

IN THE CIRCUIT COURT 3 HELD AT ACCRA ON FRIDAY THE 20TH DAY OF
JANUARY, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.),
CIRCUIT COURT JUDGE

SUIT NO. C5/345/2022

JOSEPHINE AWURA ADWOA OCRAN

PETITIONER

VRS

THEOPHILUS KWASI YEBOAH

RESPONDENT

PETITIONER PRESENT AND REPRESENTED; RESPONDENT PRESENT
AND UNREPRESENTED

JUDGMENT

The Petitioner filed the petition on July 14, 2022. The parties to this suit got married under the Marriage Ordinance (cap 127) on November 22, 2008 at the Church of Pentecost Kaneshie. The parties have two (2) children of the said marriage. According to the Petitioner, after the marriage the parties cohabited at Santa Maria and then later moved to Weija in Accra.

The Petitioner prayed to the court that the marriage celebrated between the parties be dissolved on grounds of unreasonable

behaviour. The Respondent did not enter appearance but appeared in court on December 9, 2022 when the case was called. The Respondent indicated to the court that he will not contest the grant of the divorce and therefore will not file any process or give any evidence. The court obliged Respondent's prayer and ordered the Petitioner to give oral evidence to establish the relief she seeks.

Section 2(1) of Act 367 stipulates the facts which a Petitioner or a cross-petitioner may rely on to prove that the marriage which is sought to be dissolved has broken down beyond reconciliation are as follows;

- a. That the Respondent has committed adultery and by the reason of such adultery the Petitioner finds it intolerable to live with the Respondent; or
- b. That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; or
- c. That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or
- d. That the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the grant of a decree of divorce: provided such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may

- grant a Petition for divorce under this paragraph notwithstanding the refusal; or
- e. That the parties to the marriage have not lived as man and wife for a continuous period of at least five(5) years immediately preceding the presentation of the petition;
 - f. That the parties have after diligent effort been unable to reconcile their differences.

At the close of the trial, the legal issue that fell for determination by the court was;

Whether or not the marriage celebrated between parties on November 22, 2008 at the Church of Pentecost Kaneshie District Accra, has broken down beyond reconciliation.

Under section 2(1)(b) of the Matrimonial Causes Act, 1971 (Act

367) “For the purpose of showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the court that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. The Petitioner would have to prove that the Respondent’s behaviour is such that a reasonable spouse in the circumstances and environment of these spouses could not be expected to continue to endure.”

Under **section 4 of Act 367**, in determining whether the Petitioner cannot reasonably be expected to live with the Respondent, the court shall disregard any period or periods not exceeding six (6) months in the aggregate during which the parties to the marriage lived with each other as man and wife after the date of the occurrence of the final

incident relied on by the Petitioner and proved to the court in support of his allegation."

The Petitioner tendered in evidence Exhibit A which was the Marriage Certificate to prove that she was indeed married to the Respondent. According to the Petitioner their marriage was Blessed with two (2) children namely Theodora Ante Ama Yeboah, aged 13 and Albert Yaw Yeboah, aged 8. According to the Petitioner, about 4 years prior to the presentation of this petition for divorce the Petitioner observed a change in the Respondent's character. He deserted the house and would not sleep in his matrimonial home. The Respondent sometime deserted the home for about seven (7) days without anybody knowing his whereabouts. The Respondent also became temperamental and got angry at the slightest communication. According to the Petitioner there were attempts by the elders of the church to reconcile the parties when the Petitioner reported the matter to the church. It is the case of the Petitioner that attempts at reconciliation failed. Petitioner accordingly prayed for the grant of divorce. She also prayed that the custody of the children be given to her with reasonable access to be given to the Respondent.

The Petitioner did not call any Witness.

After taking the evidence of the Petitioner as a whole, the court is of the opinion that it constitutes unreasonable behaviour for Respondent who is a married man with children to desert the

matrimonial home without the consent of his spouse. The court therefore finds that the marriage celebrated between the parties herein has broken down beyond reconciliation and same is dissolved.

DECISION

1. The marriage celebrated between the Petitioner herein, Josephine Awura Adwoa Ocran and the Respondent, Theophilus Kwasi Yeboah on November 22, 2008 at the Church of Pentecost Kaneshie Accra, has broken down beyond reconciliation and same is dissolved. The marriage certificate with registration No. A 10881 is hereby cancelled and a Decree of Divorce is hereby granted.
2. That the Custody of the children of the marriage namely Theodora Ante Ama Yeboah, aged 13 and Albert Yaw Yeboah, aged 8 are to remain in the custody of the Petitioner. The Respondent is to have reasonable access to the children.
3. The court makes no order as to cost.

LEGAL REPRESENTATION

J.K YEBOAH FOR THE PETITIONER

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT JUDGE)**