

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY THE
10TH DAY OF NOVEMBER, 2022 BEFORE HER HONOUR ROSEMARY BAAH
TOSU (MRS) – CIRCUIT COURT JUDGE

SUIT NO: C5/106/2021

JOANNE AMAMOO OTCHERE
NO: 5 NII KPAKPA BADU ROAD
GBAWE- ZERO
MALLAM, ACCRA

PETITIONER

VS.

RICHARD ACKAH
NEW ACHIMONTA, ADJACENT
GOLDEN FOUNDATION SCHOOL
ACCRA.

RESPONDENT

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JUDGMENT

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Parties were married on the 30th August, 2008 at the offices of the Accra Metropolitan Assembly. The Respondent is a Research and Food Developer whilst Respondent is a Natural Resource Management professional. The marriage is blessed with three children, who are 12, 10 and 9 years old.

Petitioner alleges that the marriage is broken down beyond reconciliation.

Petitioner further says that Respondent has behaved in such a manner that she cannot reasonably be expected to live with him.

Petitioner accuses Respondent of having a habit of borrowing and not repaying on time such that it has caused the parties embarrassment and also left them with huge debts. Petitioner says that some of her equipment for processing fruit juices were attached as a result of these debts.

Petitioner says that despite persistent requests Respondent has refused to give her money for the regular maintenance of the children. Respondent also consistently sent her and her parents threatening and insulting text messages. This led to a complaint against Respondent at the Odorkor Police Station where he was cautioned to be of good behaviour.

As a result, Petitioner says she left the matrimonial home with the three children to stay with her parents and she has been away from the matrimonial home for the past seven years.

All efforts by family, friends and church elders to help resolve these differences have been unsuccessful.

She prays for the following reliefs

- 1. Dissolution of the marriage celebrated between the parties on 30th August 2008 at the Accra Metropolitan Assembly.*
- 2. That the Petitioner be granted custody of the children of the marriage namely, Mary -Anne Ackah, David Ackah and Daniel Ackah with reasonable access to the Respondent.*
- 3. That the Respondent be ordered to pay a lump sum as settlement.*
- 4. That the Respondent be ordered to pay for the maintenance of the children including school fees, medical fees, feeding and clothing.*

In answer, Respondent says they were married traditionally in 2007 and got the marriage registered on 30th August, 2008 after a lot of difficulty from Petitioner's parents. Respondent says that on the 1st of August, 2020, both families sat down and dissolved the marriage traditionally.

According to Respondent, it is rather Petitioner and her family who have caused him much embarrassment and distress. Respondent pleads that he had to endure verbal abuse and insults from Petitioner's father. In some cases, he was described as good for nothing and these frustrations led him to lose two jobs.

Respondent denies that the fruit juice processing business is for Petitioner. He says it belongs to him per a company called Kescof Enterprise, registered as a sole proprietorship. Respondent said he took loans for the business and used some of the assets as collateral. He however run into debt and was struggling to service those debts, it was at this period Petitioner left the matrimonial home and left him to deal with the debts alone.

Respondent says from the time Petitioner left the matrimonial home, he was remitting her and the children. However, as a result of Petitioner's constant slandering of him to his friends and business partners he lost a lot of business.

Again, all attempts by him to have access to the children were always met with hostility and threats from Petitioner, siblings and parents. This is what led to the Police complaint. Respondent says he was however, not cautioned but rather advised to seek redress in the Court.

Respondent denies vehemently Petitioner's assertion that all efforts to resolve their differences failed. Respondent says it is rather he who made all the efforts through friends, family members and pastors, which efforts were all rebuffed and frustrated by Petitioner.

Respondent prays that the marriage would be dissolved. He also prays that Petitioner would not be granted custody of the children since they are facing abuse in Petitioner's parents' home.

Respondent prays that the Court dismisses Petitioner's request for alimony.

On the 5th of October, 2022, Petitioner filed a notice of discontinuance and failed to show up in Court after. Respondent, however elected to pursue his cross-petition. Respondent was therefore ordered to file his witness statement and lead evidence in proof of his case.

In his evidence led on the 28th October, 2022, Respondent testified that on 5th of December, 2012, he returned from work only to realize that Petitioner has packed all her belongings and left the matrimonial home together with the children. Respondent testified that despite several efforts he made to get Petitioner to return to the matrimonial home from her parents' home, she refused to budge.

This situation persisted and culminated in Petitioner returning the traditional drinks, engagement ring and Bible to Respondent's family, signaling the end of the traditional marriage on the 19th August, 2020.

ISSUES FOR DETERMINATION.

The issue for determination by the Court is whether or not

1. Whether or not the marriage celebrated on 24th October, 2009, is broken down beyond reconciliation.

Section 2 of Act 367 that is the Matrimonial Causes Act (1971) provides the facts to be established by a party to show 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 the adultery the petitioner, finds it intolerable to live with the respondent*
- (b) That the respondent has behaved in such 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 or*
- (d) 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 the grant of a decree of divorce, provided that such 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 notwithstanding the refusal or*
- (e) That the parties to marriage have not lived as man 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.

Under section 2(1) e of the Matrimonial Causes Act (197) Act 367, one of the grounds for the grant of a dissolution of marriage is if the parties have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition.

The evidence is uncontroverted, Respondent testified that Petitioner packed out of the matrimonial home in 2012 and Petitioner herself admitted that she had left the matrimonial home about seven years ago.

There is no evidence that between these periods the parties lived together as husband and wife. I therefore find that the marriage is broken down beyond reconciliation.

I find that in the best interest of the children, it is more beneficial that the stay with Petitioner, having lived exclusively with her and their grandparents since the year 2012.

I therefore award custody of the three issues of the marriage to Petitioner with reasonable access to Respondent.

The parties are further ordered to jointly provide the basic necessities of life including healthcare and education to the issues of the marriage.

DECISION

Having heard the Respondent and considered the evidence, it is hereby decreed that the ordinance marriage celebrated between the parties on the 30th August, 2008, at the offices of the Accra Metropolitan Assembly is hereby dissolved on the ground that the marriage is broken down beyond reconciliation.

Parties are to bear their own costs.

(SGD)
H/H ROSEMARY BAAH TOSU (MRS)
CIRCUIT COURT JUDGE