

**IN THE DISTRICT COURT HOLDING AT DODOWA, SHAI- OSUDOKU ON  
MONDAY THE 31<sup>ST</sup> DAY OF JULY, 2023 BEFORE HER WORSHIP BRIDGET AKPE  
AKATTAH**

**SUIT NO: A4/18/2023**

**PATIENCE EMEFA AMEXO ..... PETITIONER**

**VRS**

**DANIEL YAO MENSAH DO ..... RESPONDENT**

**JUDGMENT**

Per a Petition filed on the 6<sup>th</sup> day of September, 2022, the Petitioner sought the following reliefs:

- (i) An order for the dissolution of the ordinance marriage celebrated between the parties.
- (ii) An order to pay GH¢50,000.00 being maintenance arrears for the past 8 years for upkeep of the children.
- (iii) An order to be made for Respondent to be paying GH¢1,000 as monthly feeding allowance for the upkeep of the 2 children.
- (iv) An order for Respondent to be responsible for the children's education, clothing, medical etc.
- (v) An order for equitable share of property (building) both acquired to the 2 children.
- (vi) Any other reliefs as the Honourable Court deem fit and appropriate.

The Respondent also filed his answer to the divorce petition on 19<sup>th</sup> October, 2022 and cross petitioned as follows:

- a. An order for the dissolution of the Marriage Ordinance (Cap 127) celebrated on 4<sup>th</sup> December, 2000 at Accra Metropolitan Assembly Greater Accra Region of Ghana.
- b. Custody of the two children who are already with the Petitioner be granted the Petitioner with reasonable access to Respondent.
- c. An order that Petitioner does not deserve any GH¢50,000.00 maintenance arrears because Respondent has been responsible for the past 8 years in maintaining the two children.
- d. An order for the Respondent to maintain the two (2) children namely Jessica Akorfa Do and Senam Do with an amount of GH¢600.00 per month and also pay their school fees, medical bills, clothing etc.

Parties filed their written statements and the Court proceeded to take evidence to establish the breakdown of the marriage beyond reconciliation.

### **EVIDENCE OF BOTH PARTIES**

The Petitioner led evidence and called one witness in the person of Rosemond Dzineku. The case the Petitioner put across is that she got married to the Respondent under the Marriage Ordinance Cap. 127 in Accra in the year 2000 and was blessed with two issues namely Jessica Akorfa Do and Senam Do and cohabited in Adenta. That she travelled to the United States of America three times after marriage and made full disclosures of her financial status to the Respondent and the business in which she was engaged in. That she allowed Respondent to have access to her ATM card to withdraw money for use anytime he was in financial difficulty.

Petitioner further claimed that when she came back from the United States of America (USA), life became so difficult in Accra so she moved to Ho in the Volta Region which

Respondent was in agreement and Respondent also got an offer from his friend to live in his new apartment. Petitioner claimed that since then, Respondent has neglected the issues of the marriage for eight (8) years with regards to their basic needs, does little in the payment of their school fees hence she had to borrow money from financial institutions and friends for their survival.

Petitioner claimed that Respondent has denied her conjugal right for the past four (4) years, Respondent has a quick temper and has no respect for her family members especially her mother.

Petitioner also claimed that parties jointly acquired two building plots of land which is situate, lying and being at Dodowa and that one plot was sold and the proceeds was used to develop the other. That upon her first return from USA, both parties decided and agreed to buy a car but Respondent bought a cheaper one than the one they agreed upon and when asked to transfer the car into Petitioner's name to enable her get car maintenance allowance, he informed her that he can maintain the car for her only to realize that Respondent later sold the car and has since not accounted for the proceeds.

Petitioner therefore prayed for an order for the dissolution of the ordinance marriage celebrated between the parties, an order to pay GH¢50,000.00 being maintenance arrears for the past 8 years for upkeep of the children.

- (i) An order to be made for Respondent to be paying GH¢1,000 as monthly feeding allowance for the upkeep of the 2 children.
- (ii) An order for Respondent to be responsible for the children's education, clothing, medical etc.

