

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 18TH DAY
OF JULY, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT
MAGISTRATE

SUIT NO. G/WJ/DG/A4/61/23

DORA NANA AMA AMISSAH

PETITIONER

VRS

ANDREWS NII AMARTEY FLEISCHER

RESPONDENT

PETITIONER IS PRESENT AND REPRESENTED BY ITA TETTEH ESQ.

RESPONDENT IS PRESENT AND REPRESENTED BY PAULINA FLEISCHER ESQ.

JUDGMENT

Background

The petitioner is a beautician whilst the respondent is a policeman and both are Ghanaians resident in Ghana. The parties got married under Part III of the Marriages Act, 1884 -1985 (CAP 127) at the Divine Healers Church, Teshie in Accra on 4th June 2005.

After the celebration of the marriage, the parties cohabited at La and then at Osu in Accra. Parties are blessed with two issues of the marriage namely Melchizabel Naa Sackey Fleischer aged 16 years and Christabel Sacklekor aged 11 years.

The petitioner filed a petition for divorce at the registry of this court on 17th February 2023 praying for the following reliefs;

1. Dissolution of the marriage between the parties as having broken down beyond reconciliation
2. An order of custody of the children of the marriage to petitioner with reasonable access to the respondent

3. An order that the respondent pays a monthly maintenance of two thousand Ghana cedis and same should be reviewable 10% upwards every three years until the children attain the age of adulthood
4. An order that the respondent should also pay the school fees and other educational bills flowing therefrom as well as medical bills of the children until they attain the age of adulthood
5. A declaration that the 4 bedroom property acquired at Bortianor is matrimonial property
6. An order of equitable distribution of the stated matrimonial property among parties herein;
7. An order that respondent pays the petitioner lump sum of GHC100,000.00 as financial settlement
8. Costs
9. Any other order the court may deem fit and just.

The respondent filed a notice of entry of appearance on 7th March 2023 and filed an answer to the petition on 25th April 2023 and cross petitioned for the following reliefs;

- a. That the ordinance marriage celebrated between the parties be dissolved.
- b. That petitioner be granted custody of the two issues of the marriage and respondent be granted reasonable access
- c. That the respondent will continue to take responsibility for the educational and medical bills of the issues when they fall due
- d. That respondent will contribute GHC1, 000.00 as maintenance for the issues and additionally provide for the first issue in respect of her boarding school needs.
- e. That the Bortianor property mentioned in petitioner's petition is not a personal property of respondent or a matrimonial home for distribution.
- f. That parties should bear their legal costs.

g. Any other order or orders the honourable court may deem fit.

The parties prayed the court to adjourn the suit to enable parties attempt settlement of the ancillary reliefs.

On 3rd July 2023 parties filed terms of settlement in respect of the ancillary reliefs.

The court set down for determination the issue of whether or not the parties' marriage has broken down beyond reconciliation.

THE CASE OF THE PETITIONER

The petitioner grounded her petition for divorce on the unreasonable behaviour of the respondent and the fact that she cannot reasonably be expected to live with him as a wife.

She particularised the behaviour of the respondent to the extent that some relatives of the respondent picked fights with her without any justifiable cause and respondent always sided with them.

According to the petitioner, respondent was having several amorous relationships outside the marriage in spite of the pendency of the marriage.

She added that respondent kept late hours and would only return when petitioner and the children were asleep. That respondent irregularly maintained the petitioner and the children and is now living with a paramour who has a child with him.

She concluded by stating that respondent has refused to live in the matrimonial home at Bortianor with her and has packed her belongings to her sister's house where she was then living. She stated that parties have been separated since 2016 and communications has broken down, all attempts at reconciliation having been unsuccessful.

She tendered the marriage certificate of the parties and same was admitted and marked as Exhibit A.

THE CASE OF THE RESPONDENT

Respondent on the other hand admits that the marriage has broken down beyond reconciliation. According to him, petitioner was in the habit of deserting the matrimonial home to her family and respondent has always brought her back. Petitioner finally deserted the matrimonial home and refused to resume cohabitation until she served the respondent with the petition.

It is the case of the respondent that petitioner has cut off all communications with him and has not shared the matrimonial bed with him for a long time.

He added that all attempts by family and friends to reconcile parties have been unsuccessful.

He prayed the court to dissolve the marriage between the parties.

It is trite that in civil cases, proof is by a preponderance of probabilities.

In the case of *Ackah v Pergah Transport Ltd* [2010] SCGLR 728 at page 736, Sophia Adinyira JSC (as she then was) delivered herself as follows;

“It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail.”

This position of the law was re-echoed by Benin JSC in the case of *Aryee v Shell Ghana Ltd & Fraga Oil Ltd* [2017-2020] 1 SCGLR 721 at page 733 as follows;

“It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved.”

SHIFTING OF THE BURDEN OF PROOF

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

In the case of *Re Ashalley Botwe Lands; Adjete Agbosu v Kotey* [2003-2004] SCGLR 420, it was held as follows;

“It is trite learning that by the statutory provisions of the Evidence Decree 1975 (NRCD 323) the burden of producing evidence in a given case is not fixed but shifts from party to party at various stages of the trial depending on the issue(s) asserted.

THE COURT’S ANALYSIS AND OPINION

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

Section 2 (1) of Act 367 explains 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:

- (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
- (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 husband 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 the consent shall not be unreasonably withheld and where the court is satisfied that it has been withheld the court may grant a petition for divorce under this paragraph despite the refusal
- (e) 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
- (f) That the parties after a diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also 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.

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent.

To succeed under the fact of unreasonable behaviour, the petitioner must first establish unreasonable conduct on the part of the Respondent and secondly, she must establish that as a result of the bad conduct, she cannot reasonably be expected to live with him.

At pages 123 and 124 of the book “At a glance! The Marriages Act and The Matrimonial Causes Act Dissected” by Mrs. Frederica Ahwireng-Obeng, the learned writer on unreasonable behaviour writes;

“Unreasonable behaviour has been defined in English Law as:

Conduct that gives rise to injury of life, limb or health or conduct that gives rise to a reasonable apprehension of such danger.

...the court will require strong evidence to establish unreasonable behaviour. Normal wear and tear incidents of married life will not amount to unreasonable behaviour.”

Both parties refused to cross examine the each other on their assertions.

It was held in *Fori vs. Ayirebi and Others* [1966] GLR 627 that:

“When a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact.”

See also ***Western Hardwood Enterprises Ltd. vs. West African Enterprises Ltd.* [1989-1999] SCGLR 105.**

From the totality of the evidence before me, I find that the marriage between the parties has broken down beyond reconciliation due to the fact that parties have not lived together as husband and wife since the year 2016.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Dora Nana Ama Amissah and Andrews Nii Amartey Fleischer celebrated at the Divine Healers Church at Teshie in Accra on 16th June 2005 is hereby dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

The terms of settlement of the parties filed at the registry of this court on 3rd July 2023 is adopted as consent judgment and made a part of the final judgment of this court.

I make no order as to costs.

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H/W RUBY NTIRI OPOKU (MRS.)
(DISTRICT MAGISTRATE)

