

**IN THE CIRCUIT COURT 3 OF GHANA HELD IN ACCRA ON FRIDAY THE 28TH
DAY OF JULY, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.)
CIRCUIT COURT JUDGE**

SUIT NO. C5/119/2014

PASTOR OPPONG TABIRI

PETITIONER

VS.

MRS DIANA TABIRI

RESPONDENT

PETITIONER PRESENT AND REPRESENTED; RESPONDENT PRESENT

JUDGMENT

The Parties to this suit got married in under the Marriages Ordinance (CAP 127) on December 18, 2005, at the Grace Chapel International Mataheko in Accra. The Petitioner filed this petition on October 22 2013, praying for the dissolution of the marriage. The parties have no child out of this marriage.

The Petitioner is seeking the dissolution of the ordinance marriage celebrated between the parties on grounds of unreasonable behaviour

The Respondent in her response did not contested the Petition, she prayed for grant of the divorce.

The matter was set down for trial on December 4, 2013 after the parties tried to settle but failed. The court ordered the parties to file their witness statement for hearing on June 23 2017. The parties thereafter did not attend court until on October 19, 2022 when the Petitioner filed notice of intention to proceed and served it on the Respondent.

Section 1(2) of the Matrimonial Cause Act, 1971 (Act 367)

states that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In addition, the court before which such a petition is presented is required by law to determine as a fact that the marriage, has indeed broken down beyond reconciliation. In Support of this, **Section 2(3) of Act 367** provides as follows:

Notwithstanding that 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.

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.

The parties subsequently filed terms of settlement with respect to the ancillary reliefs and prayed that the court adopts it as Consent Judgment.

Unreasonable behaviour is a conduct that gives rise to injury to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger. In **Ansah v Ansah [1982-1983] GLR 1127-1133, Owusu-Addo J** held that:

“The test under the section, was whether the petitioner could reasonably be expected to live with the respondent in spite of the latter's behaviour. The test was therefore objective. But the answer obviously had to be related to the circumstances of the petition in question. That had to be a question of fact in each case. It followed that the conduct complained of must be sufficiently serious - since mere trivialities would not suffice.”

In the case of **MENSAH V. MENSAH (1972) GLR** the Court held that ‘the conduct complained of must be sufficiently grave and weighty enough to justify the finding that the Petitioner cannot reasonably be expected to live with the Respondent. Mere trivialities will not suffice. The parties must be expected to put up with what has been described as reasonable wear and tear of married life”

In **Mensah v Mensah [Supra]**, Hayfron-Benjamin defined what amounts to unreasonable behaviour when he held as follows,

“In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all

circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Casanova's Charter. The test is objective."

In considering whether one party has good cause for leaving the other much depends on whether the conduct of the other is of a grave or weighty character as to amount, in law, to cruelty: see **Gollins v. Gollins [1963] 2 All E.R. 966, H.L.** Conduct which is of a grave or weighty nature may sometimes fall short of cruelty if it lacks the element of injury to health as in **Edwards v. Edwards [1950] P. 8, C.A.**

ISSUE

The **main issue** for determination is;

Whether or not the marriage celebrated between the Petitioner, Pastor Oppong Tabiri and the Respondent Mrs Diana Tabiri on December 18, 2005 at Grace Chapel international at Mataheko Accra has broken down beyond reconciliation?

The Petitioner prayed that the marriage between the parties be dissolved on the basis of unreasonable behaviour on the part of the Respondent.

The Petitioner testified through his Attorney Edward Tagoe. He tendered exhibit A which is the Power of Attorney given to him by the Petitioner. According to Petitioner's Attorney the parties marriage is characterised by misunderstanding and quarrels as a result there is no happiness in the marriage. The Respondent tendered their marriage certificate in evidence exhibit 1. According to Petitioner after their marriage they co-habited in Bangalow at Nungua in Accra belonging to Petitioners brother-in-law. According to the Respondent their marriage was peaceful for the first 2 years of the marriage. There after the two relocated to Keta in the Volta Region for pastoral duties. During the period the parties were in Keta. The Petitioner developed a relationship with another woman called Doris which the Respondent suspected it was amorous. The Petitioner started travelling and staying out with the said woman,

as a result the Petitioner always come home late in the night. This suspicion led the Respondent to talk to the said Doris' husband about the Petitioner relationship. The hearing of this angered the Petitioner and therefore the communication between the two broke down. The Respondent there returned to Accra and reported the incident to their Head Pastor who intervened and directed the two to go to Keta and live together. The Petitioner did not comply with the said intervention and so resigned from the church and also vacated the matrimonial home. In 2019 the Petitioner went to the Respondent for his belongings and that was the last time the Respondent saw the Petitioner until December 2020. Attempts were made by both families to reconcile the parties but it was to no avail. Consequently, the Respondent prayed to the court for the grant of divorce. The Respondent also prayed that the court orders the Petitioner to pay the amount of GHC30,000.00 to her as financial provision.

Even though the parties have blamed the breakdown of the marriage on each other, the court finds from the evidence on record, that the parties have their differences in the marriage which they have been unable to resolve.

Even though it is the Court's desire to maintain the sanctity of the marriage bond, some situations warrant the granting of divorce. In my opinion and on the strength of the evidence before this Court, the Parties should not be compelled to stay in the relationship.

Court find upon considering the evidence on record that the marriage has broken down beyond reconciliation and on grounds that the parties have been unable to reconcile their differences as provided under **section 2(1)(f) of the Matrimonial Causes Act, 1971 (Act 367)** - that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

In the circumstances, I hold that the marriage between the parties have broken down beyond reconciliation. A decree of divorce is granted.

The court finds that the Respondent has not claimed financial provision in her cross-petition and therefore the court cannot grant same.

DECISION

1. The marriage celebrated between the Petitioner herein, Pastor Opong Tabiri and the Respondent herein Mrs. Diana Naa Ayitsoo Quarcoo on December 18, 2005, at the Grace Chapel International, New Abbossey Okai Accra has broken down beyond reconciliation and same is dissolved. The marriage Certificate No. GCI/NA/003/2005 is hereby cancelled. A Decree of Divorce is hereby granted.
2. Cost of GHC 10,000.00 is awarded in favor of the Respondent

LEGAL REPRESENTATION

YVONNE AMEGASHIE FOR PETITIONER

NO LEGAL REPRESENTATION FOR RESPONDENT

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