

**BEFORE HER WORSHIP PRISCILLA SOPHIA YEBOAH OF THE DISTRICT
COURT ADENTA MUNICIPALITY OF THE GREATER ACCRA REGION OF
GHANA ACCRA, AD.202**

SUIT NO A8/0026/22

EMMA NAA KWAKAI QUARTEY.....PETITIONER

ADJETEY ADJEI TELLY ST

NANAKROM, EAST LEGON HILLS

VRS

RICHARD NANA KWAME ALLOTEY.....RESPONDENT

BEACH ROAD – TESHIE

JUDGMENT

1. *The parties both Ghanaians and resident in Ghana, are married under the part three of the marriages Act also known as the ordinance marriage. The marriage was solemnized on the 6th June of 2016 which is evinced by a copy of their marriage certificate annexed to the witness statement of the petitioner. They have two children of the marriage namely Elian Nii Adotey Allotey and Elsie Naa Adoley Allotey age 6 and 2 years respectively.*
2. *Per a Petition filed on the 10th of August 2022 the Petitioner prays the court for the following reliefs:*
 - i. *An order for the dissolution of the marriage between the parties*
 - ii. *Custody of the children to be granted to the Petitioner with access to the respondent.*
 - iii. *An order for the respondent to maintain the two children of the marriage*
 - iv. *Any such orders that this Court deems fit.*
3. *The Petitioner sought the above-mentioned reliefs on the following grounds:*

- i. *Unreasonable Behaviour*
- ii. *Parties separated and living apart for about two years now*
- iii. *Marriage has broken down beyond reconciliation*

4. *In his Answer filed on the 9th of February 2023, the Respondent, aside agreeing that the marriage has broken down beyond reconciliation, and further agreeing to the dissolution of the same, denies the material particulars and in turn cross-petitioned, praying the court for:*

- i. *Dissolution of the marriage*
- ii. *Custody of the children with access to the Petitioner*
- iii. *Both parties settle their own legal cost.*

5. *Petitioner's Case:*

Petitioner is a banker and claims there is no other suit pending before any Court with regards to this marriage.

Petitioner claims the respondent has behaved in such an unreasonable manner that the petitioner cannot be expected to live with the respondent.

Petitioner claims the marriage is riddled with many issues such as:

- *Respondent is in the habit of publishing falsehood and untruths about her to third parties and friends.*
- *Respondent insulting and disrespecting the petitioner sometimes to the hearing of others as annexed in exhibit 'B' of the petitioner's witness statement.*
- *Prohibiting the petitioner from writing exams which will hinder her career growth*
- *Respondent has a habit of keeping long hours and staying outside home instead of giving support to the petitioner while pregnant.*

- *The couple not living as man and wife for two years immediately preceding the application for divorce.*
- *The parties' failure to reconcile their differences.*

6. Respondent by his answer filed on the 9th of February 2023 joins issues with the petitioner after denying all averments by the petitioner. He also agrees the marriage is riddled with many issues.

i. Respondent contends that it is the petitioner who has rather behaved in a manner that the respondent is not reasonably expected to continue in the marriage.

ii. It is the case of the respondent that all effort made by him to make the marriage work was frustrated by the Petitioner.

iii. Respondent further claims that as a husband he has often been the first to apologize whenever there is an issue. He again denies all allegations by petitioner levied in the petition such as

- *Verbally and emotionally abusing the Petitioner and rather blames the petitioner for the habit of insulting him and annexed 'Exhibits' 1-6 as prove of the petitioner's disparaging conduct.*
- *Publishing of falsehood: he rather blames the petitioner for discussing his finances with some family and friends who tend to make a laughing stock of him.*
- *That It is not true that he prevented the petitioner from writing exams to develop herself*
- *Respondent asserts that he is and has always been a responsible and supportive father such that*

iv. *he pays for the children's educational expenses*

v. *takes them to school and returns them*

vi. *bath them. In short, the respondent claims he has worked hard to keep the marriage but now he is willing to grant the petitioner her heart desire which is divorce since he does not know what else to do.*

7. Attempt at reconciliation

Both parties are at ad- idem that there has been unsuccessful attempt at reconciling their irreconcilable differences by third parties including family members.

