

**IN THE DISTRICT COURT HELD AT NYINAHIN ON TUESDAY THE  
19<sup>TH</sup> DAY OF DECEMBER, 2023, BEFORE HER WORSHIP VICTORIA  
VERA AKONU ESQ., THE DISTRICT MAGISTRATE**

---

**SUIT NO: A4/02/24**

**ELIZABETH APPIAH**

.....

**PETITIONER**

Ghana Health Service

Sereso Timpon

VRS.

**JOSHUA KOW MILLS**

.....

**RESPONDENT**

D/A Primary School

Kwametenten, Bogoso

---

PARTIES: Petitioner present

Respondent absent

---

---

**J U D G M E N T**

---

---

This petition was filed at the Registry of this Court on 2<sup>nd</sup> August, 2023 and the Petitioner is seeking for the dissolution of the Ordinance marriage celebrated between her and the Respondent on 11<sup>th</sup> February, 2017 at the church of Pentecost at Kumasi Suame.

The Respondent filed an answer and also prayed for the dissolution of the marriage.

The Petitioner is a professional Nurse working with the Ghana Health Service stationed at Sereso Tinpon and the Respondent a professional

Teacher working with the Ghana Education Service and stationed at Kwametintin – Bogoso in the D/A Primary School.

Both of them are praying the Court to dissolve their marriage, the Court therefore is mandated to find out whether there is any basis to grant the divorce.

### **THE CASE OF THE PETITIONER**

The evidence of the Petitioner is that they got married at the Church of Pentecost in Suame. She tendered in evidence Exhibits “A & A1” which are the marriage certificate No. 0030582 and the certificate issued by the Church of Pentecost respectively.

She avers that even though they agreed before they got married that the Respondent will seek for transfer to Kumasi, he failed or refused to honour his promise after they got married. Also there has not been any transparency since they got married as far as their finances are concerned. That the Respondent even though receives salary for working as a professional teacher, he does not contribute anything to the upkeep of the house. She complained to the Respondent’s family and then the two families met and spoke to the Respondent to change but the Respondent did not change.

She testified further that the last time the Respondent visited her was in March, 2020 during the Covid-19 and that was the last time they had sex as husband and wife; even though, the Respondent used to visit her anytime he was on vacation. Since then they have not lived together as husband and wife. Hence this action praying for the dissolution of the said marriage.

## **THE CASE OF THE RESPONDENT**

The evidence of the Respondent is that they agreed after their marriage to rent apartment at Pankrono where they will spend their weekends and holidays there and that even though he applied for transferred from his station to Kumasi, his request was refused thereby making it impossible for the Parties herein to live together as husband and wife.

He averred that he had a friend who wanted him to travel outside and for that matter he took a loan from the Bank for that purpose but he did not inform the Petitioner.

According to him this friend who was assisting him to travel outside died through accident and as a result he was unable to travel outside as planned. He however became indebted to the Bank because of the loan he took and for that matter, he was unable to contribute to the house keeping money which got the Petitioner to complain to his family to settle them and both families tried to resolve the matter.

He averred that 30<sup>th</sup> January, 2021 the Petitioner's family brought his drinks, that is the schnapps to his family and then dissolved their marriage. Since then the Parties have not lived together as husband and wife and prays the Court to dissolve the marriage.

## **APPLICABLE LAWS/BURDEN OF PROOF**

Under Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367), the sole ground for the grant of a decree of divorce is that the marriage has broken down beyond reconciliation and Section 2 (1) specifies facts, one or more of which the Petitioner or a Respondent who has cross-petition must establish

for the purposes of showing that the marriage indeed has broken down beyond reconciliation.

Section 2 (1) of Act 367 provides as follows:

- (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 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 parties to the marriage have, after diligent effort, been unable to reconcile their differences.

Per Section 1 of Act 367, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

A Party has the burden to adduce sufficient, cogent and reliable evidence to prove the allegations contained in his/her case in order for the Court to arrive at a decision that the facts alleged in his/her case exist rather than its non-existence. The burden of producing evidence and the burden of persuasion in a civil matter as provided under Sections 11 (1) & (4), 12 and 14 of the Evidence Act, 1975 (NRCD 323) are as follows:

“11 Burden of producing evidence defined:

(1) For the purposes 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.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of a the face was more probable than its non-existence.

“12 Proof by a preponderance of the probabilities

(1) Except as otherwise provided by law, the burden of persuasion requires proof by 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.

14 Allocation of burden of persuasion

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”.

The Petitioner must adduce 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 unless and until this burden is shifted.

