

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI
ON THE 8TH DAY OF FEBRUARY, 2023, BEFORE HER LADYSHIP AFIA N.
ADU-AMANKWA (MRS.) J.**

SUIT NO. E6/5/22

LEKITTA JEMEKI

PETITIONER

VRS.

JACOB WEMEGAH

RESPONDENT

JUDGMENT

Per her petition filed on 20th October, 2021, the petitioner prays:

“(1) That the marriage celebrated on 21/12/2013 between the Petitioner and the Respondent be dissolved.

(2) Arrears of maintenance of GHc500 per month from 2016 till the final determination of the Petition.

(3) That the respondent be ordered to pay to the Petitioner a lump sum of GHc50,000.00 [Fifty Thousand Ghana Cedis] as financial provision.

(4) Cost”.

The petitioner claims that the marriage has broken down beyond reconciliation, citing unreasonable behaviour on the respondent's part and their irreconcilable differences. In answer, the respondent denies the allegations levelled against him. Instead, he makes allegations of desertion and insolence against the petitioner.

The court is called upon to determine two issues: whether the marriage between the parties ought to be dissolved and, if so, whether the petitioner is entitled to her ancillary reliefs.

To succeed, the petitioner must bring herself within at least one of the six conditions laid out in section 2(1) of the Matrimonial Causes Act, 1971, Act 367. These conditions in a loose list are adultery, unreasonable behaviour, desertion, not living as man and wife for two years continuously with consent to divorce, not living as man and wife for five years continuously with no consent needed and irreconcilable differences. See **Danquah vrs. Danquah [1979] GLR 371**. The discharge of the burden by the petitioner on any of the facts is not in itself sufficient to obtain a decree. The court must be satisfied with all the evidence that the marriage has broken down beyond reconciliation.

The petitioner set out to prove her allegation of unreasonable behaviour and irreconcilable differences by testifying that she was a petty trader whilst the respondent was a hotel manager and owner of a football academy at Fijai. According to her, she married the respondent on 21st December, 2013 at the Good Shepherd Methodist Church, Apremdo, Takoradi. After the marriage, they cohabited at Effiakuma New Site and later moved to Fijai. The petitioner further testified that she and the respondent had challenges with childbearing after the marriage. She ran fertility tests at the Effia Nkwanta and UQ hospitals based on the respondent's suspicions that she was the cause of the problem. The results showed that she was in good condition to conceive. The respondent also run sperm tests at UQ hospital, but he refused to discuss the outcome of the test with her and told her that the doctor said there was nothing wrong with him. She found Zeman drugs as part of the drugs given to the respondent from the hospital, which upon her research, revealed that it was a drug that boosted his low sperm count. The respondent refused to take the drugs and abandoned them. The petitioner contended that the respondent's refusal to take the drugs and lying to her about his medical condition was something she found intolerable. The petitioner further recounted that her friend, Jemima, who had received herbal treatment from a woman at Effiakuma, took her to see the herbalist. After examination, she was found to be in good condition to conceive. The herbalist also examined the

respondent's sperm sample and told him that he had a low sperm count, for which she gave him some herbal medicine to help cure his defect. Again, the respondent refused to take the drugs. She contended that the respondent had demonstrated a total lack of commitment to working on their inability to have children but had instead taken an intentional stance to prevent them from conceiving and getting a child. The petitioner further accused the respondent of verbally abusing and insulting her at the slightest misunderstanding and comparing her to his former girlfriend in a denigrating manner. She also testified that the accused had not had sex with her for two years. For one and half years, the respondent had deserted the matrimonial home and was sleeping in one of the rooms in his hotel due to misunderstandings he had with her. She complained to her parents about this, but the respondent continued misbehaving. The respondent also reported the matter to one of his church elders, Elder Phillip, who also mediated the matter, but the respondent refused to change his behaviour, making it difficult for her to be reconciled with him. She complained to her pastor, who also attempted to settle their differences, but the respondent failed to turn a new leaf to take responsibilities. At the last family meeting held to resolve their differences, she was ready to accept him back, provided he was prepared to assume his duties as man of the house and to accept to undertake treatment of his low sperm count. However, the respondent told all persons at the meeting that he was unwilling to continue with the marriage with the flimsy excuse that she had imposed conditions on him and therefore stated his intention to divorce her. She contended that the respondent's attitude had caused her much pain, anguish and embarrassment.

