

**IN THE DISTRICT COURT '1' AT CAPE COAST ON WEDNESDAY THE 8TH
OF FEBRUARY 2023 BEFORE HIS HONOUR JAMES K. BOTAH ESQ.
SITTING AS AN ADDITIONAL MAGISTRATE**

SUIT NO. A4/36/2021

KWAKU BOAKYE PETITIONER

VRS

CYNTHIA BOAKYE RESPONDENT

PETITIONER -ABSENT

RESPONDENT -PRESENT

**OLIVIA ACQUAH DADZIE FOR EUGENE LARBIE APPIAH
FOR RESPONDENT -PRESENT**

JUDGMENT

The Petitioner's Petition for Divorce filed on 15th March 2021 is for the following reliefs:

(1) Dissolution of the marriage celebrated between the parties on the 15th November, 2008;

(2) An order for custody of the two children of the marriage to the Respondent with reasonable access to the Petitioner.

In her amended answer filed on the 8th July 2022, the Respondent cross-petitioned for the following:

(1) That the marriage contracted by the parties be dissolved;

(2) That the Respondent be given custody of the two issues of the marriage who have been with her all this while;

(3) That the Petitioner maintains the children of the marriage with GH¢800.00 every month subject to periodic review;

- (4) Recovery of arrears of maintenance of Respondent at GHC300.00 since May 2018 amounting to GHC10,800.00 which the Petitioner neglected and refused to give to the Respondent;
- (5) That the Petitioner be made to pay alimony of GHC60,000.00;
- (6) An order directed at the Petitioner to maintain the Respondent at GHC300.00 per month pending the dissolution of the marriage;
- (7) That the following properties acquired during the pendency of the marriage should be settled as follows;
 - (a) Plot of land at Asante-Yamoasi under development for the Petitioner;
 - (b) One (1) Toyota Highlander with Petitioner be shared equally;
 - (c) Two (2) plots of land at Interbeton, Cape Coast for the Respondent; and
 - (d) One (1) rented store at Kotokuraba for the Respondent.

PETITIONER'S CASE

The Petitioner stated in his Witness Statement that he married the Respondent on the 15th November 2008 at the Cape Coast Metropolitan Assembly. At the time of the marriage, the Respondent had a child from her previous marriage. The parties co-habited at the Police Barracks Bakaano, Cape Coast. They have two biological issues namely; Kofi Boakye aged 12 years and Holyfa Boakye aged 10 years. The children are presently in the custody of the Respondent.

The Petitioner informed the court that the parties had several misunderstandings between them and in 2018 they decided that there was no need to continue with the marriage. The Petitioner therefore vacated the matrimonial home. According to Petitioner since 2018 the parties have not lived as husband and wife.

The Petitioner told the court that the parties jointly acquired two (2) plots of land near the Interbeton Hospital, Cape Coast and a store at Kotokuraba, Cape Coast. According to Petitioner he paid GHC5,600.00 for the two (2) plots of land. He also got the indenture on the land prepared and then gave same to the Respondent. Petitioner claims he paid GHC4,500.00 for the acquisition of the store at Kotokuraba and also GHC4,000.00 as half of the cost of the container. Petitioner claims that he provided the materials for the construction of the foundation for the container store. Petitioner alleged that he gave GHC8,500.00 to the Respondent to start her business in the new store.

Petitioner denied ever jointly acquiring any vehicle with the Respondent. Petitioner said he did not jointly acquire the plot of land at Asante-Yamoasi with the Respondent.

Petitioner prayed for the dissolution of the marriage between the parties.

RESPONDENT'S CASE

Respondent testified that she has been married to the Petitioner for thirteen (13) years. Respondent told the court that the Petitioner is quick tempered and that his behavior has resulted in frequent quarrels between the parties over petty issues. Respondent alleged that the Petitioner beats her without provocation and has also driven her out of the matrimonial home on several occasions.

Respondent informed the court that she complained to the Petitioner's family concerning his behavior but nothing changed. Accordingly to Respondent in

2018, the Petitioner packed his belongings and then left the matrimonial home. Respondent alleged that the Petitioner now live with one Nana Ama and has had a child with her.

