IN THE DISTRICT COURT HOLDING AT DODOWA, SHAI- OSUDOKU ON TUESDAY THE 4TH DAY OF APRIL, 2023 BEFORE HER WORSHIP BRIDGET AKPE AKATTAH

SUIT NO: A4/70/2021

JOYCE SELORM ADJOA ARYEE … PETITIONER

VRS

JOSEPH KWAKU NYARKO AKROFI … RESPONDENT

JUDGMENT

The present petition was filed out on 28th January, 2021 at the registry of this honourable Court. The Petitioner sought the following reliefs:

a. That the said marriage as celebrated between the parties on 9th April, 2016 be dissolved forthwith and divorce certificate granted to enable the Petitioner move on with her life.
b. Custody of the child of the marriage Remi Akrofi aged 4 years be granted Petitioner with reasonable access to Respondent.
c. An order for maintenance and school fees, feeding fee etc. in favour of Petitioner.
d. Any other order or orders that this Honourable Court may deem fit.

The Respondent also caused his lawyers to file his answer to the divorce petition on 18th March, 2021 and cross petitioned as follows:

a. That the marriage celebrated on the 9th day of April, 2016 between the Petitioner and Respondent be dissolved.
b. That the custody of the issue called Remi Akrofi who is four (4) years old be granted to the Petitioner with reasonable access to the Respondent.
c. A monthly maintenance of five hundred Ghana Cedis (GH₵500.00) to be paid to the Petitioner for the upkeep of the child as the Respondent has always provided. The said amount to be reviewed based on the prevailing economic trends.
d. That the Respondent will pay the school fees of the child as he has always been doing until the child attains the age of majority.
e. That the Respondent will pay for the medical bills of the child as and when they fall due.
f. That the Respondent should be allowed to pick up the child and sleep over twice every month during weekends at Respondent's residence.
g. That the Respondent should be allowed to pick up the child for school vacation holdiays and Christmas holdiays and sleep over at Respondent's residence.
h. That either party should not be allowed to take the child out of the jurisdiction without the authority of either parent.

Parties were referred to ADR and settlement terms filed on the 14th day of March, 2022. The matter was scheduled for trials and both parties led evidence without calling any witnesses herein in support of their cases.

The main issue for the determination of this Court is whether or not the marriage between the parties has broken down beyond reconciliation and if so, to whom custody of the only issue be granted?

This is a matrimonial cause governed by the Matrimonial Causes Act, 1971 (Act 367). It is therefore in the nature of a civil claim. The onus therefore, of producing evidence of any particular fact, as in all civil cases, is on the party against whom a finding of fact

would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323. The authorities are also in harmony that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

The burden of producing evidence has been defined in Section 11 (1) of NRCD 323 as follows;

> *"11 (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party".*

The burden of proof is also not static but could shift from party to party at various stages of the trial depending on the obligation that is put on that party on an issue. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 as follows:

> *"14 Except as otherwise provided by law, unless 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 that party is asserting".*

So in accordance with the general rule of procedure, the Petitioner had the burden of proving all the averments she made against the respondent on a preponderance of probabilities. If she succeeds in establishing her averments by evidence, the onus will then shift to the Respondent to lead some evidence to rebut same.

Under section 1(2) of the Matrimonial Causes Act, 1971 (Act 367), a Court shall not grant a petition for divorce unless the marriage is proven to have broken down beyond reconciliation. And under Section 2(1) of Act 367, for the purposes of showing that the marriage has broken down beyond reconciliation, a petitioner for divorce 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;
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.

It has been held in a line of cases including ***Donkor v Donkor [1982-83] GLR 1158*** that the Matrimonial Causes Act, 1971 (Act 367), did not permit spouses married under the Marriage Ordinance, Cap. 127 (1951 Rev.), to come to court and pray for the dissolution of their marriage just for the asking. And that the petitioner in such a case for dissolution of marriage must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act (above), not only by pleading them but also by proof for the purpose of

showing that the marriage had broken down beyond reconciliation. The court explained further that Section 2 (3) of the Act, provided that even if the court found the existence of one or more of those facts it should not grant a petition for divorce unless it was satisfied that the marriage had broken down beyond reconciliation.