The brother of the petitioner, Kwame Ayevor, testified on her behalf. He testified that his sister complained to him some time ago that the respondent was not performing his responsibilities of taking care of her and the home as a husband should. Based on these complaints, he invited the respondent to try to resolve the issues, but he failed to honour his invitation. When the respondent's church heard

of the petitioner's complaints, the church leaders of the parties called both parties for a meeting and tried resolving the differences but to no avail. When the church failed to settle the differences, it asked both families to meet to resolve the differences. In March 2021, both families met at the respondent's father's house. In attendance were the parties, the respondent's father, a Pentecost elder and himself. The meeting ended without any peaceful resolution. At the meeting, the respondent admitted not performing his responsibilities, insisted that he was no longer interested in the marriage, and requested its dissolution. The family met again in two weeks, and the respondent was still not ready to get back with the petitioner. The church leaders invited them, and they informed them of their failure to settle the issues between the parties. At that point, the church leaders intervened, but the respondent was adamant that he wanted a divorce and was not ready to assume his responsibility as the husband in the home. The respondent's father then gave the respondent two weeks to seek a proper divorce against the petitioner, but he refused to do so, causing the petitioner to undertake this petition for divorce herself.

The respondent essentially denied the petitioner's claims. He testified that he had lived peacefully with the petitioner until she deserted the matrimonial home about two years ago without his knowledge and consent. Regarding their quest to have a child, the respondent denied that he was not forthcoming with their desire to have a child. He took all the drugs prescribed for him religiously and followed the petitioner to all the hospital appointments. He spent a chunk of his income on medical bills in their bid to have a child. He denied that the herbalist prescribed a drug for him. He explained that she requested that he put his sperms in a white handkerchief which he did once but refused to repeat it. He denied verbally abusing the petitioner or comparing her to his former girlfriend and instead accused her of abusing him. The petitioner accused him of being the cause of their infertility issues even though the doctor claimed that they were both healthy to bear children. The petitioner caused him great anguish and disgraced

him with her behaviour by informing third parties that he had a low sperm count when that was not true. He accused the petitioner of being insolent and disrespectful. The petitioner could leave the matrimonial home for weeks, travel to an undisclosed location for church programmes, and leave him to his fate. She was also habitually attending all-night church programmes at short notice. The petitioner had on several occasions evinced the intention to divorce him as she presented the customary drinks to him when the family members attempted to settle the dispute between them.

One common ground of agreement between the parties is their irreconcilable differences. The petitioner's evidence and that of her witness that the marriage had broken down due to their irreconcilable differences went unchallenged by the respondent. The respondent is deemed to have admitted this fact. PW1 catalogued the instances at attempts to reconcile the parties to no avail. First, the respondent's church heard the petitioner's complaint and thereafter invited the parties for a meeting to resolve their differences, but they failed. The parties' families also tried to resolve the differences but also failed. The respondent's church made another attempt to patch the parties, but the respondent was adamant about seeking a divorce. The church, family and even PW1 had made several efforts to reconcile their differences, all to no avail. There is nothing to salvage for now, given the entrenched positions taken by the parties to have the marriage dissolved. The petitioner's prayer for divorce should be granted on this ground, given that under the Matrimonial Causes Act, one of the grounds for the grant of divorce is the petitioner's proof that after diligent efforts, she and the respondent have been unable to reconcile their differences.

Evidence also shows that the parties have not lived as man and wife. Sarkodee J in the case of **Kotei vrs. Kotei [1974] 2 GLR 172** explained the concept of not living as man and wife as:

“For even under the provision of five years' separation there must be proof that the parties have not lived as man and wife for at least five years immediately preceding the presentation of the petition. There must be a total breakdown of the consortium vitae. Mere physical separation is not sufficient; a petitioner has to prove not only the factum of separation but also that he or she has ceased to recognize the marriage as subsisting and intended never to return to the other spouse”.

The uncontradicted evidence is that the parties have not had sex for two years. The petitioner confirmed under cross-examination that she left the matrimonial home about two and a half years ago. The parties have not merely separated. The respondent has evinced a clear intention of not returning to the matrimonial home to the extent of returning the customary drink to the respondent's family. A court will grant a divorce provided that the petitioner proves 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 a decree of divorce. The evidence points to the fact that two years preceding the presentation of divorce, the parties have not lived as man and wife. The respondent's posturing regarding this divorce is indicative of his consent to the petitioner's prayer for divorce. Petitioner's prayer for divorce is granted on this ground.

Among the reliefs sought by the petitioner is a lump sum payment of GHc50,000.00 from the respondent. Under section 20(1) of Act 367, the court has the power to grant financial provisions when married couples are divorced. The primary consideration is the requirement for the court to examine the needs of the parties. In the case of **Anthony Victor Obeng vrs. Theresa Henrietta Obeng [2015] DLSC 3028**, in considering the effect of section 20 of the Matrimonial Causes Act on financial provision, the Supreme Court opined that:

“In making an award for financial settlement, the Court is to take into consideration the ability of the spouse who will be required to make the payment. The court must also consider the standard of living of the parties and their circumstances”.

The parties filed their respective affidavits of means. The petitioner claimed to make an average profit of GHc200.00 monthly from her mini-provision shop situate at New Site Takoradi. The respondent also claimed to earn GHc650.00 a month, part of which was used to maintain the household and cater to his personal needs. Looking at the earning powers of the parties, one need not be a magician to know that the respondent is not in a position to accede to the petitioner's request to pay GHc50,000.00 as lump sum. However, considering that the respondent has set the petitioner up in business, an award of GHc3000.00 as lump sum in favour of the petitioner is reasonable under the circumstances.

The petitioner also prays for arrears of maintenance of GHc500.00 a month from 2016 till the final determination of the case. On this claim, the petitioner testified that since the inception of the marriage in 2013, she had singlehandedly maintained the home by providing food, buying toiletries and paying utilities with the agreement that the respondent would use the money to build. In 2016, when the rent became due, she requested that they move into the house built by the respondent. She then realized that the respondent had been deceiving her as he had not undertaken any development. The respondent failed to perform his responsibilities even after demanding money from him from 2016. Subsequently, the respondent started maintaining her at GHc20.00 for about three months and stopped; to date, he had refused to maintain her. The respondent denied the allegations against him, claiming that he had been performing his duties and responsibilities as the husband. According to him, three months after the marriage, he set the petitioner up in business to sell groceries at Effiakuma New Site, which she had run to date. He also maintained her at GHc200.00 a week and

gave her an extra GHc20.00 as transportation to her shop. He also provided for the house and paid the utility bills without assistance from the petitioner. The petitioner has left the matrimonial home for the past two and half years, and I wonder why she expects to be maintained by the respondent for that period. In the wake of the respondent's denial of not maintaining her, the petitioner has not led sufficient evidence for the court to conclude that the respondent was to maintain her at GHc500.00 from 2016 but failed to do so. At the very least, the respondent established her in a business from which she earns some money. In this dispensation where women advocate for equal rights and opportunities, the man as a husband is not solely responsible for maintaining his wife. The wife is to share that responsibility with her husband. The position in **Quarley vrs Marley [1959] GLR 377**, to the effect that it was the sole responsibility of the man to take care of his wife and children, has changed with time. Section 16 of Act 367 now makes it the duty of both spouses to maintain each other. The petitioner has failed to lead evidence on this claim to warrant any order for payment in her favour. Moreover, the business set up for her by the respondent, coupled with the lump sum payment made in her favour, should suffice.

Finally, I hold that the marriage between the petitioner, Lekitta Jemeki, and the respondent, Jacob Wemegah, celebrated at the Good Shepherd Methodist Church, Aprembo, Takoradi, on 21st December, 2013 has broken down beyond reconciliation, and the said marriage is hereby dissolved. The petitioner shall pay the respondent the sum of GHc3,000.00 as lump sum.

(SGD.)
H/L AFIA N. ADU-AMANKWA (MRS.)
JUSTICE OF THE HIGH COURT.

COUNSELS

Philip Otchere-Darko for the Petitioner.
Benedicta G. Kesse for the Respondent.