The Respondent stated in her Witness Statement that the Toyota Highlander is the joint property of the parties. In paragraphs 13 to 23 of her Witness Statement the Respondent recounted how she and the Petitioner acquired the vehicle. In paragraphs 50 to 55 of her Witness Statement the Respondent stated that she acquired the store at Kotokuraba with her own resources and that the Petitioner contributed nothing.

ISSUES FOR DETERMINATION

- (1) Whether or not the marriage between the parties has broken down beyond reconciliation;
- (2) Whether or not custody of the two (2) children of the marriage be granted to the Respondent; and
- (3) Whether or not the Respondent is entitled to her ancillary reliefs.

The main ground on which the court will grant a Petition for Divorce is where the marriage between the parties has broken down beyond reconciliation. See section 1 (2) of the Matrimonial Causes Act 1971 (Act 367). The Petitioner has the burden of proof to show that the marriage has broken down beyond reconciliation. He is required by law to prove one or more of the following grounds of Divorce; adultery on the part of the Respondent; unreasonable behavior; desertion of the Petitioner by the Respondent for at least two (2) years; irreconcilable differences between the parties; failure by the parties to live together as husband and wife for a continuous period of two (2) to five (5) years

preceding the filing of the Petition for Divorce and mutual consent by the parties for the dissolution of the marriage.

Per the evidence on record, I perceive several instances of unreasonable behavior exhibited by the parties towards each other in the cause of the marriage. The Respondent has accused the Petitioner of adultery and has produced Exhibit '2' to show that the Petitioner has fathered a child outside the marriage. Petitioner has denied the allegation. The parties have had a number of irreconcilable differences which they failed to resolve. The parties are in agreement that the marriage be dissolved. At the moment they are living in separation, having done so since 2018.

Taking all the above pieces of evidence into consideration, I am satisfied that the marriage celebrated between the parties on 15th November 2008 at the Cape Coast Metropolitan Assembly has broken down beyond reconciliation and same is hereby dissolved. The marriage certificate between the parties is hereby cancelled and declared void.

In respect of the custody of the children, section 45 (1) of the Children's Act 1998 (Act 560) provides as follows:

"A Family Tribunal shall consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access."

In the case of in re Dankwa [1961] GLR 352-353 Ollenu J. (as he then was) held that children of tender years should normally be with their mothers.

The law does not specify at what age a child is considered young and tender. The determination may be left to the discretion of the court. At the ages of 12 and 10,

I consider the children of the parties to be still young in age. Applying the law, I hereby grant custody of Kofi Boakye aged 12 and Holyfa Boakye aged 10 to the Respondent their mother. The Petitioner is granted reasonable access to the children to be limited to weekends and during school holidays. The Petitioner is reminded to comply with the maintenance orders and educational orders and health care orders made by the Family Tribunal '2', Cape Coast in the best interest and welfare of the children.

In the case of Peter Adjei v. Margaret Adjei Civil Appeal No. J4/06/2021 of 21/4/2021 the Supreme Court held that properties jointly acquired by spouses in the subsistence of the marriage is presumed to be spousal property and must be shared equally between the parties upon the dissolution of the marriage unless a party is able to lead evidence to rebut the presumption.

From the evidence all the parties admit that they jointly acquired two (2) plots of land at the Interbeton Hospital area, Cape Coast. Accordingly, the Petitioner is to take one plot and the Respondent should also take one plot for herself.

In respect of the land at Asante-Yamoasi, the Respondent wants the Petitioner to solely have it. Accordingly, this plot of land and any development on it should be retained by the Petitioner.

There is evidence on record that the Respondent solely acquired the store at Kotokuraba. An order is made for her to solely own the said store.

There is also evidence that the Respondent contributed to acquiring the Toyota Highlander vehicle. Accordingly, the parties are to equally share the vehicle or alternatively the Petitioner should pay to the Respondent the monetary contribution she made towards the purchase of the vehicle.

I award GHC8,000.00 in favour of the Respondent as financial provision or alimony.

The Petitioner is ordered to pay a reasonable sum of GHC5,000.00 to the Respondent as spousal maintenance arrears.

There will be no order as to costs.

**JAMES KOJOH BOTAH ESQ.
(CIRCUIT COURT JUDGE)**