Petitioner led evidence solely and claimed that the parties have been in dispute for years now in their marriage and all attempts at reconciliation of same has proved futile and hence this present action to dissolve the marriage. The Petitioner claimed the Respondent has behaved in way that she cannot reasonably live with him as a husband and wife anymore. Petitioner led evidence on the unreasonable behavior of the Respondent and detailed how violent the Respondent is and how he verbally abused her during the pendency of the marriage. The nub of the Petitioner's evidence is that the Respondent does not love, cherish and value her as a wife. The parties got married on 9th April, 2016 and have lived in the family house of the Respondent in Osu with no privacy in the marriage as the Respondent's family members evaded the room of the couple sometimes without even knocking first says the Petitioner.

The Petitioner says she had to vacate the matrimonial home from 2018 to date due to the unreasonable behavior of the Respondent and she has since denied him sex till date.

The Respondent's sole evidence is that they have been married since 9th April, 2016 and over 5 years now the Petitioner does not allow him to have sex with her after delivery of the only issue of the marriage. Respondent says Petitioner did not have any sexual desires for him. This situation has led to the Petitioner deserting the matrimonial home for the period without any intention of returning to same. All efforts at reconciling the parties yielded no results hence he prays the marriage be dissolved, custody of the only issue be granted the Petitioner with reasonable access to him.

It bears repeating the long-established principle that a petitioner for dissolution of marriage must not get a grant of dissolution until he/she is able to prove breakdown of the marriage beyond reconciliation. See **Donkor v Donkor** (supra). The Matrimonial Causes Act imposes a great responsibility on the court. A court does not just dissolve marriages for the sake of it. It has to follow certain restrictions established by statute. The Act establishes by section 1 (2) that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Then by section 2 (1), it lays down those facts, the proof of which shall, prima facie, show that the marriage has so broken down. Then again, section 2 (3) restricts the Court from rushing in to grant a petition for divorce unless the Court is satisfied, on all the evidence, that there has been an irreconcilable breakdown of the marriage. This is the law and injunction which each court called upon to dissolve a marriage ought to be guided by. In ***Mensah v. Mensah [1972] 2 G.L.R. 198*** Hayfron-Benjamin J. had this to say on the task placed on the court by statute at p. 203:

> "Our legislation [Act 367] seems to state that proof of one of the facts shows that the marriage has broken down beyond reconciliation, and yet the court can decline to grant the decree because it is not satisfied that the marriage has broken down beyond reconciliation. The Act seems to draw a distinction between appearance and reality. The petitioner after proving one of the enunciated facts would be held to have shown that the marriage has broken down beyond reconciliation. The court is then to find out whether in truth it has done so. Here the court is directed to conduct an inquiry as far as reasonable into the facts relied on by the parties. The court is then to consider all the evidence, that is, including what it has found on its inquiry, and if satisfied that the marriage has really broken down beyond reconciliation, decree a divorce."

As can be gleaned from the evidence of the parties herein, the marriage has broken down beyond reconciliation as the parties are not living together since 2018. The Petitioner has satisfied the requirements of the law under section 1(2) of the Matrimonial Causes Act, 1971 (Act 367). As we speak, there is no marriage for now between the parties since the Petitioner is happily living elsewhere with the child for a period over five years now as we speak and the Respondent too is living elsewhere. The parties have not lived as husband and wife continuously over five years and to say that the parties should go back to marry will be doing great disservice to society.

I am of the firm conviction that the Petitioner was able to prove breakdown of the marriage based on the facts provided in section 2(1) (a) of Act 367. The marriage having broken down beyond reconciliation is hereby dissolved and same is dissolved.

The Petitioner vacated the matrimonial home with the issue and has been in custody of the child since. It is therefore in the best interest of the child to remain with the Petitioner for continuity of her education.

On the totality of the evidence on record, I am satisfied that the marriage has broken down beyond reconciliation. I therefore grant the Petitioner's prayer and pronounce dissolution of the marriage between her and the Respondent. The marriage between the parties on 9th April, 2016 is hereby dissolved.

Custody of the issue REMI AKROFI is granted in favour of the Petitioner with reasonable access to the Respondent. Respondent to maintain the issue monthly with One Thousand Ghana Cedis (GH₵1,000) and pay medical bills and school fees as and when they fall due.

No order as to costs.

(SGD)

HER WORSHIP BRIDGET AKPE AKATTAH

DISTRICT MAGISTRATE