

IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 21TH OF OCTOBER 2022, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS) CIRCUIT COURT JUDGE

C5/203/2022

JOSEPHINE BLAY

PETITIONER

VRS

DESMOND NYARKO

RESPONDENT

JUDGMENT

On the 28th January, 2021, Petitioner herein caused this petition to be filed before the court praying the court for the following reliefs;

- a) Dissolution of the marriage contracted between parties under the ordinance.
- b) An order by the court to compel the Respondent to maintain the issues of the marriage as well as providing for their medicals and school fees as and when they fall due.
- c) An order for the custody of the issues of the marriage to be given to the Petitioner with reasonable access to the Respondent.
- d) An order for the Respondent to provide a suitable accommodation for the Petitioner and the issues of the marriage.
- e) Any further order nor orders that this Honourable Court may deem fit.

Petitioner alleges in her petition that Respondent her marriage to the Respondent celebrated 25/3/2004 at the Transcontinental Worship Centre Spintex, Accra has broken down beyond reconciliation due to the unreasonable and adulterous behaviour of the Respondent. This marriage is

blessed with four children aged 14, 12, 9 and 7 years respectively at the time of filing the witness statement.

Respondent in his answer to the petition challenged Petitioner's assertion that the marriage has broken down beyond reconciliation. He alleged that Petitioner was not mentally stable and cross-petitioned the court as follows;

1. The Respondent denies that the marriage has broken down beyond reconciliation and opposes a dissolution of the marriage celebrated between them.
2. The Respondent has solely maintained the Petitioner and the four (4) children of the marriage, thus there are no questions on the maintenance of the children and the Petitioner.
3. The Respondent contends the custody of the children to the Petitioner because she has remained unemployed for the last eleven (11) years without any source of income and without any intention to revive her valuation company; she is not only incapable but unsuitable to be awarded custody of the children; assuming the Petitioner's claim is granted by this Honourable Court.
4. The Respondent contends that the Petitioner does not need accommodation because they are still leaving together under the same roof, even on the day this Petition was served on him.

Petitioner and Respondent therefore assume the statutory obligation to lead sufficient evidence in support of their assertions and their relief(s). Before the hearing of the case however, parties entered into an agreement and subsequently filed terms of agreement in which they both agreed that the marriage celebrated between them has broken down beyond reconciliation. Parties in the said terms of settlement d further agreed on all other ancillaries issues.

Despite this express consent to the dissolution of the marriage by the parties, there is only one ground for dissolution of a marriage under the laws of Ghana. Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 states “The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.” Section 2(3) of Act 367 provides “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.” The court is therefore mandated to satisfy itself by evidence that indeed the marriage between the parties has broken down beyond reconciliation before a grant of dissolution. Section 2(1) of Act 367, has outlined several instances which suffice as proof of break down of a marriage. A petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation.

In the case of **KOTEI V KOTEI [1974] 2 GLR 172, Sarkodee J** held as follows, “the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. But the petitioner is also obliged to comply with section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that section... proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation...It is accepted that proof of one or more of the facts set out in section 2 (1) is essential and that proof of one of them shows the marriage has broken down beyond reconciliation. It is also conceded that notwithstanding proof the court can refuse to grant the decree of dissolution on the ground that the marriage has not broken down beyond reconciliation. It will be noted that the discretion given to the court is not a discretion to grant but to refuse a decree of dissolution. This means that once facts are proved bringing the case within any of the facts set out in section 2 (1) of Act 367 a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner

to show that special grounds exist justifying the exercise of the Court's power."

The court therefore heard the evidence of parties in respect of the claim that the marriage between the parties has broken down beyond reconciliation.

According to the Petitioner, in 2006 Respondent stated associating with friends and staying out late and having affairs with other women and dated a woman called Rachel to her knowledge and their family and friends. Due to the disrespect and emotional trauma Respondent was causing her, she moved out of the matrimonial home with the issues of the marriage in 2016. Petitioner stated that she returned to the matrimonial home upon series of interventions by her mother and other concerned people. Upon her return however, Respondent would abuse her by insulting her, slapping her, dragging her around and forcing her to have sexual intercourse with him. Respondent also kept telling people she was mentally unstable which is not true. She stated that although parties live in the same matrimonial home, they had since 2014 not shared any form of intimacy as husband and wife. According to Petitioner Respondent is still leaving his former life of drinking and living adulterous life till date. She stated that several attempts by friends, pastors and friends to reconcile their differences have proved futile.

Respondent in his evidence stated that in 2010, Petitioner resigned from her company on a claim that she was being led by the spirit of God to serve him without taking anything from the company. Petitioner thereafter in 2014 withdrew from all her conjugal duties to him and gradually their cohabitation became like siblings and relatives living together and not a marriage relationship. He stated that Petitioner had for the past decade always been writing day and night on what she says are instructions from God and had rejected a KIA Forte 2015 model he purchased for her. He tendered copies of the hand written notes of Petitioner and DVLA form of the KIA Forte vehicle

as exhibit 1 and 2 series. He therefore prayed the court to adopt the filed terms of settlement and grant the petition for dissolution.

From the evidence of both parties, it is undisputed that parties herein have since 2014 not lived as a husband and wife.

Section 2(1e) of Act 367 provides that where the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition, same suffices as prove of the breakdown of the marriage beyond reconciliation. Under this section, petitioner need not establish any wrongdoing on the part of the Respondent neither is the consent of Respondent required. Evidence of parties having failed to live together as husband and wife for a period over 5 years immediately preceding the petition amount and suffice as proof of breakdown of the marriage beyond reconciliation.

This petition was filed on 28/1/2021. Per calculation, Parties had for about 7 years immediately preceding the presentation of the petition been not been living as husband and wife despite being under the same roof. Parties have been having differences since then leading to Petitioner moving out of the matrimonial home in 2016. Several attempts by their pastor and respective families to reconcile their differences have all proved futile. Although Respondent initially challenged that the marriage has broken down beyond reconciliation, at the ADR centre, he agrees that the marriage be dissolved. All these evidence satisfy the court that parties after diligent efforts are unable to reconcile their differences. Under section **2 (1f) of Act 367**, where the parties to the marriage have, after diligent effort, been unable to reconcile their differences, same is proof that the marriage has broken down beyond reconciliation.

The court there finds per the evidence on record that the marriage celebrated between the parties herein has broken down due to the failure of parties to live together as husband and wife for more than 5 years immediately preceding the presentation of the petition and irreconcilable difference.

Accordingly the court decrees the said marriage celebrated between the parties herein at the Transcontinental Worship Centre, Spintex Accra n the 25/3/2004 be dissolved today, the 21st of October, 2022.

As mentioned supra, the parties executed terms of settlement on 8/8/2022 and prayed the court to adopt same as consent judgment during their evidence on oath. Parties per their terms of settlement agreed as follows;

- i. That custody of the issues of the marriage be granted to Petitioner with reasonable access to the Respondent.
- ii. That Respondent would pay for the issues school fees and
- iii. medical bills.
- iv. That Respondent would move out of the matrimonial home leaving the Petitioner and issues in the matrimonial home.
- v. That the jointly acquired matrimonial property located at Tse Addo be settled in favor of the children.
- vi. That Respondent shall maintain the children of the marriage with a weekly amount of GHC1000.00 making a monthly total of GHC4,000.00.
- vii. That the petitioner is not making any further claims. Parties therefore pray that this terms of settlement is adopted as consent judgment of this honourable court.

This court therefore adopts the above terms of agreement as consent judgment consequential to the dissolution of the marriage of the parties.

PARTIES PRESENT

NANCY TETTEH FOR PETITIONER ABSENT.

WINIFRED ODOI FOR RESPONDENT ABSENT.

**H/H AFIA OWUSUAA APPIAH (MRS)
(CIRCUIT COURT JUDGE)**