IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE

HELD IN CAPE COAST ON 30TH JANUARY, 2023

BEFORE HIS LORDSHIP JUSTICE EMMANUEL A. LODOH

E6/08/2022

BEATRICE LARNYOH TRAORE (MRS) **PETITIONER**

MPEASEM, CAPE COAST

VRS.

PROFESSOR MOUSSA TRAORE **RESPONDENT**

(ENGLISH DEPARTMENT, UCC)

CAPE COAST TEACHING HOSPITAL FLATS

KWAPRO, CAPE COAST

JUDGMENT

The Petitioner on 31st January, 2022 invoked the court's jurisdiction in a Divorce Petition pursuant to Section 1 of the Matrimonial Causes Act, 1971 (Act 367) and Order 65 rule 2 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) seeking the following reliefs:

1. That the marriage celebrated between the parties be dissolved.
2. That the Petitioner be granted custody of the sole child of female child of the marriage aged seven (years).
3. That the Respondent be ordered to contribute towards the health and educational bills of the said child.
4. That the Respondent be ordered to return all her certificates and vital documents.
5. That the following properties be settled in favour of the Petitioner and child.
    a. The plot of land at Efutu, Cape Coast.
    b. An amount of GH¢100, 000 as alimony.
6. Maintenance of GH¢1,000.00 monthly for the child.
7. Any other relief(s) as the Honourable Court may deem fit so to grant in the circumstance.
8. Any other relief(s) as the honourable

Cross-Petition

The Respondent on his Answer cross-petitioned for the underlisted reliefs:

1. That the marriage between the parties be dissolved.
2. That the Respondent be granted custody of the child of the marriage.
3. That the petitioner to be made to bear all incidentals arising out of this suit.
4. And for any other orders as this Honourable Court may deem fit so to order.

Undisputed Facts

The undisputed facts in this case are that the party's celebrated their marriage under the Marriages Act, 1884-1985 (CAP 127) on 1st February, 2014 at a ceremony at Winners Chapel, Mpeasem, Cape Coast. The second undisputed fact is that the marriage is blessed with daughter aged seven (7) years as at 31st January, 2022 when

this action was filed. It has also not been disputed that one parties los a child through death during the pendency of the marriage.

Burden of Proof

I will rely on the two cases. The first is the case of **Ababio v Akwasi III [1994-95] GBR 774@777** in determine the respective legal burdens in this matter. In this case it was held that:

"The general principle of law is that it is the duty of a plaintiff to prove his case, ie he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this he wins; if not he loses on that particular issue"

In second case is **Bank of West Africa Ltd. V. Ackun [1963] 1GLR 176** it was reported in holding 2 that:

> *"The onus of proof in civil cases depends upon the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof".*

Grounds

The sole ground upon which the petitioner has embarked on this enterprise is that her marriage to the respondent has broken down beyond reconciliation. She chronicled in her petition the allegations supporting her conclusion. It is pertinent to note at this point that both parties prayed for the dissolution of the marriage, which to my mind means that each of them find it intolerable to live together as husband

and wife. Accordingly, both will be saddled with the burden of establishing the various allegations against each other.

The Petitioner's allegations against the Respondent are contained in paragraph 9 and 10 of the petition. These allegations to my mind can be categorised into two broad headings. These heading to my mind are allegation of unreasonable behaviour and the secondly a case of desertion. The Respondent on the other hand accuses the Petitioner solely of adultery.

Dissolution of Marriage

Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367), provides that the sole ground for granting a petition for divorce shall be upon proof that the marriage has broken down beyond reconciliation. This position of the law was re-echoed in the case of **KNUDSEN v. KNUDSEN [1974] 1 GLR 133**. In this case the court stated the law as follows:

"Under section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367), "The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation."

