

CORAM: HER WORSHIP MRS ADWOA AKYAAMAA OFOSU, MAGISTRATE,
DISTRICT COURT EJISU, ASHANTI REGION ON 30TH MARCH, 2023

SUIT NUMBER A4/10/2023

ANITA ACHIAA AGYEMANG - PETITIONER

V

MICHAEL YAW ADU - RESPONDENT

.....
TIME:9:30

PARTIES: PRESENT

PARTIES SELF REPRESENTED

JUDGMENT

By a petition filed on the 22nd of November, 2022, the petitioner prays the court for the following reliefs:

- a) An order for the dissolution of the ordinance marriage contracted by the petitioner and the respondent on 5th November, 2016*
- b) An order for the grant of custody of the two children of the marriage namely Nana Ampomah Agyemang Adu and Hadassah Nyarko –Adu to the petitioner with reasonable access to the Respondent*
- c) An order for the respondent to be responsible for the educational expenses of the two children*
- d) Any other relief the honourable court may deem fit*

These reliefs being sought by the petitioner are premised on the averments contained in her petition wherein the petitioner states that she and the respondent got married under the Marriage Ordinance at the church of Pentecost Bompata Kumasi on the 5th of November, 2016. She states that she is a Nurse aged 36 years and the respondent is an Aluminium Fabricator aged 38 years old and there are two issues of the marriage aged five years and three years.

The petitioner says that the marriage between her and the respondent has broken down beyond reconciliation and she gives the particulars as follows:

- a) After six months of delivery of the parties' second child and the request and insistence of the respondent, the petitioner caused her mother to return to her place of abode.*
- b) The respondent then informed the petitioner that they should separate*
- c) The respondent thereafter adopted the practice of going out early in the morning and returning late.*
- d) The petitioner caused one Mr Bismark Owusu to advise both parties but all to no avail.*
- e) Following the petitioner's complaint, the respondent intensified his stay outside the home by leaving the house before 7:00am and returning around 12:00 am.*
- f) The respondent eventually packed all his items from the house and relocated to Tanoso Kumasi*
- g) The respondent together with his mother and other family members met petitioner's family members to inform them that the respondent has resolved not to live with the petitioner anymore as husband and wife.*
- h) The respondent has constructively divorced petitioner but is unwilling to take steps to formally dissolve the marriage.*
- i) The respondent has behaved so unreasonably that the petitioner can no longer live with him as wife and husband.*

The respondent filed an answer to the petition and he gave the reason for divorce simply as misunderstanding between the parties. He also prayed for the following reliefs:

1. *Dissolution of the ordinance marriage celebrated between the parties on the 5th of November 2016 at the church of Pentecost Bompata – Kumasi, Ashanti*
2. *Division of joint property - unnumbered house, Ejisu Manhyia, Kumasi*
3. *An order compelling both the petitioner and the respondent to jointly take up responsibility of the two children equally so far as food, education, medication, clothing and other necessities of life are concerned.*
4. *That the court should allow the respondent to pick the two children from their school every forth night and spend the weekend with the respondent at his place of abode and send them to school on Monday.*

Pursuant to an order of the court, the parties filed their witness statements. Both parties filed witness statements for a witness each. Before trial commenced, the respondent informed the court that he was no longer interested in his relief 2 being a claim for division of the joint property, unnumbered house at Ejisu Manhyia, Kumasi. Based on this, he further informed the court that he will not call his witness Peter Bekoe who was essentially to testify in respect of his contribution towards the acquisition of the said property. In the light of the petitioner's abandonment of relief 2, the petitioner also did not find it useful to call her witness, Emmanuel Nti.

Following from the above the only issue that the court has to determine is:

Whether or not the marriage between the parties has broken down beyond reconciliation

As in every civil suit the burden of proof first lies with the person who asserts the affirmative of his/her case and the standard of proof is by preponderance of probabilities as provided for under **section 12 of the Evidence Act, 1975 (NRCD 323)**.

