

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 14TH DAY
OF APRIL, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE

SUIT NO.C5/77/20

DANIEL ASANTE OPOKU ----- PETITIONER

VRS.

SUSUANA LAMPTEY ----- RESPONDENT

PARTIES

PRESENT

JOAN ELLIS, ESQ. FOR THE RESPONDENT PRESENT

JUDGMENT

FACTS:

The facts of this petition for divorce are that on 6th August, 2020, the petitioner filed the instant petition for divorce praying the court for the sole relief of the dissolution of the ordinance marriage celebrated between himself and the respondent on grounds that the said marriage had broken down beyond reconciliation. The respondent failed to enter appearance and the court granted leave for the petitioner to lead evidence to prove the breakdown of the marriage. The court granted the petition for divorce on 30th October, 2020, and decreed for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent.

In a rather strange turn of events, on 12th May, 2021, the respondent, alleging that she was unaware of the divorce proceedings, caused her lawyers to file a Motion on Notice to set aside the judgment of the Court dated 30th October, 2020 contending that the processes were not duly served on her and that the

house where the substituted service were posted is unknown to her. On 4th June, 2021, the court granted the application and granted the respondent leave to defend the petition for divorce. Pursuant to that, the respondent filed an answer and cross-petition on 30th June 2021 and cross-petitioned for the following reliefs;

- a. An order for the dissolution of the marriage celebrated between the parties on the 29th day of June, 1997.
- b. An order that the petitioner pays the respondent a lump sum of Eighty Thousand Ghana Cedis (GH¢80,000) as financial settlement.
- c. An order for the petitioner to bear the respondent's costs in this suit.
- d. An order for the matrimonial home at Cherry Hill, Afienya and the building the petitioner is putting up behind the matrimonial home to be settled on her.

The petitioner in his amended petition filed on 25 November, 2021 avers that he got married to the respondent then a divorcee on or a 29th June 1999 at the Christ Salvation Ministry Church at Madina-Firestone under Part III of the Marriages Act, (1884-1985). Thereafter, the parties cohabited at the petitioner's mother's house at Madina. There is only one issue to the marriage between the parties namely Hillary Opoku-Asante who at the time of filing the instant petition for divorce was aged 23 years old. The petitioner alleges that the marriage between the parties has broken down beyond reconciliation since the parties have been separated for the past six years and have not lived as man and wife.

The petitioner avers that on or about 3rd November 1998, a year after the marriage, with the consent of the respondent, he travelled to the United State of America to seek greener pastures, leaving behind the respondent and the only daughter of the marriage in his mother's house where they lived with his

siblings. Later, he rented a two-bedroom apartment and moved his nuclear family in and thereafter started the construction of the matrimonial home of the parties where they have lived since the year 2011.

The petitioner admits that whilst in the United States of America, he entered into a relationship with a Nigerian lady and had three children with her aged between 20 years and 15 years. The petitioner states that whilst he was in the USA and sending money to maintain the respondent and the children of the marriage, he received information on the undesirable relationship between the respondent and her ex-husband whom the respondent has a daughter with that the respondent's ex-husband sneaks in the middle of the night to come and sleep in the matrimonial home under the pretext of gaining reasonable access of the daughter of the marriage with her ex-husband. The respondent sensing danger that her illicit affair will be exposed, packed out of his mother's house and rented an apartment for herself.

The petitioner states further that the respondent was not assisting him in the payment of rent although she had a thriving sewing business but used the proceeds from the business to fund her extravagant lifestyle. The petitioner contends that the respondent left the matrimonial home because he was struggling financially since the school he set up in an improvised wooden structure was not doing well. The petitioner further states that the respondent exchanged sexually explicit text messages with her ex-husband and once, she spent the weekend out of the matrimonial home and she returned with a rechargeable lamb claiming it was given to her by her ex-husband. This resulted in a misunderstanding and he called the respondent's ex-husband to warn him to stop interfering in their marriage. After that, the respondent packed all her belongings and left the matrimonial home. According to him, he reported the conduct of the respondent to the family members but they

could not resolve their marital issues. He therefore states that the respondent has behaved in such a way that he cannot reasonably be expected to live with her and that the respondent has caused him so much pain, anxiety, distress and embarrassment.

The respondent, in her amended answer and cross-petition filed on 3rd March, 2022 is agreeable that the marriage has broken down beyond reconciliation but denied the allegation levelled against her by the petitioner. The respondent states that the petitioner had an affair with a lady called Anita who travelled to the United States of America. Shortly after that, the petitioner informed her that he had secured a visa to travel to the United States of America and needed money to purchase his air ticket. The petitioner also asked her to move to his siblings' room to enable him rent out their house to raise money to buy the ticket which she obliged.

According to the respondent, the petitioner also committed adultery with a Nigerian lady called Nelly with whom he has three children. When the petitioner returned from the USA, he lived at Golf City with his mistress and their three children and it was not until his mistress deserted him that he pleaded with her to move in with him to help him care for the children which she did until the mistress returned for the children.

The respondent further states that when their tenancy agreement at Community 11 expired, they moved into their uncompleted house at No. 1 Cherry drive. The respondent in further denial of adultery states that it was rather the petitioner who sneaked into her house to have sexual intercourse with her. The respondent further avers that the petitioner was violent and subjected her to severe physical abuse and on one occasion beat her with a flash light until it became dysfunctional. The petitioner also beat her with a

belt and threatened to shoot her during a misunderstanding. The respondent states that based on the numerous abuses meted out to her by the petitioner, it will be impossible for her to live with him as man and wife.

The respondent further states that during the marriage, they acquired a two-bedroom house with a shop attached at Madina Estates on petitioner's portion of land which was given to him by his mother, the matrimonial home at Cherry Hill, Afienya, the Cherry Hill International School which the petitioner has now converted into apartments and another building he is constructing behind the matrimonial home.

ATTEMPTS AT SETTLEMENT

During the pendency of the proceedings, the parties attempted settlement and filed terms of settlement on 3rd March, 2023, in which the parties agreed that the marriage has broken down beyond reconciliation and agreed on ancillary reliefs. The parties having settled on the ancillary reliefs, the only issue left for the court to determine is the dissolution of the marriage.

LEGAL ISSUE

Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

ANALYSIS

It is provided for under **Section 1** of the Matrimonial Causes Act, 1971, (Act 367), that the sole ground for granting a decree for dissolution of a marriage is that the marriage has broken down beyond reconciliation. To prove that a marriage has broken down beyond reconciliation, a petitioner is required to prove one of the facts contained in **Section 2(1)** of Act 367 on a balance of probabilities namely, adultery, unreasonable behaviour, desertion, failure to

live as man and wife for two years, failure to live as man and wife for five years and irreconcilable differences. Where a respondent also cross-petitions as in the instant case, she bears the burden to prove the allegations contained in the cross-petition on a balance of probabilities.

The parties are also mandated to inform the court about all attempts at reconciliation and the court shall refuse to grant a petition for divorce if there is a reasonable possibility for reconciliation. See **Section 2(3)** of the Act 367. See also the case of **Adjetei & Adjetei** [1973] I GLR 216 at page 219.

The petitioner in the instant petition has set out to prove fact 2(1) (e) namely; *“that he and the respondent have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition.”*

In the case of **Kotei v. Kotei** [1974] 2 GLR 172, a husband petitioned for divorce alleging that he and the respondent had not lived as husband and wife for six years, and that the marriage had broken down beyond reconciliation and should be dissolved. It was the petitioner’s case that he had recognised and continued to recognise that the marriage was at an end and that he never intended to take back his wife. In resisting the petition, the respondent asserted that she still loved her husband, that she was still waiting for the husband to send for her and was willing to make attempts at reconciliation if the proceedings were adjourned for that purpose. The High Court per Sarkodie J, held in holding 4 that:

“Where there was proof that the parties had lived apart for a continuous period of five years immediately preceding the presentation of the petition, the court would dissolve the marriage against the will of a spouse who had not committed a matrimonial offence and who could not be blamed for the breakdown of the marriage. But there

must be proof that the parties had not lived as man and wife during that period; there must have been a total breakdown of the consortium vitae, mere physical separation was not enough. The petitioner must prove not only the factum of separation but also that he or she had ceased to recognise the marriage as subsisting and intended never to return to the other spouse. The state of mind of the parties was relevant but it did not matter whether or not the state of mind of one of the parties was communicated to the other."

In the instant case, the parties agree that for at least more than five years immediately preceding the presentation for divorce and the cross-petition for divorce, they had not lived together as husband and wife. The parties repeated their averments on oath in an attempt to show who is blameworthy for their inability to live as husband and wife. The petitioner accuses the respondent of having inappropriate relationship with her ex-husband under the guise of granting him access to the child between herself and her ex-husband. The respondent also accuses the petitioner of committing adultery with one Nelly with whom he had three children with whilst living in the United States of America. This fact is admitted by the petitioner and that it requires no further proof. The evidence shows that after the alleged adultery, the parties resumed cohabitation. **Section 3** of the Matrimonial Causes Act, 1971(Act 367) states that the court shall disregard any period that the parties lived with each other after discovering the adultery with the view to reconciliation if the period does not exceed six (6) months but where the period exceeds six (6) months in the aggregate, a party shall not be entitled to rely on the adultery to pray for dissolution of the marriage.

The parties, in the spirit of their terms of settlement, did not conduct any rigorous cross-examination on the alleged physical abuse that the respondent was subjected to. The parties filed witness statements for themselves and their

witnesses but in the light of their terms of settlement, they agreed not to call witnesses. The undisputed fact that remains is that the parties for about six (6) years prior to the presentation of the petition for divorce had not lived together as husband and wife. On the authorities, it is not necessary to establish blame and once it is proved that the parties have not lived together as husband wife for continuous period of at least five years prior to the presentation of the petition for divorce, a party is entitled to a decree for the dissolution of the marriage even against the wishes of a party who is not to be blamed for the breakdown of the marriage.

On the totality of the evidence led by the parties, I hold that the parties have not lived together as husband and wife for a continuous period of six years immediately preceding the presentation of the petition for divorce coupled with the failure of the parties to reconcile their differences. I therefore hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition and the cross-petition for divorce.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition and the cross-petition for divorce and enter judgment in the following terms;

1. I hereby grant a decree for the dissolution of the Ordinance Marriage celebrated between the petitioner and the respondent on 29th June, 1997 at the Christ Salvation Ministry, Madina Firestone.
2. The Registrar shall cancel the original copy of the marriage certificate number *CSM003/97*.

3. The terms of settlement filed in the Registry of this court on 3rd March, 2023 is adopted as consent judgment. Per the parties' terms;
- a) The petitioner shall pay to the respondent a lump sum of Fifty Thousand Ghana Cedis (GH¢50,000) as financial settlement.
 - b) The said Fifty Thousand Ghana Cedis (GH¢50,000) shall be paid by the petitioner as follows;
 - The amount of Twenty-Five Thousand Ghana Cedis (GH¢25,000) on the day of the execution of the Settlement Agreement.
 - The amount of Five Thousand Ghana Cedis (GH¢5,000) shall be paid on or by the 28th of every month with the final amount of GH¢7,000 to be paid by the 28th of September, 2023.
 - The petitioner shall pay an amount of GH¢7000 being the legal fees and the court costs of the respondent in this matter.
 - c) Parties agree that in the event that the respondent fails to honour his side of the agreement on the dates as stipulated herein the usual default clause shall apply and the respondent shall be entitled to resort to court for the determination of the matter.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**