

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: A4/21/2023

NICHOLAS AMOH

- PETITIONER

VRS

LETICIA BERNICE BAIDOO

- RESPONDENT

Parties Present

JUDGMENT

The petitioner's petition for divorce is for the dissolution of the marriage between the parties. In her answer the respondent consents to the dissolution of the marriage, but has cross-petitioned for the following reliefs:

1. That the petitioner be ordered to maintain the child of the marriage in the sum of GH¢500.00 per month and also cater for the health and educational needs of the child;
2. That the petitioner be ordered to look for a decent accommodation for the respondent and the child;
3. That the petitioner be ordered to pay the respondent alimony and;
4. That the petitioner be ordered to share equally with the respondent the four (4) bedroom apartment acquired during the subsistence of the marriage.

PETITIONER'S CASE

Petitioner testified that the parties married in February 2004 at the Ebenezer Methodist church, Anomabo. The parties have one issue between them, namely, Rachel Eduafowah Amoh aged 18years.

Petitioner informed the court that for seven years the respondent abandoned him by packing out of the matrimonial home when he was taken ill. According to the petitioner the respondent deserted him at the time he needed her care and support most. When the respondent was asked by the

petitioner's family why she behaved that way she said that she came to marry the petitioner and not to come and take care of a sick person.

Petitioner further informed the court that the respondent openly told his family that she is no longer interested in the marriage. The parties have not had conjugal relations for seven (7) years now and all attempts to reconcile their differences have proven unsuccessful.

RESPONDENT'S CASE

The respondent stated in her witness statement that the family of the petitioner interfered in the affairs of their marriage and this made her uncomfortable and unhappy in the marriage. According to the respondent, the petitioner's father insulted her and called her a witch. The petitioner's siblings also fought with her and made all manner of remarks about her. Respondent also told the court that the petitioner beat her up without any justifiable cause.

Respondent told the court that she contributed immensely to the building of the house the petitioner is occupying. According to respondent, she used her money to cook food for the masons, carpenters and other artisans during the construction of the house.

ISSUES FOR DETERMINATION.

1. Whether or not the marriage between the parties has broken down beyond reconciliation; and
2. Whether or not the respondent is entitled to an equal share of the house the petitioner is currently occupying.

The court shall grant a petition for divorce only where 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. Section 2 (1)(a) to (f) of Act 367 requires the petitioner to prove any two or more of the grounds of divorce contained therein, namely, unreasonable behaviour; desertion; irreconcilable differences; adultery and failure by the parties to live together as husband and wife for a continuous period of two(2) years to five(5) years preceding the filing of the petition for divorce. The court

also takes into account mutual consent by the parties for the marriage to be dissolved.

Per the evidence on record, I find instances of unreasonable behaviour exhibited by the parties towards each other in the course of the marriage. The parties failed to reconcile their differences and further failed to reconcile their marriage. Both parties are in mutual consent that the marriage be dissolved. I have considered the evidence before me, and I am satisfied that the marriage celebrated between the parties in February 2004 at the Ebenezer Methodist Church, Anomabo has broken down beyond reconciliation and same is hereby dissolved. The Marriage certificate which testified of the marriage between the parties is hereby cancelled and declared void. The Parties are free to marry any woman or man of their free choice.

In respect of the second issue for determination, the court put the following questions to the respondent:

Q: Tell the court the contributions you made towards the acquisition of the house.

A: I watered the blocks that were constructed for the building. I picked the stones that were all over the land. I cooked for the labourers. I helped petitioner with money to buy building materials but I cannot remember how much I gave him.

Q: Who bought the land for the building?

A: Petitioner

Q: At the time petitioner bought the land were you in the marriage together?

A: Yes.

Q: What work do you do?

A: I used to sell Yoghurt and ice cream. I supported him with the proceeds from my business for him to build the house.

In Adjei v Adjei Civil Appeal No. J4/06/2021 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.

The petitioner led no evidence to rebut the respondent's cross-petition for a joint share of the house. He told the court that the respondent was not entitled to her cross-petition, but failed to produce documentary evidence of his sole ownership of the property. In contrast, the respondent has testified about how she contributed towards the building of the project. The court believes her testimony. In addition to that, as a wife to the petitioner, the respondent performed various household chores for the petitioner including taking care of their child so that the petitioner can have the peace of mind and free hand to engage in economic activities for the benefit of the family and therefore the respondent should not be left out when it comes to the distribution of property upon dissolution of the marriage. See the case of Quartson v. Quartson [2012] 2SCGLR 1077.

For the reasons, I have stated herein and applying the Quartson's case, I hereby make an order for the respondent to be given an equal share of the house in question. For the avoidance of doubt, the respondent is to have two (2) bedrooms whilst the petitioner have two (2) bed rooms. In the alternative, an order is hereby made for the house to be valued by a qualified valuer and then the petitioner pays half of the valued sum of the house to the respondent and thereafter retain the entire property to himself.

The petitioner is hereby ordered to maintain Rachel Eduafowah Amoh aged 18 years in the sum of GH¢350.00 per month effective from April 2023. The money is to be paid into court for the respondent to collect same. Alternatively, the petitioner may pay the money to the respondent through mobile money transfer.

The petitioner is ordered to cater for the health and educational needs of the girl as well as provide her with all the necessities of live until she finishes schooling and is gainfully employed.

I award GH¢5,000.00 in favour of the respondent as financial provision. The petitioner is ordered to find a suitable accommodation for Rachel and her mother the respondent.

(SGD)
H/H JAMES KOJOH BOTAH, ESQ

(CIRCUIT COURT JUDGE)