Finally in the case of **DANQUAH v. DANQUAH [1979] GLR 371** explained the law as follows:

"The Matrimonial Causes Act, 1971 (Act 367), imposed on the court a species of restriction which was unique. For having established by section 1 (2) that the sole ground for granting a petition should be that the marriage had broken down beyond reconciliation and having by section 2 (1) laid down those facts the proof of which should, prima facie, show that the marriage has so broken down, section 2 (3) authorised the court to grant a petition for divorce

only when the court was satisfied, on all the evidence, that there has been an irreconcilable breakdown of the marriage"

Proof of breakdown of marriage

As indicated earlier, the parties jointly prayed for the dissolution of their marriage. The duty of the court therefore is to interrogate whether each of them have any justification to support their prayer. My considered view in respect of such joint claims for dissolution of marriage is that in today's modern society, unless fraud is suspected, where couples after spending so much time together as husband and wife, subsequently decide that challenges to the marriage makes their continues stay together inimical to their individual welfare, I see no reason why the court should deny them the opportunity to be happy by terminating their marriage. Thus unless evidence is led to show that cause of the breakdown of the marriage was intentionally or constructively instigated by one of the party's I believe moving forward the courts should be slow in putting impediments in the way of the parties who honestly agree that the conditions in the marriage make it inimical for them to continue to live as husband and wife.

Be that as it may, I am constrained by the law to determine the merits of each party's grounds for requesting that the marriage has broken down beyond reconciliation. The Court's duty is set out under Section 2 (2) and (3) of Act 367 is as follows:

(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

My understanding of the law is that the court must examine the evidence and determine whether reasonable grounds have been proven to support a finding that the marriage has broken down beyond reconciliation. My duty as a judge in this matter is not to allocate blame to any of the parties. It is on this basis that I will proceed to determine the main issues.

So what incidents are the Petitioner and the Respondent burdened to establish.

In the case of D**anquah v Danquah [1979] 371** it was held as follows:

"The requirements in section 2 (1) of Act 367 that the petitioner must satisfy the court of one or more of those five facts therein specified to prove that the marriage had broken down beyond reconciliation would mean those facts the petitioner had both pleaded and proved. It would accordingly exclude facts pleaded but not proved or facts proved but not pleaded"

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

2. (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.

From the above provision, the petitioner obligation is simply to provide admissible and credible evidence to in the minimum establish any one of these conditions. But the law does not exclude proof of multiple pre-existing conditions.

The Trial

Both the Petitioner and Respondent testified during the trial. The petitioner called two witnesses to her aid. These are Rev. Emmanuel Abugre Abole (PW1) and Rev. Prof. Samuel Kyei (PW2). The Respondent did not call any witnesses.

Evaluation

As indicated earlier, the Petitioner in paragraph 9 of her petition chronicled various incidents of unreasonable behaviour. However a reading of her witness statement filed on 27th May, 2022 will show that she failed to speak to several of these allegations. The only evidence from the petitioner regarding the unreasonable behaviour of the respondent is that the Respondent's attitude changed towards her

following admonitions to the Respondent's brother to stop smoking or else he will be shipped back to Burkina Faso. The petitioner re-echoed this point during cross-examination as follows:

Q. I am putting it to you that when your husband discovered this long list of messages between you and Rev. Boateng he found it intolerable to live with you.

A. He never discussed anything. The presence of his brother Adam Traore sparked all these. I brought his brother to Ghana.

The Petitioner led evidence in respect of how her relationship with the Respondent deteriorated following her admonition of Respondent's brother. She stated in paragraphs 7, 8, 9, 10, and 11 of her witness statement as follows:

7. The respondent became verbally abusive towards me, I suffered rejection from the respondent and he rejected my food as well, for reasons I did not know, he rather drew more and closer to his brother, Adam Traore. This brought about tension in our matrimonial home.
8. I informed one of my Pastors in the person of Reverend Nana Boateng Addo, about the tension going on in my matrimonial home and pleaded with the pastor if he could intervene.
9. The Pastor came home to counsel us and we lived peacefully for sometime.
10. The respondent then travelled for some time and his brother. Adama Traore started calling family members and issuing threats against me.
11. I was living with the respondent's brother alone whiles the respondent had travelled, because of the attitude of the respondent's brother, Adama Traore I felt uncomfortable and scared in my matrimonial home.

