

**IN THE CIRCUIT COURT '1' HELD AT ADENTAN BEFORE HIS HONOUR
ISAAC ADDO ON WEDNESDAY, 17TH MAY, 2023**

SUIT NO. C5/030/2023

KWAME BOAKYE

PETITIONER

VRS

FAUSTINA OPOKU AGYEMANG

RESPONDENT

PARTIES PRESENT

EMMANUEL DWAMENA-ASARE, ESQ. FOR THE PETITIONER PRESENT

EUGENE DANSO COBOLD, ESQ. FOR THE RESPONDENT PRESENT

JUDGEMENT

The Petitioner by his Petition filed on the 25th August, 2022 is asking this Court to grant him the following reliefs:

- a. The said Ordinance marriage celebrated between the parties be dissolved forthwith and the Certificate Number FC1/9/2016 be cancelled from the records of the Registrar of Marriages.
- b. That Petitioner be granted custody of the child.
- c. The parties be ordered to bear their costs attendant to this petition.
- d. And other further reliefs as this Court may deem fit.

The Respondent entered Appearance on the 5th September, 2022 and filed an Answer and Cross Petition seeking the following reliefs:

- i. That the marriage between the parties be dissolved.
- ii. That the Respondent be granted custody of the child with reasonable access to the Petitioner.

- iii. An order for the Petitioner to pay maintenance of One Thousand, Five Hundred Ghana Cedis (GH¢1,500.00) monthly and also to take care of the educational and health expenses of the child of the marriage, Cyril Kojo Boakye.
- iv. An order for an annual upward enhancement of the maintenance fee to be determined by the Court in accordance with inflationary trends.
- v. An order for the Petitioner to pay an alimony of the sum of One Hundred Thousand Ghana Cedis (GH¢100,000.00) to the Respondent.
- vi. The Petitioner shall rent a decent accommodation for the Respondent to accommodate the issue of the marriage until he attains the age of majority or the Respondent remarries whichever occurs first.
- vii. An order to pay legal fees of Fifteen Thousand Ghana Cedis (GH¢15,000.00).
- viii. Any other order(s) the Court may deem fit.

Dotse JSC in the case of *Gladys Mensah v. Stephen Mensah* [2012] 1 SCGLR 391 quoted Lord Denning in his book, "LANDMARKS IN THE LAW" Butterworths, 1954, writes at page 176 "*on change in attitude of the British people to Divorce*" as follows:

"There is no longer any binding knot for marriage. There is only a loose piece of string which the parties can untie at will. Divorce is not a stigma. It has become respectable. One parent families abound."

The learned Supreme Court Judge stated in the same judgement that the above quotation can equally be said to be applicable to the Ghanaian society as well.

Just before the trial commenced, the parties filed Terms of Settlement and I reproduce only the agreed terms from paragraph 3 below:

"3. IT IS HEREBY AGREED AND SETTLED BY THE PARTIES AS FOLLOWS:

- i) That the marriage celebrated between the parties on the 10th September, 2016 at the Family Chapel International, Kumasi in the Ashanti Region be dissolved.*
- ii) That the custody of the child of the marriage be given to the Respondent and the Petitioner given reasonable access.
 - That the Petitioner shall have the child every other weekend beginning Friday after the child closes from school and the Petitioner shall return him to the Respondent at the agreed location on Sunday at 5pm.*
 - That the child spends all school vacation holidays with the Respondent."**
- iii) That the Petitioner shall pay to the Respondent a monthly sum of Seven Hundred Ghana Cedis (GH¢700.00) for the maintenance of the child. This amount shall be subject to an annual increment of 10%.*
- iv) That the Petitioner shall pay all educational and medical expenses of the Child until he completes his tertiary education.*
- v) That the terms and conditions set forth herein constitute the complete and final agreement between the parties as per the reliefs sought before this court and shall supersede any communications or previous agreements with respect to the subject matter of these Terms of Settlement.*
- vi) That the Parties agree that this Terms of Settlement be adopted by the Court and entered as Consent Judgement of the Court and shall be enforceable in its terms without leave of the Court."*

