

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 16<sup>TH</sup> DAY  
OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE

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SUIT NO.C5/6/23

BENJAMIN NII AMON KOTEI

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PETITIONER

VRS.

SENA PATRICIA KOTEI

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RESPONDENT

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PETITIONER

PRESENT

RESPONDENT

ABSENT

NO LEGAL REPRESENTATION

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JUDGMENT

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FACTS:

On 23<sup>rd</sup> August, 2022, the petitioner, a Ghanaian businessman resident in Ghana filed the instant petition for divorce against the respondent, a Ghanaian ordinarily resident in Canada, pursuant to leave granted by the court on 12<sup>th</sup> August, 2022. The petitioner prays this court for the sole relief of the dissolution of the marriage celebrated between himself and the respondent under **Part III of the Marriages Act, (1884-1985)** Cap 127 on 8<sup>th</sup> June, 2006 at the Tema Metropolitan Assembly, Tema.

The petitioner avers that he got married to the respondent on 8<sup>th</sup> June, 2006 and after the celebration of the marriage, they cohabited at *House No. AJ 16* Community 4, Tema. There is no issue to the marriage between the parties. The petitioner alleges that the respondent has behaved in such a manner that he can no longer live with her as husband and wife. The petitioner states that

the respondent left the shores of Ghana five years ago and has ceased all forms of communication with him. According to the petitioner, there is a total lack of commitment on the part of the respondent and the respondent has deserted him. The petitioner further states that all efforts made by both families and friends to resolve their differences have proved futile. Consequently, the petitioner states that he has totally lost interest, trust and confidence in the marriage and cannot be expected to wait in vain for the respondent who does not believe in the existence of the marriage. The petitioner therefore states that he is of the firm belief that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

The notice to the petition for divorce and all processes in the suit were duly served on the respondent at her address in Canada with leave of the court but she failed to appear in court to answer to the petition. The court granted leave to the petitioner to lead evidence to prove his claim that the marriage has broken down beyond reconciliation.

### **LEGAL ISSUE**

The sole issue for the determination of the court is 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.

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."*

The petitioner testified that after the marriage, the respondent travelled outside the country and has since not returned to resume cohabitation with him. As a result, for almost seven (7) years now, the parties have separated and there is total lack of communication and desertion on the part of the respondent. The petitioner testified that he cannot continue to wait in vain for the respondent when he does not know her decision towards their marriage and that the desertion on the part of the respondent has caused him a lot of emotional and psychological distress. The petitioner states that the respondent has therefore behaved in such a way that he cannot reasonably be expected to live with her as husband and wife.

The testimony of the petitioner that the respondent left the country and subsequently ceased all forms of communication with him with the effect that for more than five years immediately preceding the presentation of the petition for divorce, they have not lived together as husband and wife remains unchallenged since the respondent though duly served with all processes in the suit failed to appear in court to contest the petition for divorce. Once it is proven that for five years immediately preceding the presentation of the petition for divorce the parties have not lived together as husband and wife, the petitioner is entitled to the grant of the petition even against the wishes of a party who has not committed any matrimonial

offence. The respondent in refusing to contest the petition for divorce has disabled the court from verifying the facts alleged by the petitioner as to whether or not indeed consortium vitae between them completely ceased when she travelled outside the jurisdiction and on the various attempts made at reconciling the differences between the parties. It is trite learning that a party who spurns the opportunity to be heard cannot turn round to accuse the adjudicator of having breached the rules of natural justice. The conduct of the respondent in electing not to contest the petition though having been duly notified of the proceedings give credence to the assertion by the petitioner that the marriage between the parties has broken down beyond reconciliation.

On the totality of the evidence led by the petitioner, I hold that for a continuous period of five years preceding the presentation of the petition for divorce, the petitioner and the respondent had not lived as man and wife and that all attempts made at reconciliation have proved futile. Accordingly, the marriage celebrated between the parties has broken down beyond reconciliation.

### **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 for divorce and enter judgment for the petitioner in the following terms;

1. I hereby decree for the dissolution of the marriage celebrated between the petitioner and the respondent on 8<sup>th</sup> June, 2006 at the Tema Metropolitan Assembly.
2. The registrar of the court shall cancel the original copy of the marriage certificate number *ROM/368/2016*.
3. No order as to costs.

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