The above are the only pieces of evidence the Petitioner led in her evidence in chief in respect of the unreasonable behaviour of the Respondent. However, notwithstanding her failure to lead evidence in support of her other allegations of unreasonable behaviour, counsel for the respondent, through his questions during cross-examination provided the opportunity to the Petitioner to cure the defect. During cross-examination the Petitioner expanded the brackets of her evidence as follows:

Q. In paragraph 9 point 1 you stated that the respondent shows your total disrespect at every opportunity. When did he start showing you that disrespect?

A. The first time was on my way to town. I met him on campus. He was driving past so I signalled him. He turned and looked at me, he chuckled and drove off. This was the first time. This was in 2018. I cannot remember the exact date.

Q. You also state under the same paragraph at point 4 that he stopped eating the food you cooked for him. When did he stop eating the food you cooked for him?

A. That was from 2019

The responses of the Petitioner suggest that she was stressed by the conduct of the Respondent. The respondent did not deny that he stopped eating the petitioner's food. He however explained that he had justification for doing so. He provided the following responses during his cross-examination in respect of his refusal to eat food prepared by the Petitioner.

Q. When did you stop eating Petitioner's food?

A. I stopped eating petitioner's food when I saw the text messages between her and Nana Boateng somewhere in October, 2019. I stopped eating the petitioner's food for two reasons. Firstly, because of my own moral principle; I don't eat the food of a woman who does communication with a married man. Secondly, because of my culture and tradition, we don't eat the food of such a woman.

From the narration of the Petitioner, she says the situation so degenerated that the Respondent locked her out of the matrimonial home.

Lock Out/Desertion

The petitioner stated that the she was locked out of her matrimonial home by the Respondent, who also failed to visit her at her at her temporary official accommodation to dine. The respondent in paragraph 26 of his answer however alleged differently. He stated in the said paragraph as follows:

> 26. That Respondent denies paragraph 11 and avers that it is rather the Petitioner who left the matrimonial home with the child of the marriage in her home.

However, during the trial the Respondent admitted the he was the one who denied access to the Petitioner to the matrimonial home. Respondent testified during cross-examination as follows:

Q. I am putting it to you that as far back as 8th October, 2019 you had told petitioner that you cannot allow her back into the matrimonial home as shown in your message in Exhibit "A"

A. Yes I did. I can explain. The petitioner left our matrimonial home on her own on September 12, 2019. She did that when I had just returned from a

university assignment in the Brong Ahafo Region. I retuned on the 6th of September and once I returned the petitioner held my hand straight and did not allow me to even take a shower and she said "when you were away your younger brother was communicating with your sisters and he was insulting me to your sisters. I therefore went to see my boss and he allocated a bungalow to me. So, I am moving out of your house on Monday. You can come and visit our daughter there if you want. Feel free to remarry."

The said Exhibit "A" which the Respondent admits to be the author is the print out of an electronic message dated 8th October, 2019 reads as follows:

"Good afternoon Beatrice. Pastor Ansah forwarded your message to me. Right now I cannot accept you currently in my house. We have an issue to resolve as initially mentioned and I am working at that. You told me that you are entitled to accommodation, provided by your office. I am working on the denouement if [sic] our problem I have not finished yet. You will be aware if [sic] every stage. Please I cannot allow you currently in my house. Kindly work on getting accommodation from your office as you did for the one in which you currently are. "

Unfortunately, I am unable without more to put any weight on the denial by the Respondent that it was the Petitioner who voluntarily decided to vacate or desert the matrimonial home when this denial is juxtaposed with Exhibit "A" and his evidence in Court. I can only arrive at the decision on the balance of probabilities. In this case, the Respondent admits that the Petitioner returned to the house but he intentionally locked her out. The return of the Respondent to the matrimonial home to my mind creates the presumption that the Petitioner did not leave the home with the intention never to return or for that matter desert the matrimonial home. The demonstrated attitude of the Respondent towards the stay of the Petitioner in the matrimonial

home is clearly evident in Exhibit "A". Accordingly I find that it is rather the Respondent who locked out the Petitioner from the matrimonial home.

But the question is whether these incidents are weighted enough to cause a breakdown of the marriage. I will deal with this question after the consideration of the Respondents evidence in support of the dissolution of the marriage.

