

IN THE DISTRICT COURT '1' CAPE COAST
BEFORE HIS HONOUR JAMES KOJOH BOTAH ESQ.
SITTING ON THURSDAY 27TH OF APRIL, 2023 AS ADDITIONAL
MAGISTRATE.

SUIT NO: A4/22/2023

SAMUEL GYESI

- PETITIONER

VRS

MERCY ADJEI

- RESPONDENT

Parties Present

Emmanuel Hukpatsi for Solomon Gyesi for Respondent Present

JUDGMENT

On 20/1/2023 the petitioner filed a petition for divorce against the respondent seeking the following reliefs:

1. That the marriage between the parties be dissolved;
2. That the petitioner be granted reasonable access to the children;

On 27/1/2023 the respondent filed an answer to petitioner for divorce and cross-petitioned for the following:

1. The respondent be granted custody of the two (2) children of the marriage with reasonable access to the petitioner;
2. An order for the petitioner to maintain the children with a monthly amount of GH¢400.00 per child, pay the school fees and health bills of the children of the marriage;
3. An order for the petitioner to pay for the accommodation for the children;
4. That half of the joint property located at Amoyaw be settled in favour of the respondent; and
5. An order of alimony of GH¢30,000.00

PETITIONER'S CASE

The petitioner stated in his witness statement files on 10/2/2023 that the parties married on 30/4/2016 at the Methodist Church Ayan Denkyira and that they co-habited as husband and wife at Amamoma. The parties have two (2) issues between them namely Nyamekye Gyese aged 4years and Deborah Gyese aged 2 years.

Petitioner further stated that the respondent behaves unreasonably towards him without giving details.

In respect of the respondent's cross-petition for an equal share of the property situated at Amoyaw, the petitioner stated that he bought the land before marrying the respondent and that the respondent did not make any significant contribution towards the development of the land.

RESPONDENT'S CASE

The respondent testified that the petitioner is rude and insulting and that on a certain occasion the petitioner slapped her when she wanted to know why he deny her money to sew a maternity dress.

Respondent also complained that the petitioner failed to take care of her financial and emotional needs and that the petitioner physically abused her during her last pregnancy. Respondent accused the petitioner of having an adulterous relationship with one Pearl Owusu.

In respect of the property in question, respondent told the court that she provided GH¢400.00 for the purchase of quarry stones and provision of water tanks for the development of the property at Amoyaw. Respondent said she also provided food for the workmen who worked on the project.

ISSUE FOR DETERMINATION.

Whether or not the marriage between the parties has broken down beyond reconciliation.

The main ground on which the court will grant a petition for divorce is when the marriage between the parties has broken down beyond reconciliation. See section 1(2) of the Matrimonial Causes Act, 1971 (Act 367). The burden of proof is on the petitioner to show that the marriage has broken down beyond reconciliation.

The law requires the petitioner to prove one or more of the following grounds of divorce: adultery on the part of the respondent; unreasonable behaviour; 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. See section 2(1)(a) to (f) of Act 367.

The petitioner is categorical about his preference to have the marriage between the parties dissolved. He explained that the respondent is unreasonable in her behaviour, but he however failed in his witness statement to give details of the respondent's conduct that amounts to unreasonable behaviour. In comparison, the respondent is not clear in her answer whether or not she consents to the dissolution of the marriage. Her cross-petition however gives a hint that she is prepared for a divorce. In her witness statement, the respondent has outlined a number of behaviours of the petitioner that amounts to unreasonable behaviour.

It does not appear to me that the parties succeeded in reconciling their irreconcilable differences considering the parties pleadings and the evidence on record, I am satisfied that the marriage celebrated between the parties on 30/4/2016 at the Methodist church Eyan Denkyira has broken down beyond reconciliation and same is accordingly dissolved. The marriage certificate evidencing the marriage between the parties is hereby cancelled and declared void. The parties are at liberty to marry any woman or man of their free choice.

The custody of Nyamekye Gyesei aged four (4) years and Deborah Gyesei aged two (2) years is hereby granted to the respondent. The petitioner is granted

reasonable access to the children to be limited to weekends and during school vacations. The petitioner is hereby ordered to maintain the two (2) children in the sum of GH¢600.00 per month effective from April 2023. The petitioner is to pay the money into court for the Applicant to collect same.

The petitioner is ordered to cater for the health and educational needs of the children as well as provide the children with the necessities of life. Per the evidence on record, the petitioner has already accommodated the children and the respondent. He is hereby ordered to renew the tenancy agreement should it expire in December 2023.

In respect of the respondent's cross-petition for an equal share of the Amoyaw property, the Supreme Court in the case of Adjei v Adjei, Civil Appeal No. J4/06/2021 delivered on 21/4/2021 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.

The petitioner claimed in his evidence that he purchased the land on which the Amoyaw property is being built before the parties got married. However, he failed to show proof of that by a way of a receipt of purchase or conveyance of sale of the land to him. From the evidence on record, I find that the respondent loaned GH¢400.00 to the petitioner to buy stones for the building. However, the petitioner later refunded the GH¢400.00 to the respondent. The respondent testified that she took care of the matrimonial home and provided clothing for the children so that the petitioner can concentrate on the building project. The petitioner denied the claim and insisted that he was solely responsible for providing for the matrimonial home and that the respondent used her resources to develop a project in her hometown. In the case of Quartson v. Quartson [2012] 2SCGLR 1077 the Supreme Court observed as follows:

“We believe that common sense and principles of general fundamental human right requires that a person who is married to another, and performs various household chores for the other partner like keeping the home, washing and keeping the laundry generally clean, cooking and taking care of the partner's catering needs as well as those of visitors, raising up the children in a congenial

atmosphere and generally supervising the home such that the other partner has a free hand to engage in economic activities must not be discriminated against in the distribution of the properties acquired during the marriage when the marriage is being dissolved.”

In application of the Quartson’s case, I hold that even though the respondent may not have contributed significantly in terms of money towards the building of the Amoyaw property, she took care of the running of the matrimonial home and also raised up the children so as to enable the petitioner have a free hand to work and develop the property for the family’s good. Accordingly, now that the marriage between the parties has been dissolved the respondent should not be denied a share in the property. An order is hereby made for the respondent to be given an equal share of the uncompleted property at Amoyaw. Alternatively, an order is hereby made for the uncompleted property to be valued and then half of the valued price paid to the Respondent by the petitioner.

In respect of the respondent’s cross-petition for alimony of GH¢30,000.00 awards a reasonable amount of GH¢5,000 in favour of the respondent as alimony.

H/H JAMES KOJOH BOTAH, ESQ
CIRCUIT COURT JUDGE