

CORAM: HIS WORSHIP MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON WEDNESDAY, THE 27TH DY OF MARCH, 2024.

SUIT NO: UE/BG/DC/A4/3/2023

**AGNES ASIBIGA
OF DABORO
NEAR ZUARUNGU CHIEF PALACE**

PETITIONER

VRS.

**MATHEW ATIA
OF BAARE TONGO
NEAR BAARE CHIEF PALACE**

RESPONDENT

TIME: 08:35AM

PARTIES PRESENT

SIMON ALANGDE ASABO, ESQ. FOR THE PETITIONER PRESENT

MOHAMMED TAHIRU NAMBE, ESQ. FOR THE RESPONDENT ABSENT

JUDGMENT

Introduction

1. The undisputed facts of this case are that the Petitioner, a Sales Agent/Trader and the Respondent, a Soldier/Army Officer got married customarily in 2010. Thereafter the parties cohabited in Kumasi and Burma Camp Accra. The marriage is blessed with two children namely, Sharon Nayinmoya Atia aged 12years and David Yelsoma Atia aged 8 years at the time of filing the instant petition for divorce.
2. The Petitioner per petition for divorce filed on the 22nd day of March, 2023, claims against the Respondent for the following reliefs that:

- a. The marriage between the parties be dissolved.
 - b. The Petitioner be granted custody of the children of the marriage: Sharon Nayinmoya Atia and David Yelsoma Atia whilst Respondent has reasonable access.
 - c. The Respondent be ordered to make the Petitioner such maintenance pending suit and thereafter such periodical payments as may be just.
 - d. Respondent be ordered to pay in the alternative to the Petitioner a lump sum of Fifty Ghana Cedis (**GHC50,000.00**).
 - e. Any other order or orders as this honorable Court may deem just.
3. The Respondent also filed his answer to the petition on 3rd day of August 2023 and cross petition for the following reliefs:
- a. The Respondent seeks the Court to grant him custody of the children of the marriage, thus, Sharon Nayinmoma Atia and David Yelsoma Atia whilst the Petitioner has reasonable access to them.
 - b. Reliefs 3 and 4 of Petitioner should be dismissed for lack of merit.

Case of the Petitioner

4. The petitioner says that the marriage between the parties has broken down beyond reconciliation. It is the Petitioner's case that the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent and the Respondent has caused the petitioner much embarrassment, anxiety, emotional financial and psychological distress. She particularized the unreasonable behaviour as follows:

Particulars of Unreasonable Behaviour

- a) The Respondent drinks alcohol excessively.

- b) The Respondent smokes Indian hemp (popularly called wee).
- c) Anytime Respondent was drunk or under the influence of the indian hemp, Respondent would subject petitioner to all kinds of abuse and maltreatment and most times severely beat petitioner up for no apparent reasons.
- d) Respondent would sometimes go out with the first-born child (Sharon Nayinmoya Atia who was then only seven (7) years old, to a hideout around Burma Camp called RECCE Junction to join his colleagues smoke wee from morning 8:00am and return home with her at about 9:00pm.
- e) The Respondent on one occasion took the child (Sharon) to their wee smoking hideout and got involved in a fight and in the process of the fight; a piece of broken bottle cut/injured the child's arm.
- f) The Respondent subjects the Petitioner to beating right in front of the children anytime Petitioner complained about Respondent's behavior.
- g) Respondent has throughout the marriage been overly nagging quick-tempered and steamily scolding to the extent that he creates discomfort for the Petitioner anytime Respondent comes home.
- h) The Respondent ill-treats Petitioner has no respect or sympathy for Petitioner and frequently causes tension between the parties and that has distressed petitioner throughout the marriage.
- i) The Respondent on one occasion returned home at night and at around 2:00am beat the petitioner to pulp and Petitioner collapsed. It was their seven year old daughter who cried so much that one RSM Okanda upon hearing her cry called the military patrol team on the Respondent. It was the patrol team that took Petitioner to the 37

Military Hospital upon realizing that Petitioner had collapsed, and respondent had bolted away. Petitioner gained consciousness at the 37 Military hospital and was threatened and discharged.

