

IN THE DISTRICT COURT, AGONA AHANTA IN THE WESTERN REGION HELD  
ON WEDNESDAY THE 18<sup>TH</sup> DAY OF JANUARY, 2023. BEFORE HIS WORSHIP  
SIDNEY BRAIMAH – DISTRICT MAGISTRATE

---

WR/AA/DC/A4/4/22

DEBORAH DAMASHIE

VRS

ABUDULAI KARIMU

---

### JUDGMENT

---

The petitioner herein instituted the present action at this court to dissolve the marriage under the Ordinance against the respondent celebrated at SDA New Life Church on 6/11/2016. In the course of the hearing, petitioner withdrew all reliefs sought against the respondent leaving the claim for the dissolution of the marriage between the parties. The petitioner, in her pleadings and witness statement filed stated that there is no child between them. The petition again discloses that after their marriage, the parties relocated from Mpohor to Agona Nkwanta and that upon their relocation, there had been irresolvable and irreconcilable differences between in the past five years. The petitioner and PW1 submitted that respondent who was then working in Tarkwa as miner and came to Agona Nkwanta in his days off had not been cordial to petitioner because she had not been able to conceive and as a result respondent began an illicit and adulterous relationship with one Rita Quarshie through which he has two children with her. Petitioner submitted that respondent was residing with Rita Quarshie in Tarkwa and therefore frustrated all effort by petitioner to visit him at Tarkwa to the

extent that on her only visit to Tarkwa to visit respondent he did not take her to his residence but took her to a hotel. Petitioner further submitted that pursuant to the adulterous relationship, the respondent has gradually removed most of his clothing and left his matrimonial home to reside with his paramour and only comes to the house for petitioner to wash his dirty clothes; leaves the house and only comes back to the house on his return day to Tarkwa to pick up his washed cloths. Petitioner also contended that respondent takes the opportunity to insult her and her family at the least opportunity over a slightest of misunderstanding. Petitioner also contended that on notice of the impregnation of the said Rita Quarshie; petitioner confronted him and subsequently reported the matter to respondent's family without resolution. According to petitioner; respondent by his conduct and unrepentant adulterous relationship with the said Rita Quarshie has caused her much regret; anxiety distress and embarrassment over years and as such that she finds it intolerable to live with him.

In his response to the evidence adduced against him; respondent countered that on relocation to Agona Nkwanta after their marriage under the Ordinance, respondent moved to Tarkwa to work and that he returned to Agona Nkwanta on his days off. Respondent denied that assertion by petitioner that he only comes to their matrimonial home to have sex with her when he desires it; dump his dirty laundry for washing and only comes back to pick the clean laundry to return to Tarkwa. Respondent admitted his adulterous relationship with Rita Quarshie except to state that petitioner had reconciled with him after the birth of the two children in issue. Respondent further submitted that he regularly stays at their matrimonial house and only leaves the house to look for employment as he is currently unemployed. Respondent alleged that petitioner rather shows him gross disrespected when she vacated the house for four (4) days without his consent to attend a church programme and that she also packed respondent's daughter out of the house on the allegation by her spiritual mother that

his daughter is responsible for petitioner's inability to conceive. According to respondent, despite these unreasonable behaviors by petitioner he has been accommodating and prepared to resolve his difference with petitioner to save the marriage.

On the facts, the following issues are for determination:

1. Whether or not the marriage between the parties is broken down beyond reconciliation?
2. Whether or not the Ordinance marriage between the parties should be dissolved?
3. Whether or not petitioner is entitled to her reliefs?

In civil cases, the plaintiff bears the burden to adduce sufficient evidence to prove their case on the preponderance of probabilities as stated at sections 11(4) and 12(2) of Evidence Act, 1975, NRCD 323. With regard to the burden of proof on the parties to the suit, it is stated in the case of *In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors v. Kotey & Ors* [2003-2004] SCGLR 420 and *Sumaila Bielbiel (No.3) v. Adamu Dramani & Attorney-General* [2012] SCGLR 371 by the Supreme Court that in general, the defendant needs not prove anything in a civil case, given that it is the plaintiff who instituted the action against him. In respect of the burden of producing evidence on the issues admitted or denied, the apex court held in the above cases that burden is not fixed but shifts from one party to the other at various stages of the trial, although the legal burden or burden of persuasion remains with the plaintiff. Brobbey JSC puts it succinctly in the case of *In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors v. Kotey & Ors* [supra] at page 425. I reproduce:

*“ ...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.”*

In determination as to whether the parties entitled to an order of this court dissolving their marriage on grounds that it is broken down beyond reconciliation; the court takes cognizance of section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) which emphatically states that the only ground for the grant of a decree of divorce is that the marriage has broken down beyond reconciliation. Section 2(1) of Act 367 sets out the legal criteria in determining whether a marriage has broken down beyond reconciliation. I reproduce section 2(1) of Act 367:

- (a) that the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or
- (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; or

(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.”