The respondent's ground for seeking the dissolution of the marriage is that the Petitioner had been adulterous. I understand his evidence to mean that the Petitioner's adulterous behaviour impaired the survival of the marriage. The Respondent stated in paragraph 6 of his witness statement as follows:

6. Since the date we married in 2014, the Petitioner and I had had a very beautiful and loving relationship until the early part of 2019 when I discovered that the Petitioner was committing adultery.

So the question is whether evidence was put before this court to establish a case of adultery against the Petitioner. The respondent relied heavily on alleged WhatsApp® messages between the Petitioner and the Reverend Minister by name Reverend Nana Boateng in proof of his case.

Firstly, I accept the evidence that that the Respondent had access to the Whatsapp messages of the petitioner thorough lawful means. I accept same because the petitioner had alleged that the Respondent had hacked her phone and accessed these messages. What I do not find as proven though is the allegation that the Respondent hacked the phone of the Petitioner. To hack a phone is a criminal activity and accordingly proof of same to my mind will be the criminal standard of proof, which to my mind was not satisfied.

My reasons for arriving at this conclusion are that the evidence of the Petitioner is that her phone is not password secured. The question therefore is whether a mobile phone with no anti-intrusion mechanisms active can be said to be hacked. The Petitioner during cross-examination testified as follows:

Q. I am putting it to you that he chanced upon your phone that had been open and was unlocked and he read your conversation with Reverend Nana Boateng Addo, your pastor.

A. I have never put a password on my phone because my daughter uses it a lot. I did not know my husband read my messages

I also find from the evidence that the Petitioner admits that the Respondent printed out her Whatsapp messages. She testified during cross-examination as follows:

Q. You also claim that your husband hacked your phone. I am putting it to you that your husband has never hacked your phone.

A. My husband hacked my phone. When I moved out of my husband's house to West End there were some conversations on my WhatsApp® chat with my Rev. Minister. He printed these messages out and put them in circulation

The alleged printed Whatsapp® messages were tendered by the Respondent and marked as Exhibit "1". Notwithstanding the admission that the Respondent printed out her Whatsapp® messages, the Petitioner denied the contents of Exhibit "1". She testified during cross-examination as follows:

Q. I am putting it to you that the said messages shows that you have been involved sexually with Reverend Nana Boateng Addo, your pastor.

A. It is not true

Q. You received this message from Nana Boateng Addo. The message states "I miss your deep 'K' …"

A. I don't know

Further cross-examination continued as follows:

Q. You will agree with me that in 2018 up to September 2019 you were in daily whatsapp conversation with Rev. Nana Boateng.

A. Yes

Q. You will agree with me that the context of some of the messages shows that you were in an amorous relationship with Rev. Nana Boateng

A. No

Q. You agree with me that every night from the date stated you sent messages such as "goodnight my sweetheart, I miss you. Several dreams about me"

A. Not that I know off

Q. He sent you a message "hmmmm, you know what I need tonight" and your reply is "tell me".

A. I did not receive the said message.

Q. And he further writes "a good treat in bed like a good massage, hmm"

A. No

Q. He further says "I cannot have all of it so I just have to be content"

A. No

Q. And you reply "you really need it all"

A. No

The witnesses of the Petitioner similarly under cross-examination could not remember the contents of the said messages. Unfortunately, the Respondent failed to bring witnesses to corroborate his claims.

Given the paucity of evidence the court is unable to rely Exhibit "1" exclusively to make a finding of adulatory against the Petitioner. This is because the standard of proof required in respect of adultery almost close to proof beyond reasonable doubt. In the case of **ADJETEY AND ANOTHER v. ADJETEY [1973] 1 GLR 216 HC,** it was reported in holding 1 as follows:

"Adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability. Direct evidence of adultery was rare. In nearly every case the fact of adultery was inferred from circumstances which by fair and necessary inference would lead to that conclusion. There must be proof of disposition and opportunity for committing adultery, but the conjunction of strong inclination with evidence of opportunity would not lead to an irrebuttable presumption that adultery had been committed, and likewise the court was not bound to infer adultery from evidence of opportunity alone".

