

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.C5/15/23

MICHAEL APEKE ----- PETITIONER

VRS.

DORIS KUDJOE ----- RESPONDENT

PARTIES PRESENT

JOAN ELLIS, ESQ. FOR THE PETITIONER PRESENT

LIVINGSTONE AMEEVOR, ESQ. FOR THE RESPONDENT ABSENT

JUDGMENT

FACTS:

The incontrovertible facts of this case are that the petitioner, a Seaman and the respondent, a Seamstress got married under **Part III of the Marriages Act (1884-1985)**, Cap 127, in August 2012. Subsequent to that, the parties cohabited at Tema New Town and later relocated to Prampram. There is no issue to the marriage between the parties, however, there are two children of the household. At the time of the marriage, the petitioner, previously a widower had a son from the previous marriage by name Jeremy Edem Apeke aged nine (9) years at the time and the respondent also had the care of her niece by name Grace Yoyo Nartey aged eleven (11) years at the time of the marriage.

The petitioner filed the instant petition for divorce on 16th September, 2022 alleging that the ordinance marriage celebrated between the parties had broken down beyond reconciliation and prayed the court for the dissolution of the marriage and a further prayer for an order for the parties to bear their own costs.

The respondent entered appearance filed an answer to the petition for divorce and cross-petitioned as follows;

- a. That the marriage celebrated between the parties be dissolved.
- b. That the petitioner be condemned in the respondent's costs.
- c. The petitioner be ordered to return to the respondent the Mitsubishi Pontiac, saloon car in his possession.
- d. Any other costs or order(s) as the court may deem fit.

The parties in their pleadings leveled accusations and counter accusations against each other in their quest to prove the breakdown of the marriage. Whereas the petitioner blames the breakdown of the marriage on alleged unreasonable behaviour exhibited by the respondent in the marriage and desertion on her part, the respondent also in an attempt to be modest about the events in the marriage, states that it is as a result the unreasonable behaviour exhibited by the petitioner in the marriage.

It is the case of the petitioner that after the marriage, they cohabited peacefully and he took care of the respondent and her niece and made sure that they lacked nothing. He also assisted the respondent to have a vibrant sewing business. The petitioner avers that after the marriage, as a Seaman, he used to travel a lot. On one of such trips, the respondent called to inform him that she had relocated to her chamber and hall apartment in her family house at Prampram because something bit her in her sleep in the matrimonial home

which made her sick and as such, she no longer wanted to live in the matrimonial home. The respondent then asked him to join her upon his return which he did due to the love he had for her despite the inconvenience.

However, after moving and settling in with the respondent, she started exhibiting disrespectful behaviour which caused him anxiety and great embarrassment. The petitioner states that due to the unreasonable behaviour exhibited by the respondent, there is no communication between them and they have not had any sexual intimacies since the year 2019. The petitioner recounted a litany of behaviours exhibited by the respondent in the course of the marriage which he deems unreasonable including disrespectful behaviour, inappropriate relationship with her ex-husband and refusing to answer his calls without reasonable excuse. According to him, the respondent would also disrespect him by talking and chatting on the phone for hours with her ex-husband even when the he was in bed with her. Also, he sighted messages with her ex-husband which confirmed reports of infidelity on the part of the respondent he received anytime he travelled. Once, when he prevented the respondent from going to sleep in a prayer camp, she became angry and left the matrimonial home. The respondent would also tell her mother everything happening in the matrimonial home and her mother would confront the petitioner about them.

The petitioner also states that the respondent moved out of the matrimonial home without informing him sometime in 2019, at a time he was working outside the country. When he confronted the respondent about it, she lied that she was in Cape Coast working. The respondent started moving her belongings out of the matrimonial home in the year 2018 and has since not returned. Again, the respondent moved her niece from the matrimonial home to her mother's place leaving his minor son alone in the matrimonial home.

The respondent also ceased answering his calls which proved to him that she was no longer interested in the marriage. The petitioner further states that the respondent said on countless occasions that three different men of God had informed her that she would die if she stays married to him hence her resolve not to return to the matrimonial home. Consequently, since the year 2019, they have not lived as husband and wife. The petitioner states that all efforts made by the families to reconcile them have proved futile and that the marriage has broken down beyond reconciliation.