- j) Respondent consistently refused and or neglected to provide chop money for the Respondent and the children.
- k) Even when Respondent 's superior Officers caused the pay Officer to deduct GHC500.00 from Respondent salary every month to be given to Petitioner for their upkeep Respondent did not take it kindly and had reason to find trouble for Petitioner.
- l) On one occasion Respondent beat up Petitioner and chased her out from their living room onto the road in front of their quarters, caught her up by a gutter close to the quarters and tore her dress up leaving her naked in the full view of passerby simply because Petitioner had prepared rice with stew for Respondent instead of soupy food.
- m) That from the day the pay office started deducting GHC500.00 from Respondent's salary for Petitioner, Respondent intensified his maltreatment of Petitioner. For instance anytime Respondent used the water closet toilet, he would not flush his faeces, but rather order Petitioner to go and flush the toilet for after all he (Respondent) is paying Petitioner GHC500.00 per month and the Petitioner is sitting in the house doing nothing.
- n) That any time Petitioner protested Respondent's behavior Respondent would pounce on Petitioner and beat her until Respondent felt he had punched her enough.
- o) That Respondent beat Petitioner in the full glare of their first child Sandra Nayinmoya Atia, who most time cries along with Petitioner.

- p) That on the 28th June 2015 Respondent beat Petitioner so mercilessly even in her condition as a lactating mother who had just gone through cesarean delivery of their second child David Yelsoma Atia just because Petitioner had failed to prepare Banku for Respondent to send to his friend's wife who was admission at the Lekma hospital.
5. Petitioner says that the Respondent told the Petitioner and his superior Officers at a meeting called by the Officers to resolve the problems between the parties that he was no longer interested in the marriage. Petitioner says Respondent consented that Petitioner should leave the marriage and that the day Petitioner was leaving Respondent's quarters, Respondent's superior Officers were at Respondent's quarters to see to it that Petitioner left without Respondent preventing her from taking the children along with her. Petitioner says when she arrived at her father's house in Zuarungu, she got a school for the first child (Sharon) and called Respondent and told him about the fees and asked for support as the GH¢500.00 given to her per month could not cover the fees, daily transportation to and from the school and feeding but Petitioner refused to support Respondent. Petitioner says further that instead Respondent later caused the stoppage of the remittance of the GH¢500.00 to Petitioner for the upkeep of the children, alleging that Petitioner had remarried and was not taking good care of the children. Petitioner says further that Respondent later reported to his unit superior officers Petitioner had remarried and was not taking good care of the children, as a result Petitioner was invited to report at Burma Camp with the children, which Petitioner did.
6. Petitioner says that Respondent has never visited the children since Petitioner was force out of the marriage and compelled to leave Burma Camp, all he has been doing is to summon Petitioner to institutions of power to have Petitioner force to send the children back to him. Petitioner says when she reported to Burma Camp at the invitation of the superior officers of Respondent, and it became evident that the Respondent had lied to them about the care of the children, the officers at a meeting with parties caused parties to sign an undertaking that anytime Respondent visits his hometown,

Tongo he could have access to the children and that the Respondent would resume the remittances of the GH¢500.00 per month to Petitioner.

7. Petitioner avers further that soon after she returns from Burma Camp, Respondent visited his hometown and summoned Petitioner before the paramount Chief of Zuarungu seeking custody of the children. Petitioner says after hearing the parties the Paramount Chief and his elders ruled that the children were too young to be separated from Petitioner and that Petitioner is taking good care of them, so Respondent should exercise patience; and that when the children attain the ages of majority, Respondent could come for them.
8. Petitioner says notwithstanding the undertaking signed by parties at Burma Camp and the decision of the paramount Chief of Zuarungu. Respondent proceeded with a petition to the Commission on Human Rights and Administrative Justice (CHRAJ) Bolgatanga for custody of the children. Petitioner says that after hearing both parties the CHRAJ officer assigned to handle the Respondent's petition told parties that the children were too young and that from the facts the welfare of the children was of paramount concern than anything else. And that since the children were properly taken care of by Petitioner, and considering their ages, Respondent should ensure that he pays their school fees and have access to the children anytime he visit home from Accra. For Respondent to have access, the Commission said Respondent could visit the children at the family house of the Petitioner or the children could be brought to Respondent at an agreed location.
9. Petitioner says further that the officer who heard the parties at the CHRAJ Office Bolgatanga also asked Petitioner to bring to them evidence of payments she was making of school fees and a copy of the report cards of the children at the end of academic term for them to transmit same to Respondent for him to reimburse Petitioner. But Respondent has since refused to pay the fees even though same was transmitted to him. Petitioner says parties also agreed at the CHRAJ office Bolgatanga that the previous arrangement which parties had with the military high command ,

Burma Camp Accra, regarding the maintenance of the children should be in force but Respondent has disregarded the said arrangement.