Proof by a preponderance of probabilities is further explained under section 12(2) to mean:

“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”

The position of the law regarding the ground for dissolution of marriage is provided under section 1(2) of the Matrimonial Causes Act, 1971 (Act 367). The said section provides that:

“The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”

To enable a court determine whether or not a marriage has broken down beyond reconciliation, it is required of the petitioner who has brought the petition to prove that one or more of the facts provided under section 2(1) of Act 367 have occurred in the marriage. The said section provides thus:

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 a 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;***

f. that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

The petitioner herein grounds her petition on unreasonable behaviour and so the law requires her to prove per the standard of proof explained above that the respondent has indeed behaved in such a manner that she cannot reasonably be expected to live with him.

The petitioner alleged that the respondent was not maintaining her and the children with the reason that he was not getting enough money from the work he does and so the petitioner always had to provide for the family. A few months after delivery of their second child the respondent asked them to separate. He subsequently adopted the habit of leaving home early and coming home late at night. When she complained about it and questioned the respondent about his sudden change of attitude, the respondent would assault her. The respondent eventually packed out of the matrimonial home. On these allegations, the respondent did not cross examine the petitioner.

The position of the law as stated in **Quagraine v Adams [1981] GLR 599, CA**, is that:

“Where a party makes an averment and his opponent fails to cross examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by the failure to cross-examine”.

Similarly in **Kusi & Kusi v Bonsu [2010] SCGLR 60** it was held that:

“Where a party had made an averment and that averment was not denied, no issue was joined and no evidence be led on that averment. Similarly when a party had given evidence of a material fact and was not cross examined upon it, he need not call further evidence of that fact”

The failure of the respondent to cross examine the petitioner on all the allegations made against him therefore constitutes an admission of those facts and the petitioner is relieved of producing any further evidence in proof of those facts.

The respondent on the other hand also alleged unreasonable behaviour on the part of the petitioner even though he did not particularise same in his response. The respondent testified that they were living in harmony until he found out that the petitioner was planning to travel abroad with her ex-boyfriend. According to the respondent, the petitioner's ex-boyfriend came to their house without the petitioner informing him and this created a lot of misunderstandings between them because he did not like the way the petitioner was still entertaining her ex-boyfriend whilst she was married.

According to the respondent as a result, he began to lose interest in the marriage. He also found out that the petitioner was building a house for her mother without telling him and the petitioner also developed the habit of discussing their marital issues with their family members. He expressed his displeasure but the petitioner refused to change. He therefore left the matrimonial home.

Even though the petitioner cross-examined the respondent, she did not challenge any of these allegations made against her by the respondent. This means that the petitioner also admits all the allegations made against her by the respondent.

In **Mensah v Mensah [1972] 2 GLR** the court in determining what constitutes unreasonable behaviour held that:

“the test is however an objective one; It is whether the petitioner can reasonably be expected to live with the Respondent and not whether the petitioner finds it intolerable to do so. The answer must be related to the circumstances of both the petitioner and the respondent, and is eminently a question of fact in each case.....One point is clear and it is that the conduct complained of must be sufficiently grave and weighty to justify a 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 the reasonable wear and tear of life”

The question thus is whether the conduct of both parties constitutes unreasonable behaviour in terms of this laid down test.

It is my view that the behaviour of the parties in the marriage cannot be described as the normal wear and tear of married life. Marriage is about companionship, trust and also partnering each other to maintain and provide for the family. It is obvious from the testimonies of the parties that there is no companionship in the marriage and trust has also broken down. The parties can therefore not reasonably be expected to live with each other under the circumstances. The evidence also shows that the parties have irreconcilable differences as attempts at reconciliation have failed. I am therefore satisfied that the petitioner has been able to prove facts that bring her case within section 2(1)(b) and (f) which show that the marriage has broken down beyond reconciliation. The petition thus succeeds.

Consequently, it is hereby decreed that the marriage between the parties which was celebrated under the Marriages Act (Cap 127) be and same is hereby dissolved as having broken down beyond reconciliation.

In view of the dissolution of the marriage, the following consequential orders are hereby made:

1. Custody of the two children of the marriage is granted the petitioner with reasonable access to the respondent. Reasonable access shall include the respondent picking the children up fort nightly from school on Fridays and sending them to school on Monday Morning effective 13th April, 2023
2. The Respondent shall pay the school fees of the children as and when they fall
3. The petitioner shall be responsible for the maintenance of the children.
4. Parties to bear their respective costs.

ADWOA AKYAAMAA OFOSU (MRS)

DISTRICT MAGISTRATE