The Whatsapp® messages exhibited by the Respondent are alleged to be hard copies of electronic messages pulled from the phone of the Petitioner. The question though is whether the Whatapp messaged admitted by the Petitioner as extracted from her phone are the same messages tendered by the respondent. This is because the messages are simply headed "Pst BOAT", without a phone number attached. Given the denials by the Petitioner of the contents, such heading, in my considered view renders the data source unreliable and therefore reduces the weight to be attached to it.

It is trite knowledge that all SIM Card have unique number identifiers and therefore SIM Cards are generally identified by their unique numbers provided by the service provides and not names attached to same by third parties. Thus it is my considered view that the best evidence will have been for the printout to disclose these unique numbers and not names which are susceptible to digital manipulation.

What the Respondent ought to have done, in my considered view was to either tender these messages in its original electronic form or tender a hard copy which disclosed undeniable information (for example a verifiable phone number) to link the messages to the adulterer. I find from the evidence therefore that Exhibit "1" standing alone is not sufficient to infer that the Petitioner had committed adultery.

Attempts at Reconciliation

The record will show that several attempts were made at reconciliation. These attempts were spear headed by prominent men of religion. The record of evidence will further show that all these attempts failed. It is apparent to me therefore that the parties are resolved not to continue to live as husband and wife. Accordingly, I find that the marriage between the parties have broken down beyond reconciliation. This finding is predicated on the fact that I accept the evidence of the Petitioner that the Respondent has made it intolerable for them to live as husband and wife.

Physical Custody of Children

The parties have a seven year old daughter by name Fatima Abigail Traore, a minor. Both of them are seeking physical custody of the child. Even though both lawyers informed the court that the parties are talking in respect of this matter, they have since failed to give the court any details in respect of their discussions. I will therefore adopt the position that the parties have failed to reach an agreement with regard to which of them must have physical custody of the child.

The question though is what considerations the court should adopt in arriving at an informed decision. My considered view is that in determining which of the parents to grant custody to the overriding consideration must be what is in the best interest of the child. I also take the view that paramount consideration must also be given to the child's material and moral welfare. This principle is what is known as the welfare principle. This rule is provided for under Section 2(1) and particularly subsection (2) of the Children's Act, 1998 (Act 560) as follows:

2. (1) The best interest of the child shall be paramount in a matter concerning a child.

(2) The best interest of the child shall be the primary consideration by a Court, person, an institution or any other body in a matter concerned with a child.

In the case of **BARAKE v BARAKE [1993-94] 1 GLR 635**, the court applied similar provisions contained in an earlier statute. The court stated in holding 6 as follows:

"Under section 16(2) of the Courts Act, 1971 (Act 372) the welfare of the child was the primary consideration for the determination of the custody of a child. The welfare of the child however had to be considered in its largest sense. Although some of the factors taken into account in deciding on the welfare of the child were the positions of the parents, the position of the child and the happiness of the child, the first consideration should be who his parents were and whether they were ready to do their duty".

Another important consideration is the circumstances of the children when the parties became estranged. In the case of **ANSAH v. ANSAH [1982-83] GLR 1127**, the court stated in holding 3, as follows:

"On the question of the wife's application for custody of the two children, the court's duty was to make an order which was reasonable for the benefit of the children. In deciding what was in the best interest of the children, the conduct of the parents, and in the instant case, the pattern of life set up for the children since cohabitation ceased between the wife and husband, were important matters to be taken into consideration"

The courts have generally granted custody to mother's in circumstances were the child is a female and a minor, unless evidence to show that the circumstances of the mother is inimical to the welfare and well-being of the child. In the case of B**arake v Barake [1993-94] 1 GLR 635**, the High Court per Brobbey, J (as he then was) stated as follows:

"Finally, the female sexes of the children is another debilitating factor in the case made on behalf of the father. Even if it can be said that the father too has the right to bring up his children in his own concept of ideal woman, it cannot be gainsaid that there are certain occurrences in the lives of girls which can best be controlled by women and not men. There are some things about womanhood in respect of which men are totally helpless, however best our intentions may be. Such matters are best taken care of by women, whether we like it or not. I refer to the stage in the lives of girls, for instance, when they pass the ages of nine years and reach puberty, which the girls in the instant case will soon reach or have already reached"

Again I find from the evidence that the status quo is that the child is currently in the custody, however the Petitioner admits that the child is currently staying with her (petitioner) mother and schooling in Tema. I further find that the child has not been living with the respondents since the respondent locked both of them out of the matrimonial home, which is almost two years or a little more. I again find that no evidence was led by the respondent to support a finding that the current living circumstances of is detrimental to her.

