

IN THE CIRCUIT COURT, 28TH FEBRUARY ROAD ACCRA, SITTING ON THURSDAY
THE 12TH DAY OF OCTOBER 2023 BEFORE HER HONOUR ELLEN OFEI-AYEH(MRS.
) COURT COURT JUDGE

SUIT NUMBER C5/292/2023

EVANS KWESI OFOSU

H/NO 12, MENSAH WOOD AVENUE

OYARIFA, ACCRA

V

JACOBEL NUNOO

(PETITIONER TO DIRECT SERVICE)

PARTIES ARE SELF REPRESENTED

JUDGMENT

The parties were married on 3rd July 2023 under custom and their marriage was converted into the Ordinance on the 4th July 2023. The parties do not have a child and while the petitioner is an administrator the respondent is an assistant Nurse. The petitioner complains that the parties have not lived together as husband and wife for a continuous period of 14 months within what can be described as a short period of marriage. He also complains that since 2022 the parties have lived separately and do not have any emotional ties. He also complains that the Respondent's mother and uncle returned in June 2022 returned the schnapps used in the customary marriage to the petitioner. For these reasons he prays for the marriage to be dissolved because he cannot be expected to continue the marriage.

The respondent failed to enter appearance but rather filed a consent to divorce which was struck out as irregular. The matter was set down for trial after hearing Notices and court notes were served on the Respondent. Pursuant to Order 36 Rule 1 (2) (a) of High Court Civil Procedure Rules, C.I 47 as amended, the court heard the case of the petitioner in the absence of the respondent herein. Guided by the decision of Republic v High Court (Fast track Division); Exparte State Housing Co. Ltd. (No.2) Koranteng Amoako; Interested Party (