10. Petitioner says from the CHRAJ office Bolgatanga, Respondent again made a report to the Department of Social Welfare (Ministries Police Station Accra) who invited Petitioner to report with the children to the said office at 11: am on the 12th day of January 2022. Petitioner says the steps taken so far the Respondent are indicative that Respondent only wants the children notwithstanding the fact that he does not have what it takes to ensure welfare and wellbeing of the children. Petitioner says Respondent has an unstable character and so very temperamental that he cannot be trusted to take good care of the children if he is given custody of them. Petitioner avers that the Respondent is irresponsible and unfit to be trusted with children who are in their formative years. Petitioner avers Respondent has behaved in such a manner that the Petitioner cannot reasonably be expected to live with him as a wife. She therefore prays for the above stated reliefs.

Case of the Respondent

11. Respondent says that they got married in 2010 and that in 2015 both parties had a series of misunderstandings which culminated in many quarrels. Respondent says that he still considers the Petitioner his wife or he is still interested in the marriage, but if the Petitioner is seeking divorce in this honorable Court, the he does not object to that proposition. The Respondent says he has behaved unreasonably towards the Petitioner and that the Particulars of Unreasonable Behavior as articulated by the Petitioner in her petition should be struck out and expunged from the records on grounds of being excessively abusive, scandalous, vexatious and offensive and not befitting of a pleading in accordance with rules of procedure.

12. The Respondent states that he is military personnel, and that the Military has code of conduct regulating marriages and other related relationships. Respondent says it is needless to mention how disciplined the Ghana Arm Forces which he is a proud personnel is and for the sake of disciplinary

disposition instilled in him, he cannot maltreat his wife and would not be hauled before his superior for a disciplinary proceedings to be conducted.

13. The Respondent states that the Petitioner has always denied him access to the children in issue. The Respondent says he reported the matter to his office, the Department of Social Welfare and CHRAJ. The Respondent states that CHRAJ arrived at a determination that in view of the ages of the children, that the Petitioner should keep custody of them and also allows the Respondent to have access to the children but the Petitioner was adamant and vehemently exhibited attitude of defiance against the Respondent having access to the children pursuant to the ruling of CHRAJ. Respondent says that for the report at the Department of Social Welfare, the Petitioner failed to turn up for a resolution of the matter. It is the Respondent's case that all these institutions failed to resolve the matter between the parties. Respondent says he also reported the matter to one of the sub-chiefs in Zuarungu for the issue to be resolved. Respondent says that all these reports were aimed at giving him access to his children but they did not yield any positive results. It is the Respondent's case that that both the Petitioner and Respondent have had issues in the marriage and several attempts were made to reconcile the parties but to no avail.

Issues for determination

14. The main issue for determination in this case is whether or not the marriage between the Petitioner and the Respondent herein has broken down beyond reconciliation. In addressing this main issue, the following issues will be determined:

- a) Whether or not the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- b) Whether or not the parties have been unable to reconcile their differences after diligent efforts.

- c) Whether or not the Petitioner or Respondent be granted custody of the Children of the marriage; and how much should be awarded as maintenance allowance.
- d) Whether or not Petitioner is entitled to be awarded a lump sum of Fifty Thousand Ghana Cedis (GHC50,000.00).