I acknowledge that on the face of it, where a mother gives a child to her parents to raise, it creates a presumption that the mother does not have the space or time to raise a child hence the delegation of her parental duties, particularly in circumstances where the father has expressed a desire to have physical custody of the child. I however find from this case that the child having stayed with her grandmother for all these years, it would be unwise to disturb her current standing at this material time. Accordingly for the moment I do not find it appropriate to disorientate the circumstances of the child by granting physical custody to the Respondent. The Petitioner is however ordered to within the next academic year return her daughter to Cape Coast where she started her educated and also both parents reside.

Access

The next question is whether to grant access to the Respondent. I hold the view that no parent can be deprived of the right to see their children, unless same is not in the best interest of the child. To do so would be harsh and unreasonable, indeed to do so may not even be in the best interest of the child. In the case of **Happee v Happee and Anor. [1974] 2 GLR 186** the court held as follows:

"The idea of giving access to a parent in such matters seems to spring from the general notion that there is a basic right in a parent to the companionship of his child but I would prefer to call it a basic right in the child rather than in the parent. The significance of this is simply that no court should deprive a child of access to his parents unless there are strong reasons to the contrary"

According, it shall be ordered that the Respondent shall have reasonable access to the child on terms to be set out subsequently.

Alimony

The petitioner has also prayed for alimony of One hundred thousand Ghana (GH¢100,000.00). I find from the reading of her witness statement that she led no evidence in respect of same. However during cross-examination she sought to expand her evidence in chief by providing some justification for same. Her justification was however quickly shot down by the counsel for Respondent. Below is what transpired:

Q. On what basis are you looking for alimony of one hundred thousand Ghana cedis?

A. Throughout my stay with my husband he never gave me housekeeping money. He drove myself and our daughter out of the house without providing accommodation. Our child's up keeping money of two hundred Ghana cedis he was giving, he gave for six months and stopped in May 2020. Medical bills were also on me and still on me currently. What I went through in his house was akin to slavery. His relatives would not do anything. His brother Adam Mohammed would not pound fufu. I will have to pound it and serve them. His younger siblings would also leave their dishes for me to wash for them. There were so many inconveniences in the marriage which I endured. My husband has not maintained me for the number of years that he drove me out of the house till date.

Q. I am putting it to you that what you just told the court are falsehoods.

A. It is true

The respondent on the other hand stated that he simply cannot afford such amount giving his meagre lecturer's salary. The law as I understand it is that without evidence of the means of a spouse a court cannot make such orders from an

uninformed position. In the case of **Gamble v Gamble [1963] 1 GLR 416** the court stated in holding 1 as follows:

"When considering variations of alimony orders the principle to be applied is, "How much money does the husband get every month from which he can maintain himself and his wife?" Deductions for income tax and for compulsory savings may be taken into account even though the latter will eventually be refunded. The court will not look with sympathy upon a wife who makes no effort to secure employment but is content to subsist on an award of alimony"

Indeed it would be unconscionable for the court without evidence of the living standards of a claimant and how such living standards were funded make orders targeted at the unknown income of a spouse. Fortunately, the petitioner is gainfully employed. Indeed she claims she is an administrative officer with the grade of a Deputy Director with the Local Government Services. Again notwithstanding the failure of the Petitioner to prove the means of the Respondent, I find from the evidence that the Respondent is a Professor and a lecturer at the University of Cape Coast. I also find that the Respondent is saddled also with the care of children from his previous marriage.

This notwithstanding, the evidence of the Respondent suggests that he was the one exclusively maintaining the family and therefore had the means to do so. He testified as follows in paragraph 25 of his witness statement.

> 25. I have always catered for the upkeep of the Petitioner despite the fact that the Petitioner has been gainfully employed throughout the marriage. She relies on me to provide financially for the home to the extent of even paying the school fees for her children from her previous relationship.