The respondent is agreeable that the marriage between the parties has broken down beyond reconciliation but denied the allegations of unreasonable behaviour and desertion levelled against her by the petitioner. According to her, the problems in the marriage started soon after the marriage since the petitioner would get angry at the slightest joke or discussion. The respondent further contends that the petitioner was not solely responsible for the upkeep of the home. The respondent denies that she deserted the matrimonial home and states that she was constantly having health issues which was attributed to spiritual attacks because the petitioner refused to send his ex-wife's belongings to her family and opted to keep them in the single room where they lived and due to that, she relocated to Prampram. The respondent also states that the petitioner, by his hot temper made it difficult for any peaceful relationship and has caused her so much stress, anxiety and discomfort.

The respondent also did not mince words in describing the respondent as a passionate womanizer and states that the petitioner was in the habit of luring young and unsuspecting ladies with lies and that he deceived a lot of ladies including one Aborkwe who is now deceased. The respondent says that the marriage has indeed broken down beyond reconciliation and wishes the petitioner a prosperous life after dissolution.

The respondent further states that the parties had an apartment building project on-going but she does not intend to contest her interest in the said property but prays the court to order the petitioner to return a blue Mitsubishi Pontiac (salon car) which the petitioner has resprayed to white since she solely purchased out of her own resources

The petitioner in reply denied the allegations of unreasonable behaviour. In respect of property, the respondent states that he acquired the land in dispute during his marriage with his late wife and had to stall construction due to litigation on the land. The petitioner maintains that the respondent has never contributed to the said project as she even refused to go on the land whenever he sent her to check on it. The petitioner says that the Pontiac car is jointly owned by parties as the respondent paid an amount of GH¢5,000 towards the purchase of the car and he paid the remaining balance. The petitioner further claims that the respondent is aware the car has mechanical faults which he has repaired severally and that the respondent can keep the car.

ATTEMPTS AT SETTLEMENT

During the proceedings, the parties attempted settlement and filed terms of settlement on 3rd March, 2023 in which they agreed to the dissolution of the marriage and settled on the ancillary reliefs for adoption by the court upon dissolution leaving the issue of the dissolution of the marriage to be determined by the court.

LEGAL ISSUE

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

ANALYSIS

Under 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 set out in **section 2(1) of Act 367** namely; adultery, unreasonable behaviour, desertion, failure to live as man and wife for two (2) years, failure to live as man and wife for five (5) years and irreconcilable differences. Additionally, under Act 367, a court may refuse to grant a petition for divorce notwithstanding the fact that a petitioner has proved any of the facts in **section 2(1)**, if there is reasonable possibility of reconciliation. Accordingly, a petitioner and his or her counsel are mandated to inform the court of all attempts made at reconciliation and the court may adjourn proceedings for the parties to attempt reconciliation. See **Section 8** of Act 367. In the case of **Donkor v. Donkor** [1982-1983] GLR 1158, the High Court, Accra, per Osei-Hwere J, held that:

“The Matrimonial Causes Act, 1971 (Act 367), does not permit spouses married under the Marriage Ordinance, Cap. 127 (1951 Rev.), to come to court and pray for the dissolution of their marriage just for the asking. The petitioner must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act for the purpose of showing that the marriage has broken down beyond reconciliation. Section 2(3), which is pertinent, provides that even if the court finds the existence of one or more of those facts it shall not grant a petition for divorce unless it is satisfied that the marriage has broken down beyond reconciliation...the petitioner is under a duty not only to plead any one or more of those facts in section 2(1) of the Act but he must also prove them. Equally the court is under a statutory and positive duty to inquire so far as it reasonably can, into the charges and counter-charges alleged. In discharging the onus on the petitioner, it is immaterial that the respondent has not contested the

petition, she must prove the charges and, flowing from all the evidence before the court, the court must be satisfied that the marriage has irretrievably broken down."

The petitioner in the instant petition relies on unreasonable behaviour and desertion whilst the respondent also relies on unreasonable behaviour. The petitioner testified through an attorney who tendered in evidence the Power of Attorney as **Exhibit "A"**. The Attorney testified that the parties got married sometime in August 2012 after the petitioner lost his late wife in the year 2010. Thereafter, the parties cohabited at Prampram. The Attorney further testified that there have been problems in the marriage as the respondent has been disrespectful to the petitioner on countless occasions even in the presence of third parties, neglected and abused him. The respondent has been difficult in the marriage and packed out of the matrimonial home neglecting and abandoning the petitioner for over three years at the time of this petition. Also, the respondent has caused the petitioner hardship, pain and embarrassment and reduced him to public ridicule over the ten years of marriage and as such, it is impossible for the petitioner to stay married to her. The petitioner further states that all efforts to reconcile them has failed as the respondent failed to honour reconciliation meetings and has remained adamant to calls for her return to the matrimonial home. The parties have also settled the ancillary reliefs and filed terms of settlement.