8. Issues

Discernible from the facts and evidence adduce the issues worthy of resolution are:

- *Whether there is sufficient evidence in support of the claim and counter-claim that this marriage has broken down beyond reconciliation.*
- *Which of the parties is entitled to custody?*
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9. APPLICABLE LAWS/ RULES

*Dissolution of Marriages in Ghana is governed by the Matrimonial Causes Act, 1972 (Act 367). This law provides that either party may present a petition for divorce to the court however the **sole ground for the grant of a divorce is that the marriage has broken down beyond reconciliation.** A Petitioner therefore ought to present evidence to the effect that his or her marriage has broken down beyond reconciliation. This is seen in Section 1(2) of Act 367.*

For the purposes of showing that the marriage has broken down beyond reconciliation, Section 2(1) of Act 367 specifies facts the existence of which will enable the court to determine same.

"2. Proof of breakdown of marriage

(1) 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 so 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; or*
- (f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences."*

10. "Section 2

- (1) On a petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.*
- (2) 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." It was stated in the case of Danquah v. Danquah [1979] G.L.R. 371 that the Petitioner is under a duty not only to plead any one or more of those facts in section 2(1) of the Act but he must also prove them. Equally the court is under a statutory and positive duty to*

inquire so far as it reasonably can, into the charges and counter-charges alleged. In discharging the onus on the petitioner, it is immaterial that the respondent has not contested the petition, she must prove the charges, and being a civil case on a preponderance of possibilities. Flowing from all the evidence before the court, the court must be satisfied that the marriage has irretrievably broken down.

11. ANALYSIS/ EVALUATION

ISSUE 1(Unreasonable behaviour)

The parties, both in their respective witness statements filed, aver that the marriage has broken down beyond reconciliation. Though both are ad idem on this issue, this Court bears the duty of sifting through the facts and evidence presented to it in order to determine as to whether the marriage has indeed on grounds of unreasonable behaviour, broken down beyond reconciliation. This is provided for by Section 2(2) & (3) of Act 367 .

Claim of unreasonable behaviour.

The parties blame each other for unreasonable behaviour and particularize the alleged behaviour with proof or exhibits'. The petitioner relies on Exhibit " A and B" and for defendant Exhibit"1-6". The exhibits in question are disparaging and full of insults and counter insults from the married couples which in my opinion is a bad precedent, born out of improper communication and immaturity by both parties.

Further, the petitioner in this case has set out to prove s. 2 (1) (b), which stated, "that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent". In the addition, the petitioner must further demonstrate to the court that the parties are unable to reconcile their differences. Section 2(3) enjoins the court 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

*Also **Section 8 of the Act** enjoins the petitioner or his counsel to inform the court of all attempts made to effect a reconciliation and gives the court power to adjourn the proceedings at any stage to enable attempts at reconciliation to be made if there is a reasonable possibility of reconciliation.*

***Section 4 further** provides that for the purposes of determining whether unreasonable behaviour was proved under Section 2 (1) (b) the court must disregard any period or periods not exceeding six months in the aggregate during which the parties lived with each other as husband and wife after the date of the final incident relied on and proved to the court.*

*In order to appreciate the words unreasonable behaviour as envisaged in the Act 367, it is important to look up for the meaning of this word. The meaning of the word unreasonable behaviour has been defined by the Learned Author Mrs Frederica Ahwireng-Obeng in her book **"At a Glance, Contemporary principles of Family Law in Ghana."** According to her the word as defined by "English Law as a conduct that gives rise to injury to life limb or health or conduct that gives rise to a reasonable apprehension of such danger. In the case of **HUGHES v. HUGHES [1973] 2 GLR 342-348** the Court held that "It was not enough merely to refer to an isolated act which infuriated one spouse and point to it as grave and unreasonable. To succeed a petitioner had to show that the respondent's conduct had reached a certain degree of severity, and must be such that no reasonable person would tolerate or consider that the complainant should be called on to endure"*