If the Respondent's evidence is to be believed, then it would mean that he has set up a standard of living wherein the Petitioner depends on him. However, this dependency life style is equally dependent on the amount of money expended by the Respondent every month. This piece of evidence is absent from the evidence.

Be that as it may I find from the evidence that the Respondent has been unable to proof that the Petitioner committed adultery, and further that his suspicion about the relationship between the Respondent and her alleged adulterer shaped his decisions against the Petitioner and this ultimately resulted in the friction in the marriage leading to his locking out the Petitioner from the matrimonial home. I further find that during this period of isolating, he Respondent he failed to maintain the Respondent and child as he usually did. He only paid her school fees.

This situation left the Petitioner without a home, even after it came to his knowledge that she was ejected from her official bungalow. I am of the view that in these circumstances the Petitioner is entitled to alimony, which will take care of accommodation for the petitioner and the daughter. The quantum of alimony to be awarded however will be watered down by the failure of the Petitioner to put before this court evidence of the Respondent's income. The alimony to be awarded will enable the Petitioner to acquire a decent accommodation for herself and the child of the marriage in Cape Coast.

Plot of Land

The Petitioner also prayed that a plot of land at Efutu, Cape settled in her favour and that of the child. My understanding of her prayer is that the said property should be conveyed to her as property settlement.

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

Again she failed to lead any evidence in furtherance of this issue. Accordingly, I do not find any factual basis to settle the said property exclusively in her and the child's favour.

Be that as it may even though the Petitioner failed to lead evidence on why that piece of land should be settled in her favour she put in evidence the following responses during her cross-examination.

Q. You are also seeking as a relief a plot of land at Efutu?

A. Yes

Q. That plot of land was bought solely by the respondent.

A. It is not true. He paid the initial two thousand Ghana cedis and I went for a loan from KEEA Credit Union in the amount of one thousand Ghana cedis. He then added another one thousand Ghana cedis to make the four thousand payments. This is because we always do things together. A thank you of five hundred Ghana cedis was also paid by me. So, my total contribution was one thousand five hundred Ghana cedis.

Q. Is your name on any of the land documents issued by the settlers?

A. No. the first receipt was written in his name so for the second payment the lady asked what name she should use, I didn't know this day will come so I asked her to issue the second receipt in his name because I

did not have any diabolical mind that is why I asked that all the receipts be issued in his name.

Q. What you just said is false.

A. That is the truth

The Respondent on the other hand testified as follow in respect of the acquisition of the land.

24. The plot of land at Efutu was solely acquired by me and it is false that I informed the Petitioner to use her funds to look after the matrimonial home whilst I developed the land. The land is in my sole name and if Petitioner had contributed to it she would have ensured her name will appear on any title deed, most especially as she is a Ghanaian and I am a foreigner who is only entitled to a maximum of 50 year lease.

Counsel for the Respondent referred the court to the case of **Adjei v Adjei [2021] GHSC 5 (21 April, 2021)** and invited the court to apply the holding in that case and deny the Petitioner any rights over the disputed land and invited the Court not to grant exclusive ownership of the disputed land to the Petitioner. I have already dealt with the issue of exclusive interest. But the question which arises is whether or not the court should declare the parties as joint owners of the disputed land.

Counsel for the Respondent submitted in his address as follows:

"This relief for the land to be given wholly to the Petitioner is highly not supported by the law as even taken at its highest the most a spouse can gain from a property acquired during the pendency of a marriage is an equitable distribution and not a full scale transfer of property to one of the spouses. It is the submission of the Respondent that per the decision in Adjei v Adjei (Supra) the

Petitioner who acquired her land in Tema during the pendency of the marriage and which the Respondent is not laying claim to it, which is more valuable than the land in Efutu, the court should consider the peculiarities of this case and refuse Petitioners prayer to be granted the land at Efutu".

The Petitioner did not dispute that she has a land Located at Tema. She testified during cross-examination as follows:

Q. Your mother purchased land for both of you in Tema. Is that not the case?

A. That is not so. My mother bought the land for me at Kpone when she was in active service.

Q. This land, you and your mother informed your husband that your mother is building on the land for both of you. Is that not the case?

