

**IN THE CIRCUIT COURT ONE HELD AT ACCRA ON MONDAY, 27TH OF
MARCH 2023, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS)
CIRCUIT COURT JUDGE**

C5/355/2022

EUGENIA DANQUAH

H/NO E36X

FRIMPOMAA ESTATE, SPINTEX

ACCRA

PETITIONER

VRS

FESTUS AKUETTEH-ANKRAH

WEIJA, ACCRA

RESPONDENT

JUDGMENT

On the 28th day of July 2018, parties herein got married under the ordinance and thereafter cohabited at Weija in the Greater Accra Region of Ghana. The marriage is blessed with two (2) children namely Kayla Naa Aku Ankrah 3 years and Kaylee-Anita Naa Adukwie Ankrah 1 and half years respectively. Petitioner is a banker whilst Respondent is a research and policy analyst. On 25th day of July, 2022, Petitioner herein caused this petition to be filed before the court against Respondent herein praying the court for the following reliefs;

- a) That the court dissolve the said marriage between the Petitioner and Respondent.
- b) That the court give custody of the two children to the Petitioner with reasonable access to the Respondent.

Petitioner alleges in her petition that her marriage to the Respondent has broken down beyond reconciliation due to the unreasonable of the Respondent. She stated that Respondent has been abusive against her since few weeks into the marriage and does not show any sign of love or affection for her. She stated that for over a year now parties live separately and they have both lost affection towards each other.

Respondent in his answer to the petition denied any unreasonable behaviour on his part and contended that it was rather the Petitioner who had behaved in a way that he could not reasonable be expected to live with her as husband and wife. he averred that Petitioner likes nagging and accuses him of flirting with other woman and does not even allow him talk to other women. He admitted parties have not lived together as husband and wife for over a year and that both parties have lost affection for each other. He therefore agreed to the dissolution of the marriage and other relief of the Petitioner.

Before the hearing of the case however, parties entered into an agreement and subsequently filed terms of agreement at the registry of the court on 1/9/2022 in which they both agreed that the marriage celebrated between them has broken down beyond reconciliation. Parties in the said terms of settlement further agreed on all other ancillaries issues.

Despite this express consent to the dissolution of the marriage by the parties, there is only one ground for dissolution of a marriage under the laws of Ghana. Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 states "The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation." Section 2(3) of Act 367 provides "Although the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation." The court is therefore mandated to satisfy itself by evidence at indeed the marriage between the parties has broken down beyond reconciliation before a grant of dissolution. Section 2(1) of Act 367, has outlined several instance which suffice as proof of break down of a marriage.

A petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation.

In the case of **KOTEI V KOTEI [1974] 2 GLR 172, Sarkodee J** held as follows, “the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. But the petitioner is also obliged to comply with section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that section... proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation...It is accepted that proof of one or more of the facts set out in section 2 (1) is essential and that proof of one of them shows the marriage has broken down beyond reconciliation. It is also conceded that notwithstanding proof the court can refuse to grant the decree of dissolution on the ground that the marriage has not broken down beyond reconciliation. It will be noted that the discretion given to the court is not a discretion to grant but to refuse a decree of dissolution. This means that once facts are proved bringing the case within any of the facts set out in section 2 (1) of Act 367 a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that special grounds exist justifying the exercise of the Court’s power.”

The court therefore heard the evidence of parties in respect of the claim that the marriage between the parties has broken down beyond reconciliation.

According to the Petitioner, few months into the marriage till date, Respondent started abusing and insults her at the least provocation. She stated that few months into the marriage, Respondent stopped giving her attention or showing her any love or affection towards her. This notwithstanding, she listened to the advice of her parents and managed to endure the situation resulting in the birth of two children but Respondent

refused to change. She stated that Respondent does not regard her as a wife and has taken his wedding ring from her, always flirt with other women and when she complains it turns into intense argument and fights. Petitioner stated that several attempts by their families and pastors have proved futile. Respondent in his evidence also testified that Petitioner has a mindset that he is a womanizer and would not allow him freely communicate with other women he stated that this behaviour of Petitioner started few months into the marriage and has persisted till date. He stated that she talks to him anyhow and is disrespectful towards him resulting in the parties not living together as husband and wife for over a year now. He admitted that both parties have lost affection towards each other and do not intend to keep the marriage. Respondent further admitted that their respective families and pastors have tried reconciling them but to no avail.

From the evidence of both parties, it is undisputed that parties herein have not lived as a husband and wife for over year and several attempts by their respective families and pastors to reconcile them have proved futile. Further from the evidence of the parties, Petitioner accuses Respondent of infidelity and disregard of her as his wife and abuse whilst Respondent accuses Petitioner of disrespect and false accusations of him womanizing. Respondent complains of Petitioner nagging him and preventing him from communicating freely with other women. Petitioner also accused Respondent of flirting and any comment from on same always leads to intense argument and fights. It appears there is lack of trust allegations of abuse and insults in the marriage. Marriage between parties herein is fraught with distrust, arguments, fights and failing to live together as husband and wife for over a year now. Parties herein both acknowledge the fact that these differences arose between them few month into the marriage and persist till date despite reconciliation attempts by families and pastors. These cumulatively clearly show that parties after diligent efforts are unable to reconcile their differences.

Under section 2 (1f) of Act 367, where the parties to the marriage have, after diligent effort, been unable to reconcile their differences, same is proof that the marriage has broken down beyond reconciliation.

The evidence of the parties on record and their agreement to the fact that the marriage has broken down and same be dissolved satisfy the court that parties after diligent efforts are unable to reconcile their differences.

The court there finds per the evidence on record that the marriage celebrated between the parties herein has broken down due to inability to irreconcilable difference after diligent effort.

Accordingly the court decrees the said marriage celebrated between the parties herein at Accra on the 28/7/2018 be and same is dissolved today, the 27/3/2023 forthwith.

As mentioned supra, the parties executed terms of settlement on 28/8/2022 and filed same at the registry of the court on 1/9/2022 and prayed the court to adopt same as consent judgment during their evidence on oath. Parties per their terms of settlement agreed as follows;

- i. That custody of the two (2) children of the marriage be granted to the Petitioner with reasonable access and visitation rights given to the Respondent. The Respondent shall have the right to spend time with the children on weekends and every public holiday.
- ii. That all maintenance costs with regards to the children namely accommodation, school fees and other educational expenses, medical bills, clothing, feeding and entertainment costs shall be shared in the following percentage.

Petitioner forty percent (40%)

Respondent sixty percent (60%)

The court in accordance with the terms of settlement filed adopted and entered the terms supra as consent judgment consequential to the dissolution of the marriage of the parties.

PARTIES PRESENT

ROCKSON AGYEKUM FOR PETITIONER PRESENT.

RESPONDENT SELF-REPRESENTED

H/H AFIA OWUSUAA APPIAH (MRS)

(CIRCUIT COURT JUDGE)