

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 27TH DAY
OF FEBRUARY, 2024 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE**

SUIT NO. G/WJ/DG/A4/104/23

AGATHA OPAREBEA

PETITIONER

VRS

BISHOP EDMOND ARYEE

RESPONDENT

PETITIONER IS ABSENT AND REPRESENTED BY MITSUI KORYOO ODJIDJA
HOLDING BRIEF FOR YVONNE AMEGASHIE FOR THE PETITIONER
RESPONDENT IS PRESENT AND SELF REPRESENTED.

JUDGMENT

BRIEF FACTS

The Petitioner, a pastor and the Respondent a missionary both Ghanaians got married in accordance with Part III of the Marriages Act 1884-1985 (CAP 127) on 27th December 2003 at the Baptist Church, Mamprobi in Accra. After the celebration of the marriage, parties cohabited at Kamara, Mamprobi, and later moved to Ayigbe Town, near Kaneshie and from there to Kasoa and finally settled at New Bortianor all in Accra. There is no issue of the marriage.

The Petitioner filed a petition for divorce against the Respondent on 23rd June 2023 for an order of the honourable court dissolving the ordinance marriage celebrated between the parties as same has broken down beyond reconciliation.

Respondent filed an answer to the petition on 27th June 2023 and cross petitioned for the dissolution of the parties' marriage on grounds of desertion.

After the close of pleadings the Court set down the matter for trial.

THE CASE OF THE PETITIONER

It is the case of the petitioner that the initial stages of the parties marriage was blissful however a couple of years into the marriage, Respondent's family members, particularly his sisters started taunting her for her inability to have a child which put a strain on the relationship between the parties.

It is the further case of the Petitioner that due to the persistent insults from members of Respondent's family, the marriage became an unhappy and quarrelsome one. She added that she could not bear the torment from Respondent's sisters anymore and as a result she was compelled to move out of the matrimonial home three years ago with no intention of resuming cohabitation.

In support of her case, she tendered the marriage certificate of the parties' in evidence and same was admitted and marked as Exhibit A.

According to her, the family of the Respondent have caused her emotional stress and pain such that she cannot reasonably be expected to remain married to Respondent as a wife. She prayed the court to grant her reliefs.

Petitioner did not call any witness.

RESPONDENT'S CASE IN ANSWER

Respondent admits that right from the onset, members of his family did not approve of his marriage to Petitioner. He admits further that his sisters did not treat the Petitioner

kindly due to her inability to conceive a child and this has put a strain on the relationship between the parties.

According to Respondent, he did all he could to salvage the marriage to no avail and all counselling and prayers by Pastors did not yield any positive results. He adds that the Petitioner moved out of the matrimonial home three years ago and as a result, families of both parties met and dissolved the customary law marriage in May 2013.

He prayed the court to dissolve the parties' marriage to enable them concentrate on their pastoral and missionary duties.

The issue set down for determination by the Court is whether or not the parties' marriage has broken down beyond reconciliation.

BURDEN OF PROOF

The standard of proof in civil cases is proof on the preponderance of probabilities.

In *Poku v Poku*[2007-2008] 2 SCGLR 996 at 1022, Georgina Wood CJ as she then was stated as follows;

"Generally, the burden of proof is therefore on the party asserting the facts with the evidential burden shifting as the justice of the case demands. The standard or degree of proof must also necessarily be proof on the preponderance of the probabilities within the meaning of Section 12(2) of the Evidence Act, 1975 (NRCD 323)"

On the issue of whether or not the marriage between the parties has broken down beyond reconciliation, sections 1(2) and 2 of the Matrimonial Causes Act, 1971 (Act 367) reads;

1. Petition for divorce

(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

2. Proof of breakdown of marriage

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

(2) on a petition for divorce the Court shall inquire so far as is reasonable into the facts alleged by the petitioner and the respondent.

(3) Although the court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied on all the evidence that the marriage has broken down beyond reconciliation.

From the evidence, the petitioner alleged that she was compelled to move out of the matrimonial home due to the unreasonable behaviour of the members of Respondent's family.

At page 124 of the book "**At a glance! The Marriages Act And The Matrimonial Causes Act Dissected by Mrs Frederica Ahwireng-Obeng**", the learned author on unreasonable behaviour states as follows;

"Section 2(1)(b) makes it clear that the petitioner **must firstly establish unreasonable conduct on the part of the respondent and secondly that as a result of the bad conduct, the petitioner cannot reasonably be expected to live with the respondent.** The court will require strong evidence to establish unreasonable behaviour. Normal wear and tear incidents of married life will not amount to unreasonable behaviour." (emphasis is mine)

In my considered opinion, unreasonable conduct on the part of respondent's family will not amount to unreasonable conduct on the part of respondent to warrant a grant of a petition for divorce!

Though both parties were in court, they all declined to cross examine each other on their assertions.

In *Takoradi Flour Mills v Samir Faris* [2005-2006] SCGLR 882, the Supreme Court held as follows;

"The law is well settled (as held by the trial court and affirmed by the Court of Appeal) that where the evidence led by a party is not challenged by his opponent in cross examination and the opponent does not tender evidence to the contrary, the facts

deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial court.”

Applying the law cited supra to the totality of the evidence before me, I find that the Petitioner has been unable to satisfy the burden cast on her to prove unreasonable conduct on the part of the respondent for which reason she cannot reasonably be expected to live with him as a wife.

I find the story of the Respondent to be more probable in the sense that it is uncontroverted from the facts and evidence that parties have not lived as husband and wife for three years due to the desertion of the petitioner from the matrimonial home.

Accordingly, I find that the marriage between the parties has broken down beyond reconciliation due to the fact that parties have not lived as husband and wife for well over three years as a result of the desertion of the Petitioner from the matrimonial home.

I do hereby decree that the ordinance marriage celebrated between Agarthia Oparebea Opare and Bishop Edmond Ayikwei Aryee on 27th December 2003 at the Mamprobi Baptist Church in Accra is hereby dissolved. A certificate of divorce is to be issued accordingly.

I make no order as to costs.

HW RUBY NTIRI OPOKU MRS.
(DISTRICT MAGISTRATE)

