

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
HO – VOLTA REGION**

CORAM: CHARITY A. ASEM (MRS.) J.

SUIT NO. E6/11/2023

DATE: 24TH JULY, 2023

NYIKPA LUCY : PETITIONER

VRS.

SIMON QUIST AYIKU : RESPONDENT

Parties:

Petitioner – Present.

Respondent – Present.

Lawyers: Godwin Kpoble for the Petitioner – Present.

Respondent in person

Counsel for Petitioner – We are ready to proceed as there is nothing at stake. The parties do not wish to settle this matter any further.

BY COURT:

Let the petitioner be sworn to testify. Both do not wish to call any witnesses.

S. O. B in English.

Q: Give your full name to the court.

A: Lucy Nyikpa is my name.

Q: Where do you stay?

A: Ho, Barracks Newtown.

Q: What work do you do?

A: Police Officer.

Q: You know respondent.

A: Yes.

Q: How do you know him?

A: He is my husband.

Q: When did you get married to him?

A: At Atimpoku Mckeown Temple on 3/02/2018, Church of Pentecost.

Q: Where did you both stay after the marriage?

A: Ho.

Q: You filed this petition seeking dissolution of the marriage, why?

A: We got married in 2018 and we were happy at first but I got to know he was cheating on me. When I got pregnant he denied the pregnancy. When I delivered I informed him. When he came he insisted to do DNA before he could accept the child because he accused me falsely of adultery. Later he and his family came to apologize. Since I got pregnant he did not take care of me as his wife. The baby was born on 23/09/2021 but died on 20/01/2023. He only come after the child died. He has denied me sex till date.

Q: He stays in Accra and you in Ho, how were you managing?

A: We use to visit each other. But later when I cook, he will not eat. He will go out and come back late to the house.

Q: So what efforts have you made to settle your differences before coming to court?

A: I informed his father and my parents too. His father passed away. After I delivered they came to settle the matter.

Q: So why are you here?

A: After that they said there will be DNA, but came to apologize but after they left that was all.

Q: What about the respondent himself.

A: He did not say anything. He makes no effort to resolve the case. Sometimes he will call and ask me if I have done something, that is, if I had the child for another person I should say so or confess.

Q: So you are saying your marriage has broken down beyond reconciliation.

A: Yes. Anytime I see him I feel pain and the loss of the child.

End of evidence-in-chief.

Cross-Examination.

Q: You mentioned that I denied the pregnancy not so?

A: Yes.

Q: If you could remember due to some problems we could not solve that is why I said certain things to you.

A: I lost the first pregnancy when they did not believe I was pregnant because his mother said I did not look like a pregnant woman.

Q: I have not heard my said any such thing to you so it is not true.

A: The mother was speaking to me not him.

Q: We tried to settle our differences but your family was not in agreement and we have to reschedule all the time.

A: It is not true.

Q: Due to all this I have been calling you that we should settle our own issues but she is not giving me that chance.

A: It was after the child pass away that he started calling me. I am the only one who suffered before she died. From pregnancy to hospital till she died. I am the only one who suffered. When they buried the body I returned his rings to him and the schnapps because anytime I see him I remember my child again. (Petitioner crying and the court had to intervene).

Q: She mentioned that I was cheating on her and I want to say it is not true.

A: It is true.

End of cross-examination

Counsel for Petitioner – That is the of petitioner's case.

BY COURT – Let the respondent be sworn to open his defence.

SOB in English

Q: Give your name to the court.

A: Simon Quist Ayiku is my name.

Q: Where do you live and work.

A: Accra and a Civil Aviation Officer.

Q: Do you know the petitioner.

A: Yes she is my wife.

Q: She has sued you for divorce and you have been served with the petition.

A: Yes.

Q: What do you say to the allegations make?

A: I rely on my averment filed on the 23/06/2023 and I do not have anything to add.

End of evidence in chief.

Cross-Examination.

Q: Petitioner tried to get transfer to Accra to join you, is that correct?

A: Yes.

Q: Later on she discovered that you were putting impediment in her efforts.

A: It is not true. I rather went to the Police Head office to try and help but it did not work. I also tried to be transfer to Ho Airport.

Q: I put it to you that petitioner later got to know you were entertaining all manner of women in your house. The signs were all over the place. Their dresses still and perfume etc.

A: It is not true. The lady in question is known to petitioner. She will lodge when she is travelling to abroad.

Q: And whenever she come her cloths etc. were hidden so the woman will think you are not married.

A: It is not true.

Q: You also stopped wearing your wedding ring whilst hiding her things.

A: It is not true. Whenever she leaves I wash her things and fold it and put them in her bag. Due to the work I do at the airport there was need to remove the ring and I put it back after work.

Q: You also stopped having sex with her. After the pregnancy and after she gave birth because you satisfy yourself with other women in Accra.

A: It is not true.

Q: You also did not maintain her as a wife. When she was pregnant and till she put to bed and later death of the child.

A: It is not entirely true what I have I gave.

Q: You also falsely accused her of adultery.

A: It is not true.

Q: That is why you denied her and the child who has unfortunately passed on.

A: It is not true.

Q: You and your family made no effort to make the marriage work.

A: We made lots of efforts to settle the matter.

Q: I put it to you that it is your fault that the marriage broke down.

A: It is not true.

End of cross-examination.

Court – Respondent you know petition is not asking for anything from you?