Evaluation of Evidence/Legal analysis and finding of facts

- 15. The Petitioner testified herself and called two witnesses. She tendered in evidence the following documents: Documents showing the admission of Petitioner at 37 Military Hospital, Accra as **Exhibit A**, GCB Bank Statement showing periods Respondent made payments to petitioner to the day Respondent stopped the Remittances as **Exhibits B Series**, Letter of Undertaking as **Exhibit C**, Copies of Terminal Reports and Receipts of School fees of the Children as **Exhibit D series**, Copies of Receipts of Fuel purchased to transport children to and from School as **Exhibit E Series**, Summary Statement of Expenditure incurred in respect of School fees, Books, Clothing and Medical bills of the Children from 2018 to date as **Exhibit F Series**, Referral Forms to Tamale Teaching Hospital, Medical Laboratory Reports and Payment made at the Hospital as **Exhibit G**, Copy of Summary of Complaints filed by the Respondent as **Exhibit H** and Copy of Ruling of CHRAJ as **Exhibit J**.
- 16. The Respondent testified through his Lawful Attorney without a witness. The Lawful Attorney tendered in evidence the following documents: Power of Attorney dated 19th January, 2023 as **Exhibit 1**, Terms of Settlement at CHRAJ as **Exhibit 2** and Social Welfare Department Referral Form as **Exhibit 3**.
- 17. It is trite law that the sole ground for granting a petition for divorce is that a marriage has broken down beyond reconciliation. **Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367)** states that:

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

18. The law under Section 2(1) of Act 367 makes provision for six facts to prove the ground that the marriage has broken down beyond reconciliation. Thus, the Petitioner has the burden to satisfy the court on 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.

19. Although it is the duty of the court to inquire, so far as it reasonably can, into the facts alleged by both parties as stated in section 2(2), in practical terms the burden on the Petitioner is solely to establish one of the facts and it is for the Respondent in a defended suit to show, if he wishes, that the marriage has not broken down irretrievably as stated in the case of **Ash v Ash (1972) 1 All ER 582; Pheasant v Pheasant (1972) 1 All ER 587**. In the case of **Kotei v. Kotei [1974] 2 GLR 172**, Sarkodee J stated that:

“Notwithstanding proof of one of the facts showing that the marriage has broken down the court has a discretion to refuse to grant the decree of dissolution on the ground that the marriage has not in fact broken down beyond reconciliation. The discretion given to the court is not discretion to grant but discretion to refuse a decree of dissolution. The burden is not on the petitioner to show that special facts or grounds existed justifying the exercise of the court's discretion; once he or she comes within any one of the provisions specified in section 2 (1) (e) and (f) of Act 367 the presumption is in his or her favour”.

20. Hence proof of any of the facts raises a presumption of breakdown. If any of the facts is made out, the court must grant the dissolution unless it is satisfied that the marriage has not broken down irretrievably. The burden of proof and persuasion is on the part of the person making the averments to adduce sufficient, cogent and reliable evidence to support the allegations contained in the petition or cross-petition for the court to arrive at the decision that the acts alleged exist rather than their non-existence as stated thereunder. From the pleadings and evidence adduced in court, the Petitioner seeks to rely on sections 2(b) and 2(f) of Act 367. I will now proceed to examine the issues as set out above.

Issue One: Whether or not the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent.

21. A Petitioner may satisfy the court that a marriage has broken down beyond reconciliation by adducing evidence that are in tandem with **section 2(b) of Act 367**. This section is to the effect that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him or her. The Cambridge Advanced Learner's Dictionary (4th Edition) has defined behaviour generally as “the way that a person behaves in a particular situation or under particular conditions. **Baker P in Katz v Katz [1972] 3 All ER 219** put it as follows:

“Behaviour is something more than a mere state of affairs or state of mind, such as for example a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating the husband’s love, or not being as demonstrative as he thinks she should be. Behaviour in this context is action or conduct by one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct, and, in my view, it must have some reference to the marriage.”

22. Unreasonable behaviour in marriage can also take the form of cruelty, nagging, drunkenness, threats or violence. In dealing with behaviour, the question is whether the Petitioner can reasonably be expected to live with the Respondent. In **Knudsen v Knudsen [1976] 1 GLR 204**, the court stated as follows:

The behaviour of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of one act if it is of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.

In **Mensah v Mensah [1972] 2 GLR 198**, the court further stated that:

In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him the court must consider all the circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice...