*Also in the case **RIBY-WILLIAMS v. RIBY-WILLIAMS [1964] GLR 538-545**, Archer J as he then was, in delivering his judgment in this case copiously with approval referred to **Russell v. Russell [1897] A.C. 395, H.L.**; **Horton v. Horton [1940] P. 187**; **King v. King [1953] A.C. 124, H.L.**, and **Thompson v. Thompson [1957] 1 All E.R. 161, C.A** and said "Mere conduct which causes injury to health is not enough; neither does cruelty exist merely because the parties find life with each other impossible. **The conduct***

complained of must be of a grave and weighty character and must go beyond the normal wear and tear of married life."

*In **ANSAH v. ANSAH [1982-83] GLR 1127-1133**, the court was of the view that the test of unreasonable behavior must be an objective test and not a subjective test and that the Petitioner must be taken within the scheme of things that she must be expected to reasonably live with the Respondent. The court stated that the test under the section, was therefore objective. **It followed that the conduct complained of must be sufficiently serious since mere trivialities would not suffice.***

Evaluation

The Petitioner in her attempt to prove her ground of relief stated that the Respondent after their marriage has put up a series of behaviour that she cannot reasonably be expected to live with her husband. The crux of her case was contained in all paragraph of her Witness Statement and "Exhibit A&B" These paragraphs showed that the Respondent has been insulting her and her family The respondent however denied knowledge of these incident and also shows from exhibit 1-6 to show how the Petitioner had been very disrespectful towards him through insulting behavior.

Notwithstanding, the truth or otherwise of the Petitioner's version of the story, it is not enough for the Petitioner to narrate incidences of wear and tear of a marriage that is reasonably expected of two grown adults who live together as husband and wife. The Petitioner is required to demonstrate to the satisfaction of the court that the behaviour of the respondent is grievous to the extent that caused or expected to cause injury to her life emotionally, mentally and physically. It is only with this that the test to be applied in determining whether the Petitioner could or could not reasonably be expected to live with the Respondent is an objective one, and not a subjective assessment of the conduct and the reaction of the Petitioner.

As stated in the case of Hughes v. Hughes supra, that it was not enough merely to refer to an isolated act which infuriated one spouse and point to it as grave and unreasonable. The Petitioner must prove to the satisfaction of the court that the series of behaviour put up by the

Respondent were so grievous that when put together the court will come to the conclusion that the marriage has broken down beyond reconciliation. In assessing such conduct, the court had to take into account the character, personality, disposition and behaviour of the Petitioner as well as the behaviour of the Respondent as alleged and established in the evidence. The conduct might consist of one act if of sufficient gravity or of a persistent course of conduct or series of acts of differing kinds, none of which by itself might be sufficient but the cumulative effect of all taken together would be so. KNUDSEN v. KNUDSEN [1976] 1 GLR 204-216 and Mensah v. Mensah (1972) 2 G.L.R. 198 and dictum of Banal J. in Ash V. Ash [1972] 1 All E.R. 582.

In the present case the conduct complained of which with some of the incidents been normal occurrence of marriage is subject to be dismissed out rightly. The Petitioner is unable to proof satisfactorily that the severity of the conducts of the Respondents when cumulatively put together lead to the marriage to be broken-down beyond reconciliation. Rather, the parties, conducts demonstrated characteristics or symptoms of lack of maturity for in marriage which dissolution is not the option.

Apart from the insulting behavior all other claims were not proved by the petitioner. Petitioner failed to proof that the respondent stopped her from writing an exam, that the respondent does not pay the children's fees nor maintain the children of the marriage and finally that the respondent was coming home late." The rules regarding proof are very clear. It is a trite law that matters that are capable of proof must be proved by producing sufficient evidence so that the existence of the fact is more reasonable than its non-existence. This is a requirement of the law in evidence under sects 10 and 11 of the Evidence Decree. A person who makes an averment or assertion which is denied by his opponent was under the burden to establish that his assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which". Section (10) (1) of NRCD 323 (the evidence Act) "For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue".