Respondent – I am aware

Court – As a matter of fact she alone took care of the child till she died unfortunately and she must be compensated at least to take care of her pain and suffering.

Respondent – I leave the issue to the court.

BY COURT:

JUDGMENT

The instant petition was filed by the Petitioner on the 14/06/2023 against the Respondent. Her reliefs are;

- a) An order for dissolution of the marriage between the Petitioner contracted on the 3/02/2018 at McKeown Temple Atimpoku.
- b) Any other order that the court deems fit and appropriate.

Upon service the Respondent entered an appearance and filed an answer and cross petitioned.

- (i) An order to dissolve the marriage contracted on 03/02/2018.
- (ii) Any other matters that the court may deem fit.

It is the case of the Petitioner that she is a Police Officer whilst the Respondent is Civil Aviation Officer. That she is currently stationed at Ho whilst the Respondent in Accra. Petitioner in her evidence to the court stated that their relationship started on a good note as a happy couple. Later she realized respondent was cheating on her. That she got pregnant and respondent denied being responsible as she was accused of adultery. She averred further that after the birth of the child respondent requested for paternity test before he will accept the child. According to her his family came to apologize. In the cause of these development the child died. All attempts to resolve their difference have proved futile. That as a result the marriage has broken down beyond reconciliation.

The respondent testified and denied the allegations. He relied on his answer to the court and denied that he is the cause of the breakdown of the marriage. He said he did not neglect petitioner and the child.

He said petitioner told him she was pregnant sometime and they went through medical examination and there was no pregnancy. And when petitioner told him the second time about the pregnancy he was not sure because petitioner hardly have time for him anytime he visited her in Ho. She only comes to Accra whenever she has an appointment or something to do at Makola.

When respondent was cross examined, this is what he said.

Q: Petitioner tried to seek transfer to Accra to join you, not so?

A: It is true.

Q: Later on she discovered that you were putting impediments in her way.

A: It is not true. I rather went to the Police Headquarters to try and help but it did not work out.

Q: I put it to you that, petitioner later got to know that you were entertaining all sorts of women in your house. The signs were all over the place, their dresses shoes and perfume.

A: It is not true. The lady in question is known to the petitioner. She usually lodge when she is travelling abroad.

Q: I put it to you that whenever petitioner comes, her cloths etc are hidden so the woman will think you are not married.

A: It is not true.

Q: You also stopped wearing your ring whilst hiding her things.

A: It is not true. Whenever she leaves I wash her things and fold it nicely and put it in her bag. For the ring due to the work I do at the airport I remove the ring and put it back after work.

Q: You also stopped having sex with her, during the pregnancy, after the birth of the child and till date because you satisfy yourself with other women.

A: It is not true.

Q: You also did not maintain her as a wife. When she was pregnant till she gave birth and later death of the child.

A: It is not entirely true what I have I gave.

Q: You accused her of adultery.

A: It is not true.

Q: That is why you denied her and the child who has unfortunately passed away.

A: It is not true.

The evidence revealed that the child passed away recently in January, 2023 and during the cause of the trial the petitioner exhibited much sorrow. It is her case that due to the manner respondent approached the whole issue she is in pain and does not wish to continue with the marriage.

THE LAW

Section 1(1) (2) of the Matrimonial Cause Act 1971 Act 369 proved as petition:

(1) A petition for divorce may be presented to the court by either pray to a marriage.

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

Section 2 thereof states that the petitioner must pave either of the persons in section 2 (a – f) that the marriage has broken down beyond reconciliation.

In the instant case the petitioner has proved that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. That the parties have after diligent effort, been unable to reconcile their differences.

From the brief evidence adduced by the parties it appears that the love that brought both parties together according to their pleadings no longer exist. The sight and sound of things that did not matter have become sour.

From a careful study of the case the petitioner feels hurt because the respondent abandoned her in her difficult moments, and sided with her mother against her. From the issue of pregnancy, denial of paternity and the resultant death of the innocent soul couple with accusation of adultery which the respondent could not prove.

In the candid view of the court the only issue for determination would be, **Whether or not the marriage has broken down beyond reconciliation.**

There is no doubt that the parties do live apart and their relationship is toxic. As the parties found themselves engulfed in marriage challenges when they could no longer see eye to eye.

From careful analysis of the evidence, respondent's cross-petitioned. A sign that he agrees to the dissolution of the marriage. Though he denied accusing petitioner of adultery he gave no reasonable excuse for denying responsibility. The court also considers his approach to the issue of pregnancy and the death of the child, in terms of care, and settlement abysmal.

This court finds as a fact that the marriage between the parties contracted on the 3/02/2018 has broken down beyond reconciliation. From this point one cannot insist the parties should live together as man and wife as it takes two to tango.

Though the petitioner did not pray for any monetary compensation from the court, the court found that, she was not adequately maintained as a wife during the pendency of the union. Particularly the during the process of the pregnancy through to putting to bed and taking care of the child till she unfortunately passed on.

I have no doubt petitioner is going through psychological and emotional trauma and pained due to the manner the respondent handled the issues as a husband.

The court is of the considered view that the petitioner is entitled to compensation to assist pay for some of her expenses and emotional trauma. In view of the above findings therefore, I make an order directed at the respondent to pay an amount of GH¢20,000.00 representing some compensation to pacify the petitioner, to defray part of her expenses and legal cost.

There shall be no order as to cost.

(SGD)

CHARITY A. ASEM (MRS)

(JUSTICE OF THE HIGH COURT)

END