In the instant case, the Petitioner claims that the Respondent has behaved in a manner in which she cannot reasonably be expected to live with him as a wife. The particulars of unreasonable behaviour are listed *supra* and there will be no need repeat them here. The Respondent denied all these allegations and is it the duty of Petitioner to prove those allegations. The Petitioner repeated the allegations on oath without more. It is trite that a bare

assertion or merely repeating a party's pleadings in the witness box without more does not constitute proof. It has been held in the case of **Majolagbe v Larbi & Anor [1959] GLR 190 @ 192** that

“Where a party makes an averment capable of proof in some positive way, eg. by producing documents, description of things, reference 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.”

23. The Petitioner has therefore failed to lead any evidence in support of these allegations of unreasonable behaviours. This Court therefore find as a fact that the Petitioner has failed to satisfy the court to the effect that Respondent has behaved unreasonably towards her which made it intolerable to live in his company.

Issue Two: Whether or not the parties have been unable to reconcile their differences after diligent efforts.

24. **Section 2(1) (f) of the Matrimonial Causes Act, ACT 367** is to the effect that, one of the facts for establishing that a marriage has broken down beyond reconciliation is to establish that the parties to the marriage have, after diligent effort, been unable to reconcile their differences. **Section 8 of the Matrimonial Causes Act, ACT 367** states:

(1) On the hearing of a petition for divorce, the petitioner or his counsel shall inform the court of all efforts made by or on behalf of the petitioner, both before and after the commencement of the proceedings, to effect a reconciliation.

25. In her evidence, the Petitioner testified that there were several unresolved matrimonial issues between her and the Respondent and all attempt to reconcile them by relatives and friends had come to naught. In other words, Petitioner testified that all attempts by family members at reconciliation have proved futile due to uncooperative behavior of the Respondent. It is the

Petitioner's case that Respondent's Superiors also intervene and tried to resolve the differences or misunderstanding between the parties but could not succeed. According to the Respondent both the Petitioner and Respondent have had issues in the marriage and several attempts were made to reconcile the parties but to no avail and that also family members had tried to intervene to resolve their misunderstandings without success.

It is also noteworthy that there is no regular or proper communication between Petitioner and the Respondent which confirms the fact that they were unable to settle their matrimonial issues. This court therefore finds as a fact that the parties have been unable to reconcile their differences after diligent efforts. Accordingly, the court is satisfied that the marriage has broken down beyond reconciliation.

Issue Three: Whether or not the Petitioner or Respondent be granted custody of the Children of the marriage; and how much should be awarded as maintenance allowance.

26. Before I proceed to deal with this issue, it bears reminding that regarding issues concerning children, the Court must seek solely what is in the paramount interest of the child. Section 2 of the Children's Act, 1998 (Act 560) provides that:

[t]he best interest of the child shall be paramount in any matter concerning a child. The best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child.

Section 2 of the Children's Act is based on Article 3(1) of the **Convention on the Rights of the Child (adopted by the General Assembly Resolution 44/25 of 20th November, 1989 and entry into force on 2nd September 1990)** which provides that,

[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Also, section 22 of the **Matrimonial Causes Act, 1971 (Act 367)** on Custody and financial provision for children provides as follows:

(1) In proceedings under this Act, the Court shall 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 proceedings under this Act, make an order concerning a 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 subsection 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.

27. Being guided by the authorities above, the question for this court is whether it would be in the best interest of the children to grant custody of the children to the Petitioner. To resolve this issue, the court is mandated by section 45 of the Children's Act, 1998 (Act 560), to—as a matter of paramount importance—consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access. To achieve this end the panel is mandated to also consider –

“(a) the age of the child; (b) that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents; (c) the views of the child if the views have been independently given; (d) that it is desirable to keep siblings together; (e) the need for continuity in the care and control of the child; and (f) any other matter that the Family Tribunal may consider relevant.”

28. The starting point according to section 45 above is that considering the ages of the children in issue, ordinarily, they ought to be with the Petitioner. However, that is a prima facie conclusion sustainable only when the other

factors or parameters contained in section 45 inure to the presumption in favour of Petitioner. The assessment of all the factors to determine what would be in the paramount interest of a child involves the exercise of judicial discretion after all the relevant factors have been considered: see: *Re F (an infant)* [1969] 2 All ER 766; *Attu v Attu* [1984-86] 2 GLR 743; and *Young v Young* [1993] 4 S.C.R 3 at para 71 per L'Heureux-Dubé J

29. The determination as to who should have custody of a child is merely an answer to the question: “what should be the best interest of the child”? It does not in any way terminate parental duties owed by the parent against whom the order is made: see *Re W (Minors) (Residence Order)* [1992] 2 F.C.R 461 at 465 per Butler-Sloss LJ.