The Court therefore adopted the Terms of Settlement reached by the parties and filed before this Court on the 25th April, 2023 as Consent Judgement save paragraphs 3 (i) where the Court took evidence from the parties to satisfy itself of section 1(3) of the Matrimonial Causes Act, 1971 (Act 367). In the case of *Ameko vrs Agbenu* [2015] 91 G.M.J. 202 C.A., the Court at page 209 per Dennis D. Adjei, J.A. held that:

“Suffice to say that the failure by the trial Circuit Judge to take evidence in the matter before dissolving the marriage is contrary to sections 1 and 2 of the Matrimonial Causes Act and it is therefore a nullity”

THE CASE OF THE PETITIONER

The Petitioner got married to the Respondent under the Ordinance on the 10th September, 2016 at the Family Chapel International (Father’s Cathedral), Kumasi. That the parties after celebration of their marriage cohabited at Cape Coast, Kumasi and Accra. There is one (1) issue of the marriage. It is the case of the Petitioner that the parties have not been able to plan and make any plans for their future and have not been able to make any properties as a result of these irreconcilable differences raging between them. The parties have slept in separate rooms in their matrimonial home for six months prior to their separation and subsequently have been separated and living in different houses for the past eight months immediately preceding the presentation of this Petition. According to the Petitioner, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her. That the marriage between the parties has broken down beyond reconciliation because the Respondent has categorically stated that she does not want to stay married to the Petitioner and therefore her actions are geared towards creating untold hardship for the

Petitioner for which the Petitioner cannot be expected to live with the Respondent any longer. The parties have not had coitus since 15th November, 2021. Attempts by the superior of the Respondent at her workplace and a renowned marriage counsellor, Rev. Professor Kankam Boadu to reconcile their parties proved futile.

THE CASE OF THE RESPONDENT

It is the case of the Respondent that at all material times she slept in the same room with the Petitioner until they both decided that the Respondent sleeps in their son's room since the boy found it difficult to sleep alone in his room. The Respondent states that on the 12th March, 2022, the Petitioner met and informed her that he was no longer interested in the marriage and wanted the marriage between them dissolved. The Petitioner went ahead to inform the father of the Respondent that he does not want to continue with the marriage with the Respondent and expressed his intention to have the marriage dissolved. Subsequently, the Petitioner withdrew all forms of support including financial support for the Respondent. That she left the matrimonial after the Petitioner had physically abused her. The Respondent states that all the meetings she organized towards reconciliation of their differences proved futile.

The legal issues that fall for determination after the end of the trial are as follows:

- a. Whether or not the marriage between the parties has broken down beyond reconciliation.
- b. Whether or not the parties after diligent effort have not been able to reconcile their differences.

Before I examine the evidence adduced at the trial, it is pertinent to set out the relevant sections of the Matrimonial Causes Act, 1971 (Act 367) below.

Sections 1(2), 2(1)(b)(f) of Act 367 provides as follows:

"1(2) the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

2(1) For the purpose of showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the Court of one or more of the following facts:-

(b) that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent;

(f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

In the case of *Mensah v Mensah* [1972] 2 GLR 198, Hayfron-Benjamin J. (as he then was) held that:

"..... it is therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will be enough"

From the evidence adduced at this stage of the trial, it is not disputed that the marriage between the parties has broken down beyond reconciliation. What is also obvious from the proceedings is that the parties have after diligent efforts been unable to reconcile their differences. The superior of the Respondent at work, one Mr. Owusu Afriyie and a renowned counsellor and Reverend Minister, Rev. Prof. Kankam Boadu made attempts to reconcile the parties but all

did not work out. In the circumstances I hold that the marriage between the parties has broken down beyond reconciliation.

On the totality of the evidence, I enter judgement in favour of the Petitioner for the following reliefs:

- a. The Ordinance marriage (CAP 127) celebrated between the parties on the 10th September, 2016 is hereby dissolved. Accordingly, Marriage Certificate with Number FC1/9/2016 is cancelled.
- b. Terms of Settlement filed by the parties on the 25th April, 2023 is hereby adopted and entered as Consent Judgement.
- c. Parties to bear their own costs.

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ISAAC ADDO
CIRCUIT JUDGE
17TH MAY, 2023