

IN THE DISTRICT COURT HELD AT NKROFUL ON THURSDAY 23RD DAY OF NOVEMBER 2023, BEFORE HER WORSHIP AWO AMISSAH FRENCH ESQ. AS MAGISTRATE.

SUIT NO: A4/01/24

SELINA SEIDU

PETITIONER

VRS.

GIDEON NEME

RESPONDENT

PETITIONER PRESENT

RESPONDENT PRESENT

PARTIES SELF REPRESENTED

JUDGMENT

The Petitioner, a beautician (hairdresser) and a resident of Esiana petitioned this Court to dissolve the Customary Marriage between the parties, praying the Court to:

- a. Dissolve the marriage, and
- b. To grant custody of the two minor issues of the marriage namely Joseph Neme (3 years) and Naomi Neme (1 year) to the Petitioner and grant the Respondent reasonable access;
- c. Order the Respondent to maintain the two children of the marriage with an amount of One Thousand Ghana Cedis (GHC 1,000.00) per month and further

orders issued for Respondent to cater for the educational, medical and shelter needs of the two children of the marriage.

Petitioner's case is that she has been married customarily to the defendant for about four years, which said marriage produced two children namely Joseph Neme and Naomi Neme. Petitioner further avers that Respondent assaults and denies her sex and both parties have not had sex for the past one year, six months. She further avers that Respondent at a point demanded she leaves the house because she contributes nothing to the daily living expenses of the house; resulting in her deserting her marital home with the children to rent a property near old West End Radio Station to live in with her children.

Respondent, although pleaded liable to the Petitioner's claims, for his part testified that he used to work as a Geologist with Adamus Resources Limited but has since 2021 lost his job and is currently unemployed. He avers that since the loss of his job, petitioner developed the habit of always picking up quarrels with him, demanding he goes looking for a job. He further averred that Petitioner subsequently left the house and his attempts at securing her return proved futile. He indicates that petitioner's mother and uncle came to him with a bottle of local gin ("kasapreko") and forcefully demanded he accepts same in dissolution of the marriage but he declined acceptance. He further avers that later they sent the drinks to Respondent's head of family to which he responded that since the Petitioner has dissolved the marriage herself, there is nothing else to be done about the matter; hence the status quo remains.

In deciding this matter, I'll quickly observe that although section 41(1) of the Matrimonial Causes Act, 1971 (Act 367) makes the Act applicable to monogamous marriages, such

instances of its applicability to marriages other than monogamous marriages is captured under section 41 (2) of Act 367). Thus, the Court has jurisdiction to hear this matter.

Now section 41 of the Matrimonial Causes Act, 1971(Act 367) provides as follows:

Section 41—Application of this Act.

(1) This Act shall apply to all monogamous marriages.

(2) On application by a party to a marriage other than a monogamous marriage, the court shall apply the provisions of this Act to that marriage, and in so doing, subject to the requirements of justice, equity and good conscience, the Court may—

(a) have regard to the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;

(b) grant any form of relief recognised by the personal law of the parties to the proceedings, either in addition to or in substitution for the matrimonial reliefs afforded by this Act.

(3) In the application of section 2 (1) of this Act to a marriage other than a monogamous marriage, the court shall have regard to any facts recognised by the personal law of the parties as sufficient to justify a divorce, including in the case of a customary law marriage (but without prejudice to the foregoing) the following—

(a) wilful neglect to maintain a wife or child;

(b) impotence;

(c) barrenness or sterility;

(d) intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship;

(e) persistent false allegations of infidelity by one spouse against another:

Provided that this subsection shall have effect subject to the requirements of justice, equity and good conscience.

(4) In the application of this Act to any marriage under customary law, the words "child of the household" shall be construed as including any child recognised under customary law as a child of the parties.

Now, Section 22 of the Matrimonial Causes Act, 1971 (Act 367) states as follows:

"22. (1) In all proceedings under this Act, it shall be the duty of the court to inquire whether there are any children of the household.

(2) The court may, either on its own initiative or on application by a party to any proceedings under this Act, make any order concerning any child of the household which it thinks reasonable and for the benefit of the child.

(3) Without prejudice to the generality of subsection (2), an order under that section may—

(a) award custody of the child to any person;

(b) regulate the right of access of any person to the child;

(c) provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage."