30. In the instant case, Petitioner testified that she is in the best position to take care of the children than any other person as the children have been with her for some time now and she has been taking care of them without support from the Respondent. She stated that the Respondent is not fit to be given custody of the children who are their formative years. On the other hand, Respondent says he is rather in a good position to take care of the children and prays that the court grants him custody of the two (2) children of the marriage. The Respondent states that the Petitioner has always denied him access to the children in issue. The Respondent says he reported the matter to his office, the Department of Social Welfare, CHRAJ and to one of the sub-chiefs in Zuarungu for the issue to be resolved and that all these reports were aimed at giving him access to his children but they did not yield any positive results.

31. From the evidence, the court found as a fact that the Petitioner denied the Respondent access to the children based on the fact the he was not taking care of the children or paying their school fees. As a result, the Respondent reported the matter to CHRAJ, Social Welfare Department and a chief of Zuarungu to intervene but all to no avail hence his application to this court for custody-See **Exhibit H**. The said Application for custody was

withdrawn after Petitioner filed the instant petition for divorce claiming among others an order for custody of the children.

Analyzing the evidence in accordance with the best interest of the children as well as the authorities mentioned *supra*, this court is of the view that the best interest of the children in issue in the instant case are for them to live with their father or Respondent subject to the right of the Petitioner to have access to them. Accordingly, custody of the children is hereby granted to the Respondent subject to the right of the Petitioner to have access to them.

32. Furthermore, this court found as a fact that both parties are working or employed. Thus, the Petitioner is a Trader/Sales girl and the respondent is a Soldier or Army Officer. They have two children who are in school; and since both parties are working it is their responsibility to take care of the children together. Accordingly, the Respondent as the man shall be responsible for paying of the Educational Expenses and Medical Expenses of the children while the Petitioner as the woman shall support the Respondent as much as she can in paying those expenses. The Respondent shall in addition pay an amount of One Thousand Ghana Cedis (**GHC1,000.00**) to the Petitioner every month as maintenance allowance for the upkeep of the children of the marriage till he pays the maintenance allowance in areas as well as the Monetary amounts awarded in favour of the Petitioner herein. This means the order for custody takes effects from the time the Respondent pays the monetary amount awarded in favour of the Petitioner. The Petitioner and the Respondent are advised not to influence the children of the marriage against each other. The parties are also encouraged to communicate in order to enable them take good care of the children together.

Issue Four: Whether or not the Petitioner is entitled to be awarded a lump sum of Fifty Thousand Ghana Cedis (GHC50,000.00).

33. The Petitioner is claiming a Lump sum of GHC50,000.00 to cover the amounts he spent on taking care of the children, thus school fees, medical

expenses, clothing expenses, feeding expenses among others. It is her case that she has been taking care of the children alone without any support from the Respondent especially from 2021 to April 2023. It is also her case that all the expenses she incurred from 2018 to date is 50,000.00. She tendered in GCB Statement showing Periods Respondent made payments to petitioner to the day Respondent stopped the Remittances as **Exhibits B Series**, Copies of Terminal Reports and Receipts of School fees of the Children as **Exhibit D series**, Copies of Receipts of Fuel purchased to transport children to and from School as **Exhibit E Series**, Summary Statement of Expenditure incurred in respect of School Fess, books, Clothing and Medical bills of the Children from 2018 to date as **Exhibit F Series**. It is noteworthy that from 2018 to November 2021, the Respondent was paying maintenance allowance of GHC500.00 which was deducted from his account. See **Exhibit B**. The lawful attorney of the Respondent admitted that the Respondent stopped sending maintenance from 2021 to May 2023 because the Petitioner failed to give him access to the children. To this court, there is sufficient evidence on record that the Petitioner took care of the children by paying their school fees, medical bills among others from 2018 to April, 2023 without Respondent's support. This court will therefore order the Respondent to pay the Petitioner the sum of Thirty-Five Thousand Ghana Cedis (**GHC35,000.00**) as compensation for taking care of the children by paying their school fees, medical expenses, feeding expenses, clothing expenses among others without Respondent's support from 2018 till April 2023.