A. That is not it. My husband is a foreigner and in order to get a permanent stay he needed some documents showing that he is married to a Ghanaian and that he has properties in Ghana so that is how come he sent one thousand Ghana cedis to my mother on three occasions to mound blocks on the land. So, we bought a number of blocks which was put on the land. This was to help him acquire his permanent stay.

Q. So, you will agree with me that irrespective of the motive that your husband sent three thousand Ghana cedis towards the construction of that land.

A. Yes

Unfortunately, she failed to provide evidence in respect of how this land was acquired and the fact that she was meant to be the exclusive owner of the Tema Land. I accordingly find that the Tema land as marital property. I accordingly agree with counsel for the Respondent that the justice of this case will require that these two lands be distributed in a manner which will not further antagonise the parties.

Maintenance for Child

I have already granted physical custody of the children to the Petitioner. This essentially means that the Petitioner will be responsible for the direct care of the child. Now, whether or not a parent should provide for the maintenance of a child is not a matter of controversy. This is essentially because the care of one's child is a statutory obligation. The Children's Act, 1998 (Act 560) has imposed a legal duty of care on parents. Section 6 of Act 560 provides as follows:

6. (1) A parent shall not deprive a child of welfare whether

(a) the parents of the child are married or not at the time of the child's birth, or

(b) the parents of the child continue to live together or not.

(2) A child has the right to life, dignity, respect, leisure, liberty, health, education and shelter from the parents.

(3) A parent has rights and responsibilities whether imposed by law or otherwise towards the child which include the duty to

(a) protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression,

(b) provide good guidance, care, assistance and maintenance for the child and assurance of the child's survival and development.

I take the view that it is the responsibility of both parents of the children to contribute to the maintenance of the children. Therefore the parties will each

contribute towards the upkeep of the child. Fortunately, the parties are both gainfully employment. Therefore the only issue is to determine their respective contributions. The Respondent in his evidence testified that he was already paying for the school fees of the child. This will be ordered to continue. It is further ordered that the Respondent shall in addition contribute the sum of One thousand Ghana Cedis monthly towards the feeding of the child. The parties shall be jointly and equally responsible for the medical expenses of the child. All other expenses such transport to and from school, school feeding cost, and clothing of the child shall be borne by the Petitioner. These orders have been made taking cognisance of the standard of living set up by the parties for the child.

Return of Certificates

This matter was resolved during the pendency of the trial. The Respondent was ordered to allow the Petitioner to enter the matrimonial home to pick up her certificates. However, if there are outstanding matters the petitioner is at liberty to file a motion in this regard.

Conclusion

In conclusion, having considered the totality of the evidence I find that the marriage celebrated between the parties have broken down beyond reconciliation. As a consequence of this finding I hereby order as follows:

1. The ordinance marriage between the parties celebrated on 1st February, 2014 at the Winners Chapel, Mpeasem, Cape Coast is hereby dissolved.
2. The Petitioner is hereby granted physical custody of the child of the marriage. The Respondent shall have reasonable access as follows:
    a. The child shall spend her school vacations with the Respondent.

b. The Respondent shall have access to the child at school but shall not remove the child from school during school term/periods unless with the consent of the Petitioner.

3. The Respondent shall pay the School fees of the child and shall further pay to the Petitioner the sum of One thousand Ghana cedis (GH¢1,000.00) towards the feeding of the child.
4. The parties shall be jointly and equally liable for the medical expenses of the child.
5. The Respondent shall contribute financially towards all other expenses not mentioned above towards the maintenance of the child.
6. The sum of Thirty Five thousand Ghana Cedis (GH¢35,000.00) is hereby awarded as alimony to the Petitioner.
7. The Respondent is hereby granted exclusive interest in the land at Efutu, Cape Coast. Whereas the Petitioner is declared exclusive owner in the land at Tema.

(SGD)

Emmanuel A. Lodoh

(HIGH COURT JUDGE)

Counsels

1. Daniel Arthur, Esq. Counsel for the Petitioner
2. Felix Awuah , Esq. Counsel for the Respondent