

CORAM: IN THE DISTRICT COURT HELD AT KODIE IN THE ASHANTI REGION ON MONDAY THE 2ND DAY OF OCTOBER, 2023 BEFORE HER WORSHIP CHRISTIANA ODARKOR BRUCE-ASHIRIFIE (MRS), THE DISTRICT MAGISTRATE.

SUIT NO. AR/KD/DC/A4/15/2023

GODFRED ASAFO
Suing per his lawful Attorney
FRANK WIREDU)
Of Kumasi

]

PETITIONER

VRS

JANET AMPONSAH

]

RESPONDENT

JUDGMENT

The parties to the marriage were joined in Holy Matrimony under the Marriages Act 1884, CAP 127 on 30th December, 2001 at the Church of Pentecost, Breman. There are four issues of the marriage of which the eldest is 18yrs of age and the youngest is 12yrs. The Petitioner is a driver whilst the Respondent is a trader.

CASE FOR THE PETITIONER

On the 14th of July, 2023, the Petitioner, the husband, through his Attorney filed an Amended Petition in the registry of this Court praying the court for the sole relief of a decree of divorce. The basis of his petition is that the marriage between himself and the Respondent has broken down beyond reconciliation due to the unreasonable behavior of the Respondent.

Per the petition and witness statement, the Attorney of the Petitioner asserted that the Respondent since the marriage has behaved in a manner that he the Petitioner cannot live with the Respondent as husband and wife. According to the Attorney, the Respondent has on several occasions openly insulted the Petitioner in front of family and friends. He averred that in or around the year 2020, there was a minor dispute which resulted in insult. After the minor dispute, the attorney stated that he apologized to the Respondent and he pleaded with her to allow herself for an amicable resolution of the dispute but the Respondent insisted on a divorce

It is the case of the Attorney of the Petitioner the Petitioner reported the matter to elders of both families but the Respondent failed to allow for a peaceful resolution of the matter. He added that the Respondent had insisted on a divorce to the extent that the Respondent had already returned the head drink that was paid to her family.

Continuing his assertions and evidence the Attorney of the Petitioner made it clear that attempts by their family members to resolve their differences have proved futile as the Respondent had frustrated all attempts to resolve the issue amicably. The petitioner therefore prayed for the dissolution of the marriage.

CASE FOR THE RESPONDENT

In the Respondent's answer filed on the 17th of July, 2023 and her witness statement filed on the 15th of August, 2023, she denied the allegations of unreasonable behavior levelled against her and stated categorically that she had never insulted the Petitioner in public as he wants the court to believe.

According to the Respondent they have been separated as husband and wife for the past three (3) years. She admitted that she had sent her head drink to the

husband's family and she has been compensated with Thirty Thousand Ghana Cedis (GH¢30,000.00) by the husband in front of both families and she accepted.

The Respondent averred that she consents to the dissolution of the marriage.

ISSUE

At the end of the trial, the issue to be determined by the court was whether or not the marriage contracted by the parties has broken down beyond reconciliation

EVALUATION OF THE EVIDENCE AND THE APPLICABLE LAW

Generally, the **Matrimonial Causes Act, 1971 (Act 367)** governs the dissolution of a monogamous marriage such as contracted by the parties in this instant suit. Even though it primarily covers dissolution of marriages contracted under the ordinance, the law permits marriages contracted under the other forms to have their marriages dissolved under Act 367.

Any party to the marriage may apply for a dissolution of the marriage but the party is required to prove that the marriage has broken down beyond reconciliation per **Section 1(2)** of the Act.

A Petitioner must prove one or more of the facts provided under **Section 2(1)** of **Act 367** which provides as follows:

“(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 the Petitioner finds it intolerable to live with the Respondent;

- b. That the Respondent has behaved in such 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 lived apart for continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to a decree being granted;*
- e. That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition;*
- f. That the parties to the marriage have, after diligent efforts been unable to reconcile their differences."*

In this instant case the Petitioner founded his case on **Section 2(1)(b)** and **(f)** of the Act.

Thus the burden of proof or persuasion is on the Petitioner to adduce sufficient, cogent and reliable evidence to support the allegations contained in his petition in order for the court to arrive at the decision that the facts alleged exist rather than their non-existence. I am fortified to say so by reason of Section 11(4) and 12 of the Evidence Act, 1975 NRCD 323.

Section 12 states as follows;

- 1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

- 2) “Preponderance of the probabilities” means that degree of certainty of belief in the 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.

In the case of GIHOC Refrigeration and Household Products Ltd vrs. Hanna Assi [2005-2006] SCGLR 458, it was stated that

“since the enactment of NRCD 323, therefore, except otherwise specified by statute, the standard of proof (the burden of persuasion) in all civil matters is by a preponderance of the probabilities based on a determination of whether or not the party with the burden of producing evidence on the issue has, on all the evidence, satisfied the judge of the probable existence of the fact in issue”

I will first deal with the petitioner’s allegation of the respondent’s unreasonable behaviour which he asserts had contributed to the difficulties in their marriage.

Under **Sec 2 (1) (b) of MCA 1971**, a Petitioner must prove that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent, to prove that a marriage has broken down beyond reconciliation.

The burden is on the party who alleges unreasonable behaviour to prove it. The Petitioner must prove two things:

Firstly, the conduct constituting the unreasonable behaviour on the part of the Respondent, and secondly the fact that he cannot reasonably be expected to live with the respondent as a result of the bad behaviour, as espoused in the case of **ANDREW V. ANDREW [1974] 3 All ER 643**

In such a case, the objective test is applied. Thus whether or not the Petitioner cannot reasonably be expected to live with the Respondent is a question of fact for the court to decide.

Whether or not the respondent has behaved in an unreasonable manner making it intolerable for the petitioner to live with her as husband and wife.

Unreasonable behaviour has been defined in English law as conduct that gives rise to injury to life, limb or health or conduct that gives rise to reasonable

apprehension of such danger. Thus, actual injury does not have to be established but mere apprehension of such injury is enough so far as it has led to the breakdown of the marriage beyond reconciliation. (Vide *At a glance! Contemporary principles of Family Law in Ghana by Frederica Ahwireng-Obeng at page 111*)

In order to succeed on the ground of the alleged unreasonable behavior, it must be shown that the conduct reached a certain degree of severity. The conduct must be such that no reasonable person would tolerate such conduct or consider that the Petitioner should be called on to endure. See **HUGHES V. HUGHES [1973] 2 GLR 342**

In the case of **MENSAH VS MENSAH [1972] 2GLR 198**, the Court held that;

“... ..the conduct complained of must be sufficiently grave and weighty enough to justify the finding that the Petitioner cannot reasonably be expected to live with the Respondent. Mere trivialities will not suffice. The parties must be expected to put up with what has been described as reasonable wear and tear of married life”

See the case of *Happee v. Happee and Another [1974] 2 GLR 186* in which it was held that the Respondent’s conduct was unreasonable and that the Petitioner was entitled to an order for dissolution of the marriage.

Also, in the case of *Riby-Williams v Riby-Williams (1964) GLR 538-545* the court stated that:

“The conduct complained of must be grave and weighty and must go beyond the normal wear and tear of married life”

It is to be noted that in all the cases cited the court came to that conclusion because detailed evidence was given to the specific several incidents that the Respondent had subjected the Petitioner to and vice versa.

The Petitioner’s pleadings and evidence before this court is that the Respondent has on several occasions openly insulted him in front of family and friends. Thus

the question is what evidence was led by the Petitioner to support these allegations of disrespect and others?

The law is very clear on the kind of evidence required when a party makes an allegation of fact in his pleadings. The rule does not change when it comes to matrimonial matters. A party who alleges a fact must prove it either by direct evidence or evidence from which the court can rightly infer that the facts alleged exists. One cannot mount the witness box and repeat the same allegations of fact without calling evidence to support same.

Thus it behooves on the Petitioner to lead evidence of the numerous incidents in the marriage where the Respondent had openly insulted him before his family and friends more so when the Respondent denied the allegations. The petitioner therefore did not sufficiently prove his allegation of unreasonable behavior on the part of the respondent with respect to the verbal abuse he is alleging he suffered from the Respondent.

The Petitioner further claimed that the Respondent had returned the head drink to his family, claiming she can no longer live with the Petitioner as husband and wife. It is his case that the Respondent had frustrated all attempts by the family members to resolve the issue between them amicably.

It is worthy to note that the Respondent admitted to this piece of evidence in her witness statement and added that they have not live together as husband and wife for the past three (3) years and so she consents to the dissolution of the marriage.

Whether or not the marriage has broken down beyond reconciliation.

From the evidence led before me, it is evident that the parties have not been living together as husband and wife for about three (3) years. It is evident from the

evidence of both parties that the marriage between the parties has been severely strained. The Respondent has categorically made known to the court that she does not want to live with the Petitioner anymore and all attempt to resolve their differences have proved futile.

It is indeed apparent that the parties have not found common ground to reconcile not even the existence of four children between them, not to talk of the length of the marriage. In such a circumstance this court cannot exercise its powers under the law to assist the parties to reconcile their differences nor order them to go back to their families to be reconciled and so I will not press the matter any further.

I am satisfied that there is ample evidence that the marriage between the parties is broken down beyond reconciliation. I consequently hold that the marriage which was celebrated between the parties on the 30th of December, 2001 has broken down beyond reconciliation and same is hereby decreed as dissolved under **Section 2(1)(d) and (f) of Act 367.**

The Respondent at trial informed the court that the Petitioner adequately maintains the issues of the marriage and so they will carry on with their current arrangement. She further informed the court that the Petitioner has adequately compensated her by way of an alimony. This court will therefore not make any ancillary reliefs to either party.

There will be no order as to cost.

CHRISTIANA BRUCE-ASHIRIFIE (ESQ.,)
(DISTRICT MAGISTRATE).

PARTIES

PRESENT

COUNSEL

ADUTWUMWAA MMROSAH PRESENT FOR PETITIONER