34. Moreover, it is noteworthy that before the parties separated, the Petitioner did what is expected of her as a wife by performing various household chores for the Respondent like keeping the home, washing and keeping the laundry generally clean, cooking and taking care of the Respondent's catering needs as well as those of visitors, raising up of the children in a congenial atmosphere, among others. The court is empowered upon dissolution of marriage to order either party to the marriage to pay to the other a sum of money as part of financial provision or convey to the other party such movable or immovable property as settlement of property rights.

Thus, **section 20 of the Matrimonial Causes Act, 1971 (Act 367)** on property settlement as follows:

20 (1) The court may order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision as the court thinks just and equitable.

Accordingly, having found that the Petitioner performed her duties as a wife or supported the Respondent in one way or the other till they separated, it will be improper to let her go without any financial provision or compensation. This court will therefore award a token of Ten Thousand Ghana Cedis (**GHC10,000.00**) in favour of the Petitioner as financial settlement/provision or alimony.

35.Finally, in the course of determination of this case an interim order was made for the Respondent to pay maintenance allowance of GHC1,000.00 pending the determination of this case. From May 2023 to March 2023 is 11 months which is equivalent to GHC11,000.00. During cross examination of the lawful Attorney of the Respondent by Counsel for Petitioner he admitted that Respondent only paid GHC2,100.00. If you subtract GHC2,100.00 from GHC11,000.00 the remaining balance is GHC8,900.00 This means that Respondent owes maintenance allowance of GHC8,900.00 from May 2023 to March 2024.

Conclusion

36.Having examined the facts as alleged by the Petitioner and the Respondent as well as the totality of the evidence adduced in the trial by the parties in accordance with the above-mentioned authorities, this court is of the considered opinion that the marriage between the parties herein has broken down beyond reconciliation. Accordingly, the court holds that:

- a. The marriage celebrated between Petitioner and the Respondent in 2010 is hereby dissolved.
- b. The Respondent shall pay the Petitioner the sum of Thirty-Five Thousand Ghana Cedis (**GHC35,000.00**) as compensation for taking care of the children by paying their school fees, medical expenses, feeding expenses, clothing expenses among others without Respondent's support from 2018 till April 2023. Besides, a token of Ten Thousand Ghana Cedis (**GHC10,000.00**) is awarded in favour of the Petitioner as financial settlement/provision or alimony.
- c. The Respondent shall pay the maintenance allowance arrears from May 2023 to March 2024 which is GHC11,000.00 less GHC2,100.00 (**GHC8,900.00**).
- d. Custody of the children is granted to the Respondent subject to the right of the Petitioner to have reasonable access to them. Thus, to ensure compliance with the dictates of section 5 of the Children's Act, 1998 (Act 560) which grants children the right to grow with their natural parents, the court hereby grants access to the children of the marriage to the Petitioner who shall accordingly have the right to live with the children not later than two (2) days into their vacation except that Petitioner shall return the children to the Respondent not later than two (2) clear days before school reopens. When the children are coming to spend the vacation with Petitioner, Respondent shall bear the cost of transportation and when the children are going back to the Respondent, Petitioner shall bear the cost of transportation.
- e. The order for custody in favour of the Respondent takes effect from the time the Respondent fully paid the Monetary amount awarded in favour of the Petitioner as stated above. The Respondent shall pay maintenance allowance of One Thousand Ghana Cedis (**GHC1,000.00**) a month to the Petitioner effective from 1st April, 2024 for the upkeep of the two (2) children of the marriage till Respondent pays the Monetary amount

- awarded in favour of the Petitioner. This amount shall be paid to the Petitioner's mobile money account by the 30th day of each month except in February it shall be on the 28th or 29th as the case may be.
- f. The Respondent shall be responsible for educational expenses and medical expenses of the two (2) children of the marriage. The Petitioner shall also support the Respondent in paying the educational and medical expenses as much as she can.
- g. The Petitioner and the Respondent are advised not to influence the children of the marriage against each other. The parties are also encouraged to communicate in order to enable them take good care of the children together.
- h. There will be no order as to costs. The parties are to bear their respective costs incurred in pursuing this matter.

(SGD.)
H/W MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)