In the case of MAJOLAGBE VRS. LARBI & ORS. [1959] GLR 190 @ 192 proof was explained as

**“proof, in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g by producing documents, description of things, references to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true”.**

The Respondent also prays that the marriage between them should be dissolved and for that matter he also bears the same evidential burden just like the Petitioner.

## **ISSUE FOR DETERMINATION**

Whether or not the marriage between the parties has broken down to warrant its dissolution?

Reading through the petition and the evidence adduced by the Parties at the trial, this petition is premised on Sections 2 (1) (c), (d), (e) and (f) of Act 367.

Both Parties have stated in the petition and the answer that they have been married for 3 years as at the time of the petitioner. However, from Exhibits A & A1, the parties married on 11<sup>th</sup> February, 2017 and from that time till the date the petition was filed on 2<sup>nd</sup> August, 2023 is over 6 years.

A party must prove that the marriage has broken down beyond reconciliation when it is established that the parties have not lived together for a continuous period of two years. During this period each of the parties carries on with life as if the other person does not exist, there will be no consortium and all marital obligations are withdrawn.

The Petitioner averred when she testified on 5<sup>th</sup> October, 2023 that the last time the Respondent visited her was in March 2020, during the Covid-19 period and that was the last time the parties had sex and for the past three years the Respondent has refused to visit her even during his vacations.

This is what transpired when the Respondent sought to cross examine the Petitioner on 5<sup>th</sup> October, 2023:

Q: I am putting it to you that I visited you from March 2020 to January 2021 for 9 months?

A: It is not true. In June 2020, I was at a training program in Kumasi for 6 weeks and you came during the Christmas and left. So it is not true that you spent 9 months continuously with me.

Q: Do you remember that I left Sreso on the 9<sup>th</sup> January, 2021.

A: Yes, I remember and that was after you have left and came back.

This line of cross examination confirms the Petitioner's assertions that they have not lived together as husband and wife for the past two years. This admission is very advantageous to the Petitioner and for that matter she does not need any further proof or evidence to establish that fact that they Parties herein have not lived together for 2 years.

I therefore find and hold that the Parties have not lived together as husband and wife for a continuous period of two years.

Has the Parties been able to reconcile their differences?

The Petitioner also testified that the Respondent does not maintain the house even though he is a professional teacher who receives his salary and that he has also being hiding things from her as he has not been transparent with her since they got married.

Even though the Respondent had denied this assertion of the Petitioner in his Answer, he however confirmed same when he testified on 6<sup>th</sup> October, 2023. This is what he said

*"..... So I took a loan from the bank for that purpose, but I did not inform my wife about it. In the process my friend who was making the connection for me to travel outside got accident and died. Even though I could not travel as planned, I owed the bank because of the loan I took. Due to that I was facing financial problems and for that matter I was not able to contribute to the house keeping money".*

If the Respondent was going to travel out of the country through connection or whatever means, then it was important that he should have involved or

informed his wife about it because this is a major decision that was going to affect the Petitioner's life. It is unfortunate that the Respondent chose not to involve his wife in such a monumental decision even to the extent that he had to borrow money from the bank which resulted in his inability to cater for his wife financially. Husband and wife are supposed to be one in everything they do as captured in **Mathew 19:5-6**

*"5 and he said: for this reason a man shall leave father and mother, and be joined to his wife, and the two shall become one body? 6 So they are no longer two but one body;.....".*

Even when the Petitioner complained to the family, the Respondent did not change and for that matter the Petitioner is unable to agree with the Respondent.

I therefore find and hold that the parties have not been able to reconcile their difference.

Has there been any attempt at reconciliation?

The evidence of the Petitioner is that she complained to the family of the Respondent who talked to him to change his ways and when he refused to amend his ways, the Petitioner's family came in and the two families met to reconcile them all to no avail. The Respondent has also stated in his Answer that there were two attempt as reconciliation and repeated same in his evidence in chief. So per the evidence of the Parties, attempt at reconciliation yielded no results.

On the totality of the evidence adduced by the Parties and on the balance of probabilities, I therefore, conclude that the marriage between the Parties has broken down beyond reconciliation and warrant its dissolution.

On account of this conclusion, I will and hereby grant the order for the dissolution of the Parties marriage celebrated under the Marriage Ordinance (CAP 127) on 11<sup>th</sup> February, 2017 on the grounds that the Parties herein have not lived together as husband and wife for a continuous period of two years and they have also not been able to reconcile their differences.

Accordingly, the marriage celebrated between the Parties on 11<sup>th</sup> February, 2017 is hereby dissolved and the marriage certificate No. 0030582 in respect of their marriage is duly cancelled.

No order as to cost.

SGD.  
VERA V AKONU  
DISTRICT MAGISTRATE