On the evidence, the petition is grounded on three reliefs of dissolution of the marriage pursuant to section 2(1)(b) and (f); alleging the marriage had broken down beyond reconciliation due to unreasonable behavior, desertion and failure to reconcile their differences after diligent effort.

The evidence on record in respect of the adultery is unanimous that respondent engaged in adulterous behavior with the said Rita Quarshie and same resulted in the birth of two children for the respondent. The respondent on notice of the said adulterous relationship and the resulting children therefrom tolerated the conduct of respondent and remained in the marriage to save it albeit her abhorrence of the pervasive and persistent adultery committed by petitioner with Rita Quarshie. That being the undisputed facts in issue, the record is clear from the dates of notice and birth of the two children by Rita Quaeshie that in 12<sup>th</sup> October 2018 and December 2019 that petitioner was aware of both pregnancies she continued to live together with respondent beyond the period in excess of six months with the view to reconcile with respondent, Accordingly, under section 3(a)(b) of Act 367 prevents petitioner from

relying on the admitted adultery as a ground for determining whether the petitioner finds it intolerable to live with respondent resultant of the said adultery.

Despite the defence provided to respondent under section 3 of Act 367 for his admitted adultery; the evidence is strong that the respondent is still in his relationship with the said Rita Quarshie. The petitioner, in acceptance of the relationship between respondent and Rita Quarshie, proposed to respondent to schedule days in a week when he would spend exclusively with her but respondent refused to reach consensus with her. The respondent denied that petitioner made the proposal to him. The court finds no reason to doubt that petitioner made the said proposed living arrangement to him based on the admission by respondent that he prevented petitioner from visiting him at his residence in Tarkwa and that he did not spend most of his days off with the petitioner and that he had to attend to family matter at his hometown. On the further assertion by petitioner that respondent has constructively moved out of their matrimonial home, respondent responded that he has some of his cloths at the house and that he visits petitioner and that when he is not at home he is out looking for work. The court finds the explanation by respondent not to be reasonably probable. The respondent could not reasonably explain his regular absence from his matrimonial home and the subsequent denial of consortium of petitioner merely because he is out looking for employment; more particularly so when he admitted on record that he is working and staying at Mpohor. The court is of the view that the respondent in the history of his marital relationship with petitioner in Agona Nkwanta constructively deserted her. Again, the record is evident that petitioner has gone out of her way to accommodate the respondent's excesses by accepting his relationship with Rita Quarshie and reconciled with him. Is it not reasonable therefore for plaintiff to attempt to regain some sort of consortium with respondent as his wife? Is it not the refusal by respondent to resume consortium with petitioner that moved her to file the petition to dissolve the marriage between as she

now finds it intolerable to live with him? Respondent did not deny the allegation by petitioner that he had vacated their matrimonial home except to state that he has his properties there. The court accordingly finds it so.

Again, the court finds the denial by respondent that petitioner made complaints to his family about his behavior to be highly suspect. It is reasonably expected that any wife whose is subject to the admitted behavior of the respondent that has led to vacation of his matrimonial home has not come to the attention of both families. Is it not the multitude of irreconcilable difference between the parties that has resulted in the vacation of the matrimonial home by respondent resulting in the loss of consortium?

On the totality of the evidence on the record, the court finds that the acrimonious atmosphere surrounding the matrimonial home was such that it will be unreasonable to expect the petitioner to live with the respondent. The court further finds as fact that that the parties to the marriage have not been successful in reconciling their entrenched differences upon diligent effort to restore the affection between them to motivate them to resume consortium. Accordingly, on the totality of the evidence on record the inevitable conclusion of any reasonable court will be to find that the marriage between the parties has broken down beyond reconciliation.

In assessing cost, the court inter alia, takes into consideration, the number and reasons for adjournments, processes filed and the period of litigation. Accordingly, the court awards cost of Gh¢5,000.00 against the respondent. Interest thereof will be at the prevailing bank rate and same will take effect from today until the entire amount is fully paid.

(SGD.)

.....

**H/W SIDNEY BRAIMAH**  
**(DISTRICT MAGISTRATE)**

COUNSEL FOR RESPONDENT: MR. PETER KOJO BAIDOO