- (iii) An order for equitable share of property (building) both acquired to the 2 children.
- (iv) Any other reliefs as the Honourable Court deem fit and appropriate.

Respondent led evidence and called no witnesses herein. Respondent averred that after the birth of the second issue of the marriage, he started experiencing some verbal, emotional and psychological abuse from Petitioner and that Petitioner refused to respond to her phone calls which made it difficult for him to get in touch with the issues and that affected him psychologically. That he then had to buy a phone for the second issue to be able to communicate with them but Petitioner collected the phone from him.

Respondent averred that both parties have not had sex for the past five years, that Petitioner always wants to be in control of everything in the marriage and that anything that makes him happy, Petitioner does not want.

Respondent further averred that he bought the land and single-handedly put up the building Petitioner talked about without her contribution therefore Petitioner has no share in that building and that it is for the two issues of the marriage.

Respondent alleged that he bought a brand new laptop for each of the issues of the marriage when they gained admission to pursue further studies, paid school fees for the issues and remits their daughter who is in the University of Ghana with GH¢200.00 every week. That he sent an amount of GH¢2,000 to Petitioner as their daughter's school fees on 5<sup>th</sup> January, 2022 but she said any subsequent money should be paid directly to her daughter and since then he has been sending every money directly to their daughter.

Respondent therefore prayed the Court for an order of the dissolution of the marriage between the parties celebrated on 4<sup>th</sup> December, 2000, custody of the two children who are already with the Petitioner be granted the Petitioner with reasonable access to Respondent, an order that Petitioner does not deserve any GH¢50,000.00 maintenance arrears because Respondent has been responsible for the upkeep of the issues for the past 8 years in maintaining the two children and an order for the Respondent to maintain the two (2) children namely Jessica Akorfa Do and Senam Do with an amount of GH¢600.00 per month and also pay their school fees, medical bills, clothing etc.

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 he made against the respondent on a preponderance of probabilities. If he succeeds in establishing his 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.

Having stated the legal framework above, I shall discuss the issues germane to a determination of the case. The issues which call for determination in this case are:

1. Whether or not the marriage between the parties has broken down beyond reconciliation?
2. Whether or not the Petitioner is entitled to maintenance arrears of GH¢50,000?

From the settled law confirmed in a line of judicial decisions, in a petition for divorce, any other established fact from the evidence has to support a finding that the marriage has broken down beyond reconciliation. In other words, any of the grounds upon which

divorce is founded as laid down under section 2(1) of Act 367 must only go to prove breakdown beyond reconciliation and nothing else.

From the evidence of the Petitioner as relayed above, I am able to decode a plethora of facts upon which she seeks dissolution of this marriage.

On the totality of the evidence on record, I am satisfied that the marriage has broken down beyond reconciliation, as the parties have not lived as husband and wife for over four years now. I therefore grant the petitioner's prayer and pronounce dissolution of the marriage between her and the respondent. The marriage between the parties on 4<sup>th</sup> December, 2000 is hereby dissolved.

Again, on the issue of custody, both parties have agreed the Petitioner be granted custody of the issues of the marriage. For the best interest of the children to be served herein and for continuity of education and the enjoyment of the environment that the children have been living, custody of the issues Jessica Akorfa Do and Senam Do be granted in favour of the Petitioner with reasonable access to the Respondent herein.

Petitioner further made a claim for an order for Respondent to pay maintenance arrears of GH¢50,000 for eight (8) years without any estimated value at which each month is calculated. Even though the petitioner made the claim above, she failed to lead any evidence in proof of same. The relief is accordingly dismissed as unproven.

Respondent to maintain the issues monthly with One Thousand Ghana Cedis (GH¢1,000) and pay medical bills and school fees as and when they fall due until they complete tertiary education.

The matrimonial property which per the evidence herein is presumed a joint property of the parties as described by the parties herein situate and located in Dodowa be shared equally between the issues of the marriage herein.

Costs of GH¢10,000 is awarded against the Respondent.

**(SGD)**

**HER WORSHIP BRIDGET AKPE AKATTAH**

**DISTRICT MAGISTRATE**