10(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non – existence.

Section 12 (1) Expects is otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities.

12 (2) Preponderance of probabilities means that the degree of certainty of belief in mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non – existence. ACKAH VRS REGAH TRANSPORT LTD AND OTHERS (2010) IGLR 728 @ 736 – PER SOPHIA ADINYIRA JSC –“It is a basic principle of the law in evidence that a party who bears the burden of proof is to produce the required evidence of facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes testimonies of the party and material witnesses, admissible hearing, documentary and things (often described as real evidence), which the party might succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or the tribunal of fact such as jury. the fact or facts he asserts can properly and safely be inferred.

CONCLUSION:

After thorough examination of the evidence before me regarding the claim of unreasonable behavior, I hold that the burden of proof regarding the claim of unreasonable was not discharged by the parties in this matter to ground the instant divorce.

Issue 2

Parties having not lived together as man and wife for a continuous period of at least two years.

section 2(1) (d) allows for a marriage to be dissolved where 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 so withheld, the Court may grant a petition for divorce under this paragraph despite the refusal; In the 2016 case of MICHAEL MANTEY V ELIZABETH OYINKA, the High Court dissolved a marriage on the grounds that parties had been separated for at least two (2) years. ***In ADDO V. ADDO it was held that 2 years of not living as man and wife was sufficient to grant a divorce.***

Evaluation

Applicable as in this case, due to the rift in the marriage the parties were advised to separate from some time to enable matters cool down unfortunately it ended up separating them for good. I will comment that this advice was in bad faith and has contributed and worsened the parties' predicament. Both parties agree that for about two years preceding the presentation of this divorce petition they have not lived as man and wife and no sexual intercourse had taken place.

Conclusion

Since the respondent does not oppose or withhold his consent to the dissolution of marriage I hold that fact 2(1) (d) of Act 367 has been successfully proved to warrant the dissolution of the marriage.

Issue 3 (Irreconcilable Differences)

The Parties refusal to reconcile their differences supports fact (2)(1)(f) and goes to proof that the marriage has broken down beyond reconciliation and same stands dissolved accordingly.

Conclusion

Accordingly, I find that the marriage has broken down beyond reconciliation on fact 2(1)(d) and (f) of Act 367. I decree the marriage as celebrated between the Petitioner and the Respondent on 4th June, 2016 with Certificate number PC6/UCG/01/16 per licence number RC7497677, dissolved. The marriage certificate is thus cancelled. The parties shall be issued with divorce certificate for transmission to the registrar of marriages to amend its records.

ANCILARY RELIEFS

***Custody:** Petitioner who has custody of the children shall continue to have custody of the two children of the marriage, with reasonable access to the respondent as already in place. This is because the children are young and it would serve the best interest of the children.*

- *Respondent shall contribute an amount of Ghc1,200 towards the upkeep of the children. The money shall be paid the 30th of every month through the Petitioner's momo account provided as 0248194956*
- *Respondent shall be responsible for the children's educational expenses and shall bear the medical expenses of the children.*
- *Petitioner shall also bear accommodation and all other incidental expense.*

Cost

- *No order as to cost.*

(SGD)

**H/W SOPHIA PRISCILLA YEBOAH
MAGISTRATE**

Furthermore, I enter the terms of settlement filed the 16th day of February, 2022, signed by the parties as consent judgment of this court as follows:

- a. Custody of the four (4) children of the marriage is granted to the Respondent with access to the Petitioner with the agreed days and with children's consent*
- b. That the Petitioner can talk to the children any day within the time agreed by both parties*
- c. The Petitioner may provide clothing and groceries for the children*
- d. The Petitioner can have the children every other weekend and holidays as they may decide, as long as she is with them personally.*

Costs of GHC 1500 payable by the Petitioner to the Respondent.

