

DIV C 70/2023

2023

R. NO.3

IN THE HIGH COURT OF SIERRA LEONE

(FAMILY AND PROBATE DIVISION)

BETWEEN

MOSHOPEH G. ROBERT

AND

FELIX AKARAH ROBERT

B.E.T. Cummings Esq. for the Petitioner

RULING DELIVERED ON THE 8TH DAY OF APRIL, 2024.

This is an undefended petition dated 24th day of March, 2023 issued by Moshopeh G. Robert the (petitioner herein) against Felix Akarah Robert (respondent Herein). The petitioner petitioned this court praying for the following orders:

1. That the marriage which was celebrated on the 16th day of December, 2000 between the parties be dissolved.
2. That the respondent pays the educational bills for his son David until his finishes University
3. That the respondent be made to pay the cost of this action

The petitioner petitioned this court for a dissolution of their marriage on the grounds that their marriage has irretrievably broken down due to the respondent's act of cruelty and also for deserting her.

The brief background is that the petitioner and the respondent lawfully got married on the 16th day of December, 2000 at the Winner's chapel Church, Freetown in the Western Area of the Republic of Sierra Leone. The marriage certificate was produced as evidence to same, marked exhibit A.

Following the celebration of their marriage the parties cohabited at, in the Republic of Guinea. The petitioner though returned to Sierra Leone while the respondent continued to stay in Guinea. They were blessed with one Child David who is 12 years of age.

That there has been not been any previous proceedings between the parties, regarding the marriage in any Court of law in Sierra Leone.

That since the celebration of their marriage the respondent has treated the petitioner with cruelty and has deserted her without cause for a period of 16 years immediately preceding the presentation of this petition.

PARTICULARS OF CRUELTY

In her particulars of cruelty, the petitioner alleges that the respondent throughout the subsistence of the marriage, save for the few months immediately following the marriage the

petitioner has been subjected to absolute ridicule, abuse, humiliation, untold pain and resentment by the respondent.

That the respondent was in the habit of not returning home until after 9:pm and refused to provide financial support for the family.

That the respondent is very arrogant, violent and provocative. He gets annoyed easily over trivial issues and when that happens, he mercilessly beats up the petitioner to the extent that she sustains injuries on her face and other parts of her body. As a result of the injuries she receives from the respondent, she had cause to regularly seek medical treatment in different hospital over the years and even presently suffers from headache.

That save for the few months immediately following the celebration of the marriage, the respondent failed to provide maintenance for the petitioner and provide for the educational, medical and wellbeing for the child.

That as a result of the consistent beating she received from the petitioner, she travelled to Sierra Leone sometimes in 2007/2008 and requested that the respondent joins her hoping that there will be a change in the attitude of the respondent but he became very violent towards her.

PARTICULRS OF DESERTION

That since 2007/2008, the petitioner has been living separately and the respondent has not resumed cohabitation with the petitioner.

That by virtue of the respondent's conduct, the petitioner has come to the conclusion that the respondent does not wish the marriage to continue and intends to bring cohabitation to an end.

THE LAW

It is a trite law that the burden of proof in divorce cases- lies on the party that alleges misconduct on the part of the other party, there being a presumption of innocence, see **Redpath and Milligan (1950) 1ALL ER 600.**

Though divorce cases are civil in nature, standard of proof in such cases is slightly higher than on other ordinary civil cases in which it is only on the preponderance of probability, although not as in criminal cases in which it has to be beyond reasonable doubt.

Section 5 of the Matrimonial Causes Rules Cap 102 of the Laws of Sierra Leone 1960 outlines the grounds to seek divorce by the husband and wife, namely adultery, desertion, cruelty and in the case of the wife that husband has been convicted of rape, sodomy or bestiality.

One of the petitioner's grounds for seeking the dissolution of her marriage to the respondent is that he committed the matrimonial offence of cruelty. What is cruelty or what acts or conduct amounts to cruelty.

Cruelty is defined as 'conduct of such character as to have caused danger to life, limb or health-body or mentally or to give rise to a reasonable apprehension of such danger' see **Raydon on Divorce**.

In the case of *Habyarimana v Habyarimana* (1980) HCB 139. It was held that there is no single definition of cruelty but case law has established that no conduct can amount to cruelty unless it has the effect of producing actual or apprehended injury to the petitioner's physical and mental or reasonable apprehension of it to constitute cruelty.

The petitioner also complained that the respondent deserted her during the subsistence of their marriage.

Desertion occurs where the spouse leaves the matrimonial home with the intention not to return or where parties stay together in the same house/room but one spouse has withdrawn from the other and this continues for a period of time, two years or more.

In the case of **Lang v Lang (1954) 3ALL ER**. It was held that '*to establish desertion two things must be proved, first certain outward and visible conduct, the factum of desertion and secondly the 'animus deserendi' the intention underlying this conduct to bring the matrimonial union to an end, in ordinary desertion the factum is simple. It is the party absconding party in leaving the matrimonial home. The contest is such a case will be almost entirely as to 'animus deserendi' was the intention of the party leaving the home to break it up for good, or something short of*


The evidence on record shows that the petitioner and the respondent have been living apart for the better part of 16 years. They only enjoyed marital bliss during the first few months of their marriage.

I am of the view that the accumulation of those acts of ill-treatments accompanied by the petitioner's violent conduct caused or likely caused the suffering spouse to break down and that to me constitute cruelty. Also based on the fact that the parties are no longer living together and are not planning reconciliation, guided by the legal principles stated above.

I hold that the respondent committed the matrimonial offence of cruelty and desertion.

I accordingly make the following orders:

1. A decree Nisi is entered dissolving the marriage between the petitioner and the respondent.
2. That the respondent shall pay the educational bills for his son David until he finishes University.
3. The respondent shall bear the cost of this application.


SIGNED: ALFRED A.T. GANDA
8/4/24
(JUSTICE OF THE HIGH COURT)