

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 25TH DAY OF APRIL, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/73/2022

MAME SERWAA OWUSU

PETITIONER

VRS

SONNY GABRIEL ADDAWO

RESPONDENT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

The Petitioner filed an amended petition on 31st October 2022 and prayed for the following reliefs;

- a. Dissolution of the parties' marriage.
- b. That the Kokrobite land acquired by petitioner and developed jointly by the parties should be given to respondent.
- c. Parties to bear their own cost.

Respondent filed an answer to the petition on 15th November 2022 and cross petitioned for the dissolution of the parties' marriage, a declaration that the house at Joma and land at Kokrobite are jointly owned by the parties and as a result, petitioner should be ordered to give him a key to the house.

THE CASE OF THE PETITIONER

The Petitioner testified by herself and called no witness.

It is the case of the petitioner that parties got married under the ordinance at the International Central Gospel Church Christ Temple in Accra on 14th July 2012. She

tendered the marriage certificate with licence number A.M.A 5274-2012 in evidence and same was admitted and marked as Exhibit A. It is her further case that after the marriage, parties cohabited at Awoshie in Accra and have no issue of the marriage. According to the petitioner, the parties' marriage has broken down beyond reconciliation by the fact of irreconcilable differences between them and all attempts at reconciliation by the parties and their families have not been successful.

According to the petitioner, parties have been separated since January 2021. She prayed the court to grant her reliefs.

THE CASE OF THE RESPONDENT

The respondent confirmed that the parties got married on 14th July 2012 at the International Central Gospel Church in Accra. He admitted that parties cohabited at Awoshie after the celebration of the marriage and that there is no issue of the marriage. He informed the court that he has given his consent to the dissolution of the parties marriage and prayed the court to order the petitioner to hand over the documents to the land situate at Kokrobite whilst she takes the two bedroom house situate at Joma in line with their out of court settlement.

ISSUE SET DOWN FOR DETERMINATION BY THE COURT

The issue set down for determination by the court is whether or not the marriage contracted between the parties has broken down beyond reconciliation.

BURDEN OF PROOF

It is trite that sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

In **NARTEY V MECHANICAL LLOYD ASSEMBLY PLANT LTD [1987/88] 2 GLR 314 at 344, Adade JSC** reiterated the position of the law cited supra by stating:

“A person who comes to court no matter what the claim is must be able to make a case for the court to consider otherwise he fails.”

In **ABABIO V AKWASI IV [1994-1995] GBR 774, AIKINS JSC** delivered himself thus;

“The general principle of law is that it is the duty of a plaintiff to prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins if not he loses on that particular issue.”

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.

His Lordship Dennis Adjei J.A stated this position of the law in **CHARLES AKPENE AMEKO V SAPHIRA KYEREMA AGBENU (2015) 99 GMJ 202**, thus;

“The combined effect of sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a court to dissolve a marriage, the court shall satisfy itself that it has been proven on the preponderance of probabilities that the marriage has broken down beyond reconciliation. That could be achieved after one or more of the grounds in Section 2 of the Act has been proved.”

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the fact that parties have been unable to reconcile their differences after diligent efforts.

At page 314 of the book, "The Law on Family Relations in Ghana by William Cornelius Ekow Daniels, the learned author states as follows;

"His Lordship went on to explain the duty of the court as follows:

- (a) There should exist differences between the parties.
- (b) They should have made diligent efforts to reconcile their differences
- (c) They should have been unable to effect the reconciliation of the differences"

From the evidence, petitioner stated that parties have irreconcilable difference and all efforts to effect reconciliation had proven futile. Accordingly, the Court referred parties to the Court Connected Alternative Dispute Resolution on 16th August 2022 for a possible reconciliation however the mediator referred parties back to court for trial as they had been unable to reconcile their differences.

From the evidence, I find that the marriage between the parties has indeed broken down beyond reconciliation by reason of the fact that the parties have not lived as husband and wife since January 2021 and the respondent gives his consent to the grant of the divorce petition. I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Mame Serwaa Owusu and Sonny Gabriel Tetteh Addawo celebrated at the International Central Gospel Church in Accra on 14th July 2012 is hereby dissolved.

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

Per the agreement between the parties as stated in their evidence before this court, I do hereby settle the one plot of land situate at Kokrobite on the respondent whilst the two bedroom house situate at Joma is settled on the petitioner.

I make no order as to costs.

.....

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