

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, HELD IN TEMA MONDAY THE 31ST DAY OF JULY 2023 BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS.

Time: 10:30 am

SUIT NO: E5/010/2021

DANIEL OFOSU ADJEI

-

PETITIONER

VRS

EDITH AKWERTER

-

RESPONDENT

PARTIES:

Petitioner - Present

Respondent - Present

LEGAL REPRESENTATION

Mr. Bernard Asare for the Petitioner - Present

Ms. Claudia Asibi Panka-Arday holding brief of Ms. Joyce Agyepong for the Respondent-Present

JUDGMENT

Petitioner herein **Daniel Oforu Adjei** on the **12th of February 2021** filed this Petition against Respondent herein **Edith Akwerter** praying for the following reliefs:

- i) That the said marriage between the Petitioner and the Respondent be dissolved.*
- ii) That he should be granted custody of their children and also continue with their care and maintenance.*

Respondent on the 5th of March 2021 filed an answer to Petition and cross-petitioned seeking the following reliefs:

- i) That the marriage between the two parties be dissolved.*
- ii) The Petitioner pays an amount of Two Thousand Ghana Cedis (GH¢2,000.00) as maintenance pending suit to Respondent.*
- iii) An order granting Respondent access to the children twice every month during public holidays and vacations.*
- iv) Financial provision of Hundred Thousand Ghana Cedis (GH¢100,000.00).*
- v) An order for equal share of the uncompleted house located at New Land, Afienya.*

Petitioner's case

On the 12th of February, 2021 the Petitioner instituted the instant Petition against Respondent for seeking the aforementioned reliefs. It is Petitioner's case that he is an Economist whilst Respondent is a Ticketing Consultant.

Parties are lawfully married under the Ordinance (Cap 127). On the **12th of December, 1998** at the Presbyterian Church, Tema North, Community 4.

It is Petitioner's contention that after the said marriage, parties cohabited at various places within Tema until Respondent abandoned the Matrimonial home in December 2020. There are three (3) children of the marriage namely **Felicia Afia Dede Adjei**

twenty-one (21) years, Daniela Ofosua Adjei sixteen (16) years and Edwin Kwaku Ofosu Adjei fourteen (14) years.

Petitioner contends that the said marriage between parties has broken down beyond reconciliation due to Respondent's infidelity which has created a lot of problems in their marriage.

Petitioner further contends that, he has instituted this action after getting to know the Respondent's promiscuous life of committing adultery with several men, some of whom are family friends.

Respondent's case

Respondent also contends that their marriage has suffered several problems of which Petitioner is the cause.

Respondent states that Petitioner accuses her of infidelity and that Petitioner does not care for her nor think of her welfare and rather treats her with gross disrespect.

It is also Respondent's case that Petitioner makes her feel inferior due to the fact that she got married to the Petitioner when she was only nineteen (19) years. She further avers that Petitioner treats her as if she is a domestic help, conjugal partner or a child and does not treat her as a wife.

It is Respondent's case that she had to force her way through during their marriage to further her education.

She further contends that it is rather the Petitioner who has caused her embarrassment, anxiety and distress.

Respondent through her Cross-Petition is also praying this Court to dissolve the marriage between Petitioner and herself and to grant the reliefs she is seeking.

The main issue that came up for determination after close of pleadings were:

- a) Whether or not the marriage between Petitioner and Respondent has broken down beyond reconciliation.*
- b) Whether or not parties are entitled to their reliefs.*

Both parties filed their Witness Statements to rely on as their evidence-in-chief in this trial which same were adopted as their evidence-in-chief. Parties did not call witnesses.

In determining the issue of whether or not the marriage between parties herein; that is Petitioner, Daniel Ofosu Adjei and Respondent, Edith Akwerter has broken down beyond reconciliation, I will refer to the laid down rules principles which govern the dissolution of a marriage by the Court.

Sections 1(2) and 2(1) of the Matrimonial Causes Act, Act 367 provides;

Petition for Divorce:

- 1) A petition for Divorce may be presented to the Court by either party to a marriage.*
- 2) The sole ground for granting a Petition for Divorce shall be that the marriage has broken down beyond reconciliation.*

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 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 be 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 (2) years immediately preceding the presentation of the Petition*
- (d) That the parties to the marriage have not lived as man and wife for a continuous period of at least two (2) years immediately preceding the presentation of the Petition and the Respondent consent to the grant of a decree of Divorce, provided that such concerns 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.*
- (e) That the parties to the marriage have not lived as man and wife for a continuous period of at least 5 years immediately preceding the presentation of the Petition*
- (f) That the parties to the marriage have after diligent effort been able to reconcile their differences.*

Section 2(3) provides:

(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.