From the pleadings filed by the parties in respect of the matter, it is evidenced that the marriage was blessed with two issues namely Joseph Neme (3 years) and Naomi Neme (1 year). It is also evidenced that the children are currently in the custody of their mother the Petitioner. Being guided by the outcome of a social enquiry conducted on both parties with the social enquiry report filed on 13th November, 2023, *I therefore grant Custody of the two children of this marriage namely Joseph Neme (3 years) and Naomi Neme (1 year) to the Petitioner.*

Further to this, I grant to the Respondent, reasonable access to the said children especially on weekends within the hours of 9am to 4pm.

Now, in the light of *Section 22(3)(c) of the Matrimonial Causes Act, 1971 (Act 367)* as well as *Sections 47 and 49 of the Children's Act, 1998 (Act 560)* regarding the maintenance and care for children, I make the following care and maintenance orders in favour of the children of the marriage under consideration, taking into consideration the personal circumstances of both parents:

- a. The cost of provision of shelter for the children is to be borne by both parties in a 60:40 ratio, since she Petitioner is gainfully employed.*
- b. The Respondent is ordered to maintain the children with GH¢ 800 every month. Same shall be paid in 2 equal installments in each month.*
- c. The Petitioner shall augment the maintenance amount with groceries and any other items the children may need.*
- d. The Petitioner shall ensure that the children are enrolled unto the National Health Insurance Scheme and that their National Health Insurance Cards are renewed when due; should any medical expenses arise which are not covered under the National Health Insurance Scheme, Respondent shall bear those expenses when due.*

- e. Respondent shall pay all educational expenses of the children with the exception of transport and feeding which shall be borne by the Petitioner.*
- f. Respondent shall cater for all festive clothing needs of the children while Petitioner caters for all ordinary day-to-day clothing needs of the children.*
- g. The children are not to be taken outside the jurisdiction except with the consent of the other party and approval of the Court.*

The parties are advised to provide all necessities of life, health and education for their children and are to maintain these arrangements until a party applies for a variation of same.

The only issue for determination therefore is whether or not the parties' marriage has broken down beyond reconciliation. .

Petitioner avers that Respondent has behaved in such a way that she cannot reasonably be expected to live with him and that the Respondent has caused her much anxiety and distress, reason for which she has deserted her marital home, taking the children along with her. Parties are thus separated.

Respondent on his part agreed that the marriage should be dissolved.

Now, Section 2(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that; "On a petition for divorce, it shall be the duty of the court to inquire, so far as is reasonable into the facts alleged by the petitioner and the respondent." The Court is thus required to establish from the evidence whether the facts support the claim by the Petitioner that the marriage has broken down beyond reconciliation.

The Court's duty therefore is to critically consider the facts in evidence and determine whether or not the marriage has broken down beyond reconciliation.

Section 2 of the Matrimonial Causes Act, 1971 (Act 367) states 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 that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

(d) that the parties to the marriage have not lived as man 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 such 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 notwithstanding the refusal; or

(e) that the parties to the marriage have not lived as man 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.

The Court has to therefore analyze the evidence on record to find out if any one or more of the facts in *Section 2 of Act 367* is made out in order to establish that the parties' marriage has in fact broken down beyond reconciliation.

Petitioner has said that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him and that the Respondent has caused her much anxiety and distress. From the evidence on the record, this claim is unsubstantiated.

What I rather glean from the evidence on the record is that Petitioner is frustrated following Respondent's loss of his job, resulting in Respondent's unstable financial standing. This has bred unrest as between the Petitioner and the Respondent, affecting their marital relationship. There is no gainsaying that the horse has already bolted as between the parties, who are thus unable to resolve their differences resulting in their separation. Section 2(1) (d) and (f) of Act 367, in my opinion is thus satisfied as parties are simply unable to settle their differences.

The parties herein, having clearly shown from the evidence on record that they cannot resolve or reconcile their differences and live together as husband and wife, this Court being guided by the evidence on record, accordingly finds so. It is no longer in doubt that the parties cannot reconcile their differences.

Thus, from the fact of the parties' irreconcilable differences, I hold that the marriage celebrated between the parties for the past four years (2019) has broken down beyond reconciliation and I dissolve the said marriage this 23rd day of November, 2023.

Accordingly, a Divorce Certificate is to be issued to each party.

I make no award as to monetary compensation as Petitioner made no such claims; equally no Order is made as to costs. The parties shall bear their own costs.

SGD

H/W: AWO AMISSAH FRENCH

DISTRICT MAGISTRATE, NKROFUL

23RD NOVEMBER, 2023