The respondent on her part testified that prior to her marriage to the petitioner, she had never been married but the petitioner had an adult child he came into the marriage with and she became the foster mother to the child. There is no issue between them. The respondent further testified that the challenge in the marriage started soon after their marriage when the petitioner would intentionally get angry over the slightest issue or joke and

would stay away from home for days even during his relief stay because of the nature of his work.

The respondent further testified that she is aware that the petitioner has committed adultery in the marriage. According to her, the petitioner was actively flirting with girls but would turn round to accuse her of flirting. The respondent also states that the petitioner is a passionate womanizer and was in the habit of luring young and unsuspecting ladies. According to her, she deceived one Aborkwe, now deceased, and the lady reported him to her and when she confronted the petitioner about it, he told her that he is a man and made a joke about the situation. The respondent further testified that the habit of the petitioner and his family members in persistently accusing her of infidelity caused her embarrassment and depression.

Additionally, the respondent testified that she and her family members tried to settle the issues between herself and the respondent but to no avail. On one occasion, the petitioner and his family did not take it kindly to issues of unreasonable behaviour raised during the said meeting. It was after such meetings that the petitioner's attitude towards her became worse. The respondent states that the petitioner practically abandoned the family because of his job but the maintenance was equally shared yet he left the matrimonial home and would only visit briefly and refused to maintain the family of five that he kept under inhumane conditions. The respondent maintains that following the petitioner's acts of desertion, deprivation, substantial hardship, the marriage cannot be salvaged and that it should be dissolved.

The respondent, under cross-examination by counsel for the petitioner testified that she left the matrimonial home about three years ago because she fell sick and her mother took her to a place at Tema New Town. According to

her, the matrimonial home was rented by her and after the herbal treatment, the rent had expired and she was compelled to move out of the matrimonial home.

The parties, even though they made allegations and counter allegations of unreasonable behaviour, the lawyers for both parties, in the spirit of their terms of settlement did not conduct rigorous cross-examinations. As such, the allegations and counter allegations made against each other remain unproved. The evidence on record shows that the parties since the year 2019, have not lived together as husband and wife and various attempts made by the parties themselves and their family members to reconcile their differences have proved futile within the meaning and intendment of **Section 2(1)(f)** of Act 367. In the case of **Mensah v. Mensah** [1972] 2 GLR 198 -209 @ 206 the court held that for **Section 2(1) (f)** to apply, the following elements must be present;

- (a) *There should exist differences between the parties.*
- (b) *They should have made diligent efforts to reconcile these differences,*
- (c) *They should have been unable to effect the reconciliation of the differences.*

In the instant case, the matrimonial history of the parties reveals that there is a deep crack in the marriage and the parties, from the onset of the marriage had differences as to whether the petitioner could keep the belongings of his late wife in the house and the supposed spiritual impact on the health of the respondent which caused her to leave the matrimonial home under the guise of seeking treatment. Thus, the parties had serious differences on the place to serve as their matrimonial home. The nature of the work of the petitioner as a Seaman also meant that he was out of the jurisdiction most of the time with its attendant suspicion and rumours of infidelity against the respondent in his absence. The evidence on record shows that the parties after diligent efforts

made by themselves and well-meaning people have been unable to reconcile their differences. When the court adjourned proceedings for the parties to attempt settlement, they agreed that their marriage has indeed broken down beyond reconciliation and filed terms of settlement on the ancillary reliefs which is a strong indication that they each see the marriage as at end and do not intend to return to it.

On the totality of the evidence led by the parties, I hold that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition and cross-petition for divorce and decree for the dissolution of the marriage celebrated between the parties.

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 in August 2012.
2. The parties shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. The terms settlement filed by the parties in the Registry of this Court on 3rd March, 2023, is hereby adopted as consent judgement. Per the parties' own terms;
 - a. The Petitioner shall have absolute right to their on-going apartment building project. Thus, respondent shall henceforth cease to have or express any interest or claim to the said apartment building.
 - b. The petitioner shall return the respondent's Mitsubishi Pontiac-Saloon car which previously was blue in colour but now re-sprayed to white

(in his possession) to her within two months upon his return to the country.

- c. All other reliefs or issues relating to cost, including legal fees are waived.

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