there is a building project which is at lintel level and the other being a bare land.

3. On 24<sup>th</sup> October, 2022 the Petitioner filed this petition against the Respondent for the following reliefs:

- a. Dissolution of the marriage between the parties.
- b. Custody of the issues of the marriage with access to the Respondent.
- c. Maintenance of the issues for the marriage in the sum of GHS1,000.00 for each child per month.
- d. Arrears of maintenance in the sum of GHS72,000.00 for 2016-2022 which is the period within which the Respondent totally neglected his duties as a father towards the children.
- e. Property settlement in respect of the uncompleted building and the plot of land acquired jointly during the subsistence of the marriage.
- f. That the Respondent be ordered to pay the costs of the suit.

4. The Respondent on 16<sup>th</sup> December, 2022 filed an answer and cross-petition to the Petitioner's petition. In his cross-petition, he prayed for the following reliefs:

- a. An order granting custody of the children.
- b. An order that the jointly acquired property of the parties be valued, sold and the proceeds shared equally.

5. The respective cases of the parties are detailed below.

#### PETITIONER'S CASE

6. The grounds for Petitioner's petition are that the Respondent has deserted the marriage, committed adultery and behaved unreasonably such that she cannot

reasonably be expected to live with the Respondent as wife. According to her, the Respondent had since 2016 vacated the matrimonial home. Also, that the Respondent is presently married to another person despite the subsistence of this marriage. Regarding unreasonable behaviour, the Petitioner contends that the Respondent consistently made unfounded insinuations of infidelity against her. According to her, when parties were moving from their old premises to a new one, a male colleague offered his vehicle to her to convey the items. This Respondent then concluded that Petitioner was in an amorous relations with the said colleague. Petitioner denied being in amorous relationship with the said colleague. She argued, however, that it is rather the Respondent who is in an amorous relationship with her cousin. She stated that when her cousin came to stay with them, she saw Respondent in several instances uncharacteristic of a married man which includes: Respondent fondling the breast of her cousin, the cousin sitting on the laps of Respondent while Respondent had his trousers unzipped, Respondent one midnight rested his legs on her cousin, among others. Petitioner averred that all attempts by family members and pastors to reconcile their differences have proven futile. To her, the marriage between the parties has broken down beyond reconciliation.

7. In respect of the other reliefs, Petitioner stated the children of the marriage are presently with her and that the Respondent has neglected to cater for them. She averred that she pays the children school fees which is GHS1,000.00 per child per term and their monthly upkeep was around GHS1,000.00 each month. She added that parties jointly contributed to the Yong property. She explained that parties have on one plot a building currently at lintel level and the other plot being a bare land.

Petitioner's Witness.

8. Petitioner caused to be filed two witness statements. However, she called one Iddrisu Sulemana (PW1) and abandoned that of Tominu Alhassan. PW1 stated that Petitioner paid for ten (10) trips of gravels supplied for the construction of the building at Yong.
9. The Petitioner did not tender any exhibit.

#### RESPONDENT'S CASE

10. Respondent, on his part, contended in his answer and cross-petition that parties have not lived together as husband and wife since 18<sup>th</sup> September, 2015. He denied committing adultery and not married to another woman. He stated that it was rather the Petitioner who gave him cause to suspect that she was in an amorous relationship with other men. He explained he saw Petitioner texting the ex-boyfriend that she misses him. He added that Respondent came to the marriage with her ex-boyfriend's pictures. Also, another male friend accompanied Petitioner to a gynecologist without his consent or knowledge. Again, this male friend gave his car to Petitioner for parties to pack to their new residence. These acts by this male friend, Respondent stated were overly generous to the Petitioner. Respondent also stated that the Petitioner persistently threatened to commit suicide if not allowed to leave the marriage. And true to her words, on 13<sup>th</sup> September, 2015 Petitioner took an overdose of some pills and was rushed to the SDA Hospital, the Respondent stated. Respondent averred that Petitioner failed to return to the matrimonial home after being discharge on 18<sup>th</sup> September, 2015. He explained that the petitioner's mother and another man came for all the items of Petitioner, including utensils, the gas cooker, cylinder, napkins, curtains and groceries.
11. Regarding the acquired properties, Respondent indicated that both parties contributed equally to buying the two adjoining plots. Also, both parties contributed

to building on one plot, leaving the other bare. He admitted that the building project is at lintel level. He prayed for the properties to be valued, sold and proceeds shared equally.

12. In respect of custody of the children, Respondent prayed the court for custody. He argued that he has been paying the children's school fees until the Petitioner took the children to a new school without his consent. He stated that he only found out when he had gone to pay the fees at the bank and on producing the receipt at the school, he was informed by the school accountant that the children were no longer in the school. He added that anytime he visited the Petitioner's house to give her money for maintenance, Petitioner would sack him and threaten him not to set foot in the house again. He contended that Petitioner has made it impossible for him to perform his fatherly duties. He, however, posited that the maintenance and upbringing of the children is the responsibility of both parents and that the cost should be shared equally upon dissolution of the marriage.

13. He tendered in evidence the following exhibits:

Exhibits 1, 1A and 1B - Copies of Petitioner's pay slip.

Exhibit 2 - Copy of Petitioner's petition filed at the High Court.

Exhibits 3, 3A-3Y – Copies of receipt of the school fees.

Exhibit 4 – Copy of his pay slip.

14. It is important to mention here that at the time of hearing this matter, the Petitioner's petition at the High Court had been discontinued.

THE EVIDENCE AND THE LAW

15. Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that a decree for divorce shall be granted only on the ground that the marriage between the parties has broken down beyond reconciliation. Section 2(1) of the Act specifies the conditions to be proved that the marriage has broken down beyond reconciliation to include:

- a. that the *Respondent has committed adultery* and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent;
- b. that the Respondent has *behaved in such 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 man 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*; or
- f. that the parties to the marriage have, after diligent effort, been *unable to reconcile their differences.*"

16. The law, therefore, enjoins either party to satisfy the court on one or more of the aforementioned grounds for a dissolution of the marriage, see the cases of **Ansah v. Ansah [1982-83] 2 GLR 1127** and **Akoto v. Akoto [2011] 1 SCGLR 533**. Section 2(3) of Act 367 further provides that:

“Although the Court finds the existence of one or more of the facts specified in subsection 1, the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation.”

17. From the above, all that the court is to satisfy itself, on the balance of probabilities, is that one of the grounds is proven and that the marriage has broken down beyond reconciliation. According to the Petitioner, the Respondent has deserted the marriage, committed adultery and behaved unreasonably such that she cannot reasonably be expected to live with the Respondent as wife. On adultery and unreasonable behaviour, this is what ensued when Respondent was under cross-examination:

*“Q: Are you currently living with any lady you have contracted marriage with?”*

*A: Yes.*

*Q: Kindly mention the name of this lady?*

*A: Kyeremaa Dora*

*...*

*Q: At the time of you married Dora, had you divorced Erica?*

*A: Yes. The Petitioner has already divorced me. On 18/12/15 the petitioner’s mother and Mr. Ntim, I was at work when petitioner’s mother called me, they came with schnapps and presented it to me that there is nothing between us. Present was the late Lay Chairman of Methodist Church, Tamale. He accepted it.”*

18. Respondent in his cross-petition also alleged that the Petitioner has behaved unreasonably such that he cannot reasonably be expected to live with Petitioner as a

husband. In support of this contention, this is what ensued when Petitioner was under cross-examination:

*“Q: I am suggesting to you that you are the cause of the breakdown of the marriage?*

*A: Yes. Because I don't want the marriage again.*

...

Q: Is it true that Respondent saw the text message on your phone saying that he misses you?

A: Yes.

Q: And when he confronted you, you told him it was your ex-boyfriend?

A: Yes. I did.

Q: And as a matter of fact when you were moving into your matrimonial home, you moved in with a photograph of that ex-boyfriend?

A: Yes.

Q: Why did you move into your husband's house with your ex-boyfriend's photo?

A: That was not the only photograph. I told him about my ex-es.

Q: I am suggesting to you that even after you got married to your husband, you were still having amorous relationship with you ex-boyfriend?



A: It is not true. When I met him, I told him all about my past about this particular boyfriend. Because I believe that once we were going to stay together there shouldn't be any secret. And that was not the only picture about this ex-boyfriend. As at that time, I had not heard from him for years. He is in the Western Region with his family. While here I heard a song he used to play by Ofori Amponsah, so I texted him that I miss him, they are playing his song and he texted back that he misses me and that I gave the phone to Respondent and that is what he saw.

Q: Do you not agree with me that you showing him that conversation alone is enough to make him insecure?

A: No. I gave him the phone to buy books and he said he does not have money, so that was when he went through the phone and he saw that text and he knew I have nothing to do with that guy.

...

Q: Do you not agree with me that going to a gynecologist with male colleagues, it is not proper?

A: No. Colleagues I see as my brothers at work. I do not have female friends.

...

Q: Is it true that you threatened the Respondent that if you do not leave the marriage, you were going to kill yourself?

A: It is true.

Q: On 13<sup>th</sup> September, 2015 you carried out the threat by swallowing some pills?

A: Yes. My family said I should stay in the marriage and that is what resulted in that because I didn't want the marriage. Respondent was always accusing me."

19. From the above, it is obvious that Respondent is not interested in this marriage and has moved on with another woman. However, it unclear to this court whether the Petitioner is pursuing bigamy. For bigamy, it is a criminal offence, see ss. 262 and 263 of the Criminal Offences Act, 1960 (Act 29). It requires proof beyond reasonable doubt that while there is a subsisting ordinance marriage, a person marries another, except the former spouse has not been heard/seen for seven (7) years. To pursue this, one does not come by a civil action, i.e. petition as in this case. Rather, a criminal proceeding initiated at the instance of the Attorney-General or anyone acting under his or her authority, see Article 88(3) of the 1992 Constitution and in accordance with Part III of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30). Unfortunately, bigamy even though was proved beyond reasonable doubt in this instant case, it is not a ground for divorce under s. 2(1) of Act 367. It, however, may constitute unreasonable behaviour and adultery, to which I shall hold against the Respondent. I also find from the above that the that Petitioner has behaved unreasonably. I, therefore, wonder how this marriage could subsist. In effect, I am of the opinion that the marriage between the parties has broken down beyond reconciliation.

20. Let me also point out here that the dissolution of the tradition marriage does not invalidate or dissolve the ordinance marriage. This marriage was duly celebrated

under the ordinance. As a matter of law, the dissolution of the traditional marriage, i.e. the customary marriage, has no legal effect whatsoever on this marriage. In fact, the very day parties entered into this ordinance marriage, the customary marriage mathematically and automatically ceased to exist, see sections 74 and 76 of CAP 127. Hence, the acceptance of the drinks by Respondent's representative did not in any way invalidate this marriage.

21. Having come to the conclusion that this marriage has broken down beyond reconciliation, I hereby decree that the marriage celebrated between the parties herein on 10<sup>th</sup> April, 2010 at the Bethel Methodist Church, Tamale be and is hereby dissolved. Divorce certificate to issue.

22. Regarding the issues of custody and maintenance of the children, the law enjoins the court to consider the benefit/interest of the children. Section 22(2) of Act 367 provides:

*“The Court may, either on its own initiative or an application by a party to proceedings under the Act, make an order concerning a child of the household which it thinks is reasonable and for the benefit of the child.”*

23. Section 2(1) of the Children’s Act 1998 (Act 560) captioned, *Welfare Principle of a Child* provides that:

*“The best interest of the child shall be paramount in any matter concerning a child, and it shall be the primary consideration of any court, person, institution or other body in any matter concerned with a child”.*

24. In considering what constitutes the benefit of the child, Owusu-Addo J in **Ansah v Ansah (supra)** held in holding 3 that:

*“... the Court’s duty was to make an order which was reasonable for the benefit of the children. In deciding what was in the best interest of the children, the conduct of the parents, ... the pattern of life set up for the children since cohabitation ceased between the husband and wife were important matters to be taken into consideration ... .”*

25. Also, on the claim of maintenance, section 47(1) of Act 560 stipulates that:

*“A parent or a person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, basic education and reasonable shelter for the child.”*

26. From the evidence, the children are presently in the care of the Petitioner. I find that the Respondent has been paying the school fees, Exhibit 3 series, save the present term

which he admitted he is yet to pay. He contended that it is the Petitioner who prevented him from performing his fatherly duties, until the intervention of this court regarding the interim orders. He also argued that the maintenance and upbringing of the children is a shared responsibility of the parents, hence upon dissolution of the marriage, both parties be made to bear the burden equally.

27. Based on the above, I have no hesitation at all in concluding that custody should be given to the Petitioner with the Respondent given reasonable access. In effect, I hereby grant custody of the children to the Petitioner and the Respondent granted reasonable access. Reasonable access, for emphasis, includes vacations, weekends and public holidays. The Respondent to pick the children at least every two weeks, for the weekend.

28. On the monthly allowance, I did not find any agreement to which the amount of GHS72,000.00 was to be paid and that same had not been paid by Respondent since 2016. I shall, therefore, not make any determination as to maintenance in arrears. However, I shall maintain the GHS650.00 per month for each child to be paid by the Respondent. In addition, Respondent to cater for the school fees and medical bills of the children. The Respondent to also provide a two year rent for the Petitioner and the children, without subsequent renewal. To avoid any confusion by the parties as to the type of rent, the value of the two years rent shall not be less than GHS12,000.00.

29. Finally, the law regarding properties acquired during the marriage is that such properties are presumed to be jointly acquired, unless evidence is led to the contrary, see the recent case of **Peter Adjei v Magaret Adjei [2021] DLSC 10156** per His Lordship Appau JSC (as he then was) delivering the majority decision. From the evidence, both parties posited that they contributed equally to the acquisition and

building of the property at Yong. Since, there is not dispute as to contribution, I hereby hold that the two plots with one plot having a building (at lintel level) and the other being bare, be shared equally. Thus, the properties be valued, sold and proceeds shared equally.

## CONCLUSION

30. In sum:

- a. The marriage between the parties is hereby dissolved. Divorce certificate to issue.
- b. Custody of the issues of the marriage, Derrick Nimo, 11yrs and Aaron Adom Nimo, 9yrs, is granted to the Petitioner with the Respondent given reasonable access. Reasonable access here includes vacations, weekends and public holidays. The Respondent to pick the children at least every two weeks, for the weekend.
- c. Maintenance is assessed at GHS650.00 per month for each child. In addition, Respondent is ordered to pay for the school fees and medical bills of the children. The Respondent to provide a two year rent for the Petitioner and the children, not less than GHS12,000.00.
- d. The two plots at Yong with one plot having a building (at lintel level) on it and the other plot being bare, be shared between the parties equally. Thus, the properties be valued, sold and proceeds shared equally.
- e. No order as to costs.

**H/W D. ANNAN ESQ.**

**[MAGISTRATE]**

MABEL L. AWUNI FOR THE PETITIONER

RASHID M. MUMUNI ESQ. FOR THE RESPONDENT

References

1. *Article 88(3) of the 1992 Constitution*
2. *ss. 1(2), 2(1), 2(3), 22(2) of the Matrimonial Causes Act, 1971 (Act 367)*
3. *ss. 74 and 76 of Marriage Ordinance, 1951 Rev. (CAP 127)*
4. *ss. 2(1) and 47(1) of the Children's Act 1998 (Act 560)*
5. *ss. 262 and 263 of the Criminal Offences Act, 1960 (Act 29)*
6. *Part III of the Criminal Procedure Act, 1960 (Act 30)*
7. *Ansah v. Ansah [1982-83] 2 GLR 1127*
8. *Akoto v. Akoto [2011] 1 SCGLR 533*
9. *Peter Adjei v Magaret Adjei [2021] DLSC 10156*