

IN THE CIRCUIT COURT 3 HELD AT ACCRA ON FRIDAY THE 14<sup>TH</sup> DAY  
OF JULY, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.),  
CIRCUIT COURT JUDGE

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SUIT NO. C5/42/2023

MARTHA TETTEH

PETITIONER

VRS

FRANCIS TETTEH

RESPONDENT

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**PARTIES PRESENT AND REPRESENTED**

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**JUDGMENT**

The Parties to this suit got married under the Marriage Ordinance (Cap 127) on February 25, 2007 at The Church of Pentecost Teshie Accra. The parties have two children from the said marriage. The Petitioner is seeking the dissolution of the marriage on the grounds of unreasonable behaviour on the part of the Respondent and she cannot be expected to continue in the marriage with the Respondent.

The Petitioner prayed to the Court as follows:

1. That the marriage celebrated between the parties be dissolved.
2. That the two children of the marriage namely Jushua Tetteh aged 15 and Debora Tetteh aged 12 be granted to Petitioner.

3. That the Respondent be ordered to provide the medical and educational needs of the two children.
4. That the Respondent be ordered to provide accommodation for the issues of the marriage.
5. That the Respondent be ordered to provide monthly maintenance of GHC1,000.00 for the two issues of the marriage.
6. Cost.

The Respondent in his answer and cross-petition filed on January 19, 2022<sup>3</sup> contested the Petition stating that their marriage has not broken down beyond reconciliation and therefore prayed that the court orders the parties to attempt settlement. In the event that the court will grant the Petitioner's petition the Respondent prayed in alternative for the custody of the two children of the marriage be granted to him. the Respondent prayed that the court refuses the grant of the Petitioner's 3rd and 4th reliefs.

that he did not contest the petition. He also prayed, in his cross-petition as follows:

1. That the marriage celebrated between the parties be dissolved and custody granted to her with reasonable access to the Petitioner.
2. The Petitioner is not entitled to reliefs (b),(c) and (d) endorsed on her petition.

**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 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 live as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f. That the parties have after diligent effort been unable to reconcile their differences.

This court has taken into consideration the evidence of both parties on recorded. The court finds the parties had various misunderstanding with each other which could not resolve and situation resulted in the parties not living together as husband and wife for the past 10 years.

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under section **2(1)(e) of the Matrimonial Causes Act, 1971 (Act 367)** “That the Parties to the marriage have not live as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition”

The fact that the parties have not lived as husband and wife for the past 10 years is not in dispute, this fact shows that the parties have evinced the intention of not to continue in their marriage and the court will in the interest of justice not hold them bound to continue in the marriage.

The Petitioner prayed that the Court grants her petition for dissolution of the marriage if the Respondent wanted parties to reconciled he would not wait for 10 years to elapse.

Having considered the evidence before the Court as a whole, the Court finds that the parties deserve the grant of divorce as they have satisfied the provisions under **section 2(1)(e) of the Matrimonial Causes Act, 1971 (Act 367)**. In the circumstances, I hold that the marriage between the parties have broken down beyond reconciliation.

### **ISSUES (2) & (3)**

#### **Whether or not the Petitioner or the Respondent is entitled to custody of the children and to maintain the children?**

The Petitioner is praying the court to grant custody of the issues of the marriage to him with reasonable access to the Respondent and that the parties should be made jointly responsible for the maintenance of the issues of the marriage. The Respondent has also cross-petitioned for custody of the children with reasonable access to the Petitioner. In making an order regarding the custody of the children, the court is guided by what is in their best interest. Section 2(2) of the Children's Act, 1998 (Act 560) states that the best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child. In **Braun v Mallet [1975] 1 GLR 81-95**, it was held that in questions of custody it was well-settled that the welfare and happiness of the infant was the paramount consideration.

In **R v. Gyngall [1893] 2 QB 232 at 243, CA the Court of Appeal per Lord Esher MR** stated further:

“The Court has to consider, therefore, the whole of the circumstances of the case, the position of the parent, the position of the child, the age of the child, the religion of the child ... and the happiness of the child.”

**Brobbery J.** as he then was, in **Attu v. Attu [1984-86] GLR pg. 144** said that “In divorce proceedings where the custody of children is concerned, the welfare of the children is of paramount consideration. In principle children should not be separated from each other and the advantage of motherhood and sisterhood should be considered when there is more than one child of the marriage”

“Unless such traumatic change is proved in all probability to be in the child’s better interest than their present habitat, it will invariably be better to leave the status quo alone”.

**Under section 45(1) of the Children’s Act 1998 (Act 560),**

“A Family Tribunal shall consider the best interest of the child and the importance of a young child being with the mother when making an order for custody or access.”

**Under section 45(2) (d) of Act 560,** the Family Tribunal shall take into consideration the fact that it is desirable to keep siblings together.

The children have been living together with the Petitioner all this while even though the parties have been living separately. Giving custody to the Respondent now would mean their environment is likely to change. The court opines, this situation will impart negatively on the children. The children have lived in the house since they relocated there and even the last child has not known any other environment since she was born. It is my opinion that it would be in the best interest of the children to keep them

together and with their mother since they are young. It will be best if the children continue to stay with the Petitioner with reasonable access to the Respondent.

The parties are to share the responsibility of catering for the children. According the court is of the opinion that it is fair and equitable to order the Petitioner to cater for the accommodation and other personal needs of the children whilst Respondent also pays the children's' school fees and medical bills and pay a monthly maintained fee of GHC800.00 for the up keep of the children to review bi-annually to accommodate economic condition in the country.

### **DECISION**

1. The Court hereby finds that the marriage celebrated between the Petitioner, herein Martha Tetteh and Francis Tetteh the Respondent, herein on February 25, 2007 at The Church of Pentecost Teshie Accra has broken down beyond reconciliation and same is hereby dissolved. The marriage certificate COP/TD/002/2001 is accordingly cancelled. A decree of divorce is hereby granted.
2. Custody of the two children Jushua Tetteh aged 15 and Debora Tetteh aged 12 be granted to Petitioner the Respondent is to have reasonable access to them and that the parties are ordered to be jointly responsible for the up keep of the children.
3. The Respondent is ordered to pay the medical bills and the school fees and all incidental relating thereto of the two children
4. The Respondent is further ordered to pay an amount of GHC800.00 a month to the Petitioner to maintain the children in the custody of the Petitioner.
5. The Petitioner is ordered to provide accommodation for the children and also cater for other personal expenses of the two children.

6. The Court will make no order as to cost.

**LEGAL REPRESENTATION**

**YVONNE AMEGASHIE FOR THE PETITIONER**

**RICHMOND KORLEY FOR THE RESPONDENT**

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

