

IN THE CIRCUIT COURT (11) HELD AT ACCRA ON TUESDAY, THE 10TH DAY OF
MAY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT, A
CIRCUIT COURT JUDGE

SUIT NO. C5/297/2022

ELIZABETH ABOTSI

PETITIONER

VS

BENJAMIN FRANCIS KWAME AFRIYE

RESPONDENT

JUDGMENT

Background:

The Petition was filed on the 30th of May 2022 and the Petitioner suing per her Lawful Attorney; Mr. Ike Aboagye prayed for the following reliefs:

- i. The marriage celebrated between the parties on the 21st of April, 2001 at AMA – Accra, be dissolved by this Honourable Court.
- ii. Each party bears their cost to the suit, Solicitor fees inclusive.
- iii. And for any other Order(s) that this Honourable Court may deem fit.

The basis of the instant Petition is that the parties were initially in a committed relationship which resulted in the birth of a son in 1991 until the marriage was celebrated under the Marriage Ordinance (CAP 127) on the 21st of April, 2001. That, the parties cohabited as husband and wife after the marriage at Greda Estates, Accra for a period of Six (6) years before the Petitioner relocated to Italy in the year 2007 while Respondent remained in Ghana. The Petitioner stated further that the marriage has broken down

beyond reconciliation as the parties have been separated since 2007 and have not been sexually involved with each other since their separation in 2007. In addition to that, the Petitioner says that during the course of the marriage, the Respondent behaved in such a manner that the Petitioner cannot reasonably be expected to live with him as man and wife.

In one instance, the Petitioner left the matrimonial home during the cohabitation of the parties due to the Respondent's persistent physical and emotional abuse towards the Petitioner. She indicated that the Respondent attacked her on several occasions with a knife during the subsistence of the marriage, a fact which indeed caused the Petitioner to leave the matrimonial home in 2006 till date. She continued that the marriage itself is non-existent due to the long separation of the parties for the past fifteen (15) years, coupled with the distance which has destroyed the very foundation of the marital relationship without any reasonable expectation of reconciliation. On the 21st of June 2022, the Respondent filed a Notice of Entry of Appearance together with a process titled 'Consent of Benjamin Francis Kwame Afriye' where he gave his consent to the dissolution of the marriage, a statement made in his own belief and understanding of the issues at stake.

DETERMINATION

On the 8th of March 2023, the court heard the case of the Petitioner on oath as she gave a short evidence in chief through her Lawful Attorney with the Counsel for the Respondent opting not to cross-examine the Petitioner. The Respondent also gave his evidence in chief on oath and the Counsel for the Petitioner also opted not to cross-examine the Respondent. In view of the above, the main issue for determination is whether the marriage between the parties ought to be dissolved.

Analysis:

The Matrimonial Causes Act, 1971 (Act 367) provides in its Section 1(2) that *“The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”*. Petitioner therefore has to satisfy the court of one or more of the grounds under section 2(1) of Act 367 as proof that the marriage has broken down beyond reconciliation. The court also has to satisfy itself that the grounds for dissolution canvassed by the Petitioner falls within Section 2 of Act 367. To this end, the Petitioner per her evidence in chief through her lawful attorney testified that she has been married since 2001 when the marriage was celebrated at the Accra Metropolitan Assembly (AMA), Accra but prior to the marriage, the parties had a son who is now Thirty-One (31) years old. The Petitioner testified further that the parties have not lived with each other for the past Fifteen years, neither have they had any sexual relationship. Additionally, during the subsistence of the marriage, the Respondent had on several occasions threatened the Petitioner by attacking her with a knife which caused the Petitioner to leave the matrimonial home and all attempts at reconciling their differences have been futile. She concluded her testimony by stating that she has taken further steps to dissolve the marriage customarily by returning the dowry paid on her by the Respondent to his family and same was accepted.

In view of the above, the Petitioner’s ground for seeking dissolution of the marriage therefore falls under Section 2 (1)(d) of Act 367 which provides that *‘... the parties to the marriage have not lived as husband 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...’* as well as Section 2 (1)(e) of Act 367 which provides that the Petitioner proves that *‘... 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...’*. It has been held

in the case of **Kotei vs Kotei** [1974] 2 GLR 172 that “once one of the grounds specified in section 2 (1) of Act 367 was proved, a decree of dissolution should be pronounced in favour of the petitioner’. The Court held further that “Notwithstanding proof of one of the facts showing that the marriage had broken down the court had a discretion to refuse to grant the decree of dissolution on the ground that the marriage had not in fact broken down beyond reconciliation. The discretion given to the court was not a discretion to grant but a discretion to refuse a decree of dissolution. The burden was not on the petitioner to show that special facts or grounds existed justifying the exercise of the court’s discretion; once he or she came within any one of the provisions specified in section 2 (1) (e) and (f) of Act 367, the presumption was in his or her favour.”

Conclusion

It is not in dispute that the parties have not lived together as husband and wife for the past Fifteen (15) years neither have they had sexual relations within the period. Additionally, attempts at reconciling the differences of both parties have been futile and the Respondent has consented to the dissolution of the marriage. Under section 2 (1)(e) of Act 367, it is irrelevant whether or not there has been any wrong doing on the part of the Respondent. The most important fact to be considered is whether or not the court is satisfied that for a period of at least Five (5) years preceding the petition, the parties have not lived together as husband and wife. Per the record, the parties have not lived as husband and wife for a period of over 15 years immediately preceding the presentation of this petition, that is, since 2007.

Parties having failed to live as husband and wife for a period of about 15 years immediately preceding the presentation of the Petition satisfies the court that the marriage celebrated between parties herein has broken down beyond reconciliation and same cannot be salvaged. The court therefore finds that the marriage between the parties celebrated on the 21st of April 2001 at

the Accra Metropolitan Assembly, Accra has broken down beyond reconciliation. The court hereby decrees the said marriage dissolved this 10th day of May, 2023.

COUNSEL

1. Mavis Asiamah Esq. for the Petitioner present.

2. for the Respondent present.

**H/H HALIMAH EL-ALAWA ABDUL-
BAASIT**

CIRCUIT COURT JUDGE