

IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 16TH OF JUNE, 2023 BEFORE HER HONOUR, AFIA OWUSUAA APPIAH (MRS) THE CIRCUIT COURT JUDGE.

SUIT NO: C5/204/2023

VICTORIA AKU MAWUSI

PETITIONER

V

REGINALD KOJO GYAPANING ASSOKU

RESPONDENT

JUDGMENT

This petition was issued by the Petitioner against the Respondent herein on 16/3/2023 praying the court for the sole relief of dissolution of their ordinance marriage celebrated at the Accra Metropolitan Assembly.

Petitioner's ground for seeking the dissolution of the marriage per petition is that parties got married on 5/6/1992 and thereafter cohabited at Dansoman within the jurisdiction of the court. She averred that since July 1993, parties have not lived together as husband and wife following Respondent's declaration of total disinterest in the marriage. There is no issue to the marriage. She further contended that all efforts at reconciling them by their friends and family had proved futile.

Respondent upon service of the Petition on him entered appearance to the Petition and subsequently filed an answer to same. In his answer filed on

29/3/2013, he admitted the averments of Petitioner and consented to the dissolution of the marriage.

In addition, parties on 21/04/2023 filed terms of settlement where they agreed as follows;

- i. that the marriage contracted by the parties and celebrated under the Marriage Act Cap 127 on 5th June 1992 be dissolved as having broken down beyond reconciliation.
- ii. There shall be no order as to cost.
- iii. The terms herein contained shall be adopted by the court.

Under the laws of Ghana, 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". The court therefore has to determine the break down or otherwise of the marriage between the parties based on evidence

Petitioner therefore has to satisfy the court of one or more of the grounds under section 2(1) of Act 367 as proof that the marriage has broken down beyond reconciliation and the court is duty bound to satisfy itself that the grounds for dissolution canvassed by the Petitioner falls within section 2 of Act 367.

Petitioner's evidence on oath is that she got married to Respondent 30 years ago under the ordinance at the Accra Metropolitan Assembly, Accra on 5/6/1992. According to her after the marriage, things went bad between them leading to their separation in 1993 after only a year of marriage. She stated that attempts to reconcile them by family, friends and the church failed. As a result they have not lived as husband and wife for about 29 years.

Respondent confirmed on oath that parties after the marriage could not reconcile their differences leading to their separation over 25 years ago. He confirmed there are no issues of the marriage and reiterated his consent to the dissolution of the marriage.

Petitioner's ground for seeking dissolution of the marriage being failure of parties to live as husband and wife for over 29 years falls under section 2 (1e) of Act 367. **Section 2(1e) of Act 367** provides that where the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition same suffices as prove of the breakdown of the marriage 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. The petitioner in this case has set out to prove (1) (e), namely,

“that [he and the respondent] have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition... 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) 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. Once he or she comes within any one of the provisions in section 2 (1) (e) and (f), the presumption is in his favour; proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation. Proof of five years’ continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage.”

In the present case, the parties have not lived as husband and wife for a period of over 25 years immediately preceding the presentation of this petition. Under section 2 (1e) of Act 367, it is irrelevant whether or not there has been any wrong doing on the part of the Respondent.

The most important fact to be considered is whether or not the court is satisfied that for a period of at least five years preceding the petition, the parties have not lived together as husband and wife. The consent or otherwise of the Respondent is not required. Respondent has further intimated that he consent to the dissolution of the marriage per his answer and evidence on oath. Further, there is unchallenged evidence to the effect that attempts by friends and relatives to reconcile the parties have proved futile in satisfaction of section 8 of Act 367.

The court is therefore satisfied and finds that the ordinance marriage between the parties celebrated on the 5/6/1992 at Accra Metropolitan Assembly has broken down beyond reconciliation. The court hereby decree the said marriage dissolved this 16th day of June 2023.

There shall be no order as to cost as agreed to by the parties in their terms of settlement filed on the 12/4/2023.

PARTIES PRESENT

NANA AMA AMPONSAH FOR PETITIONER ABSENT

(SGD)

**H/H AFIA OWUSUAA APPIAH (MRS)
CIRCUIT COURT JUDGE**