Petitioner is alleging that the Respondent has committed adultery. This actually is the mainstay of this divorce.

Respondent initially committed adultery but in the course of trial during cross-examination she admitted to having caused adultery but with only one person and not numerous men that the Petitioner wants the Court to believe.

This ensued during Cross-examination of Respondent by Counsel for Petitioner;

Q: Now tell this Court have you ever admitted to the Respondent of committing adultery?

A: Yes I did, but with only one person. Not with numerous men he is talking about.

Q: Kindly tell the Court who is this only one person?

A: Sampson Kofi Acquah.

In the course of cross- examination, this again ensued;

Q: I am putting it to you that your own amorous relationships with numerous boyfriends of which you have admitted one, made the Petitioner know that you are not faithful and a descent wife. You were not living by your vows?

A: I admitted one because I was going out with one person. I do not know if you call that indecent. In the vows, as a man and a husband, he was supposed to love me, care for me, protect me, cherish me which he was not doing.

Judging from what transpired during cross-examination, there is no iota of doubt that indeed Petitioner has proved to the Court that Respondent has adultery and for that

reason he cannot reasonably be expected to live with Respondent as husband and wife.

In the instant Petition, it seems to me that Petitioner has proved to the Court that a decree for divorce ought to be granted.

The Court through the evidence adduced has made a finding that not only one of the requirements have been satisfied by the Petitioner but more.

For instance, I deem the adultery of the Respondent as an unreasonable behaviour and thus Petitioner cannot possibly be expected to live with him as husband and wife.

Respondent has also deserted the Matrimonial home since 2020. Again, parties have not lived as husband and wife for more than two (2) years preceding the institution of the instant Petition.

For these reasons, it seems to me that Petitioner has been able to prove to the Court that the marriage has broken down beyond reconciliation.

I hereby decree that the ordinance marriage celebrated between Petitioner, Daniel Ofori Adjei and Respondent, Edith Akwete on the 12th of December 1998 at Presbyterian Church, Tema North, Community 4 has broken down beyond reconciliation and same is dissolved.

Parties are also seeking some reliefs as follows:

In the case of the Petitioner;

iii) That the said marriage between the Petitioner and the Respondent be dissolved.

iv) That he should be granted custody of their children and also continue with their care and maintenance.

Respondent is also praying for the following reliefs in her Cross-Petition;

i) That the marriage between the two parties be dissolved.

ii) The Petitioner pays an amount of Two Thousand Ghana Cedis (GH¢2,000.00) as maintenance pending suit to Respondent.

iii) An order granting Respondent access to the children twice every month during public holidays and vacations.

iv) Financial provision of Hundred Thousand Ghana Cedis (GH¢100,000.00).

v) An order for equal share of the uncompleted house located at New Land, Afienya.

Both parties per their ancillary reliefs are in agreement that the custody of the children should be granted to the Petitioner.

Both parties have agreed that access should be given to the Respondent since there is no contention in this regard, I will grant same.

In respect of Respondent's relief of Two Thousand Ghana Cedis (GH¢2,000.00) pending suit, I will dismiss same as moot.

Respondent is asking for financial provision of Hundred Thousand Ghana Cedis (GH¢100,000.00), Respondent has not proved means of Petitioner.

In respect of the order for equal share of the incomplete house located at New land, Afienya Respondent has, I have averted my mind to **Article 22(3)(a) & (b) of the 1992 Constitution** which provides that:

“(3) With a view to achieving the full realization of the rights referred to in clause (2) of this article-

(a) spouses shall have equal access to property jointly acquired during marriage.

(b) assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.”

In the instant Petition, Respondent has not led any cogent evidence in this Court to suggest that the said uncompleted building was jointly acquired by parties and therefore she is entitled to equitable distribution of same.

After analyzing all the evidence adduced in this Petition, I hereby make the following orders:

- a) The Court hereby decrees that the marriage contracted between parties under the Ordinance (Cap 127) on the 12th of December 1998 at the Presbyterian Church Tema North Community 4 is hereby dissolved for irreconcilable difference.*
- b) Custody of the three children of the marriage is granted to Petitioner with reasonable access to the Respondent fortnightly during public holidays and vacations.*
- c) Although I do not necessarily find Respondent entitled to financial settlement, I will order that after twenty eight (28) years of marriage, it will be equitable for Petitioner to pay Respondent a lump sum of Ten Thousand Ghana Cedis (GH¢10,000.00). Respondent has not led any cogent evidence to this court that entitles her to equal share of the uncompleted house situate at New Land Afienya.*

I make no order as to cost.

**H/L: RITA AGYEMAN-BUDU (MRS)
OF THE HIGH COURT).**

(JUSTICE