

**IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 28TH DAY OF
APRIL, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT
COURT JUDGE**

SUIT NO.C5/75/23

GABRIEL KENNETH SAVAGE

PETITIONER

VRS.

GRACE LARTEBEA ODURO

RESPONDENT

PETITIONER

PRESENT

RESPONDENT

ABSENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The petitioner, formerly a bachelor and the respondent formerly a spinster lawfully got married on 25th July, 2015 at the Mount Zion Methodist Church, Sakumono. The parties after the marriage cohabited at Sakumono. The petitioner is a businessman and the respondent is an Accounts Officer. There are two children in the marriage namely Gabrielle Yaba Savage and Danielle Abena Nkrumah Savage aged six (6) years and four (4) years respectfully.

On 1st February, 2023, the petitioner filed the instant petition for divorce alleging that the Ordinance Marriage celebrated between himself and the respondent has broken down beyond reconciliation and prays the court for the sole relief of the dissolution of the marriage. The petitioner avers that the respondent has behaved in such a way that he cannot reasonably be expected to live with her. According to the petitioner, their marriage has been bedeviled with problems and misunderstandings which could not be settled. When the issues in the marriage became overwhelming, the

respondent vacated the matrimonial home stating that she was no longer interested in the marriage. The petitioner further avers that upon several persuasions to reconcile their differences to make the marriage work, they could not do so as the respondent was not ready for any reconciliation. Consequently, the parties have been separated for two years now and there have not been any form of intimacies between them since then. Thus, they have agreed to have the marriage dissolved. The petitioner states that all efforts made by elders, friends and members of their families to resolve their differences have proved futile and that the marriage has broken down beyond reconciliation.

The respondent entered appearance on 13th February, 2023 and filed consent to the dissolution of the Ordinance Marriage but she failed to appear in court to participate in the proceedings. The court proceeded take to take evidence to satisfy itself that the marriage has indeed broken down beyond reconciliation.

LEGAL ISSUE

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

ANALYSIS

Under **section 1** of the Matrimonial Causes Act, 1971 (Act 367), the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts stipulated under **section 2(1)** of Act 367, namely, adultery, unreasonable behaviour, desertion, failure to live as husband and wife for a continuous period of at least 2 years immediately preceding the presentation of the petition, failure to live as man and wife for a continuous period of five years immediately preceding the presentation of the petition and lastly, irreconcilable differences. **Section 2(3)** of Act 367, enjoins the

court to inquire into the facts alleged in support of the dissolution. The court shall refuse to grant dissolution of the marriage notwithstanding the fact that any of the facts are proved if there is a reasonable possibility for reconciliation.

In the case of **Kotei v. Kotei** [1974] 2 GLR 172, the court held in its holding 1 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. It was, however, wrong to contend that proof of total breakdown of the marriage and the possibility of reconciliation should be taken disjunctively so as to require firstly, proof of a breakdown and secondly, proof that it was beyond reconciliation.”

The petitioner in the instant petition set out to prove that for two years immediately preceding the presentation of the petition for divorce, she and the respondent had not lived as husband and wife within the meaning and intendment of **section 2(1)(d)** of Act 367. Under **Section 2 (1) (d)** of the Matrimonial Causes Act, 1971 (Act 367), not living together as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition for divorce can be proof that the marriage has broken down beyond reconciliation. To succeed on this ground, the respondent must consent to the grant of the decree for divorce. However, consent of the respondent should not be unreasonably withheld. See the case of **Addo v. Addo** [1973] 2 GLR 103 at 106. In the case of **R v. Creamer** [1919] 1 K.B. 564 at 569 the court per Darling J. said;

“In determining whether a husband and wife are living together the law has to have regard to what is called consortium of the husband and wife. A husband and wife are living together, not only when they are residing together in the same house, but also when they are living in different places, even if they are separated by the high seas, provided the consortium has not been determined”

Furthermore, the petitioner must prove that he ceased to recognize the marriage as subsisting and never intended to return to it and the respondent must consent to the

dissolution of the marriage. The consent may be given in the answer to the petition or in the form of cross-petition. It may also take the form of consent to the dissolution during attempts at settlement.

The petitioner testified on oath that after the marriage, they cohabited at Sakumono and the marriage is blessed with two children. The petitioner testified further that the challenges in the marriage started right after the marriage and the family members came in to assist them to reconcile their differences but they were not able to resolve their differences. The petitioner identified the root cause of their marital issues to disrespect, temperamental issues and verbal abuse experienced during the course of the marriage. According to the testimony of the petitioner, in October 2019, they experienced the same challenges in the marriage and on the same day, the respondent packed out of the matrimonial home. When he enquired from her where she had taken the things to, she informed him that she had moved to a new place she had rented. When he went to his mother-in-law, he realized that she was aware that the respondent had vacated the matrimonial home. Finally, one day she came to move her all belongings out of the matrimonial home and for two years now, she has not manifested any intention to return to the matrimonial home. Based on that, they agreed to petition for dissolution of the marriage.

On attempts at reconciliation, the petitioner testified further that they made various attempts at reconciliation. The respondent's dad, her family members and counsellors intervened in their marital issues but they could not resolve the problems in the marriage. The petitioner further testified that the children are now with the respondent and they have their own arrangement concerning custody and access. The petitioner therefore prays the court to grant the dissolution of the marriage.

The respondent did not file an answer to the petition but filed consent to the dissolution of the marriage in which she states that she consents to the dissolution of the marriage. The respondent, to prove that her interest in the marriage has totally waned, failed to appear in court to participate in the instant divorce proceedings. The allegation of the petitioner that for two years prior to the presentation of the petition for divorce, they had not lived as husband and wife remains unchallenged coupled with the various fruitless attempts by the parties to reconcile their differences.

On the totality of the evidence led by the petitioner, I hold that for two years immediately preceding the petition for divorce, the parties had not lived as husband and wife and that the respondent consents to the dissolution of the marriage. I therefore hold that the Ordinance Marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation and accordingly grant the petition for divorce.

CONCLUSION

In conclusion, I hold that the Ordinance Marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I therefore grant the petition for divorce and enter judgment for the petitioner 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 25th day of July, 2015 at the Mount Zion Methodist Church, Sakumono.
2. The Registrar of the Court shall cancel Marriage certificate number *MZMC/SAK/005/15*.
3. There shall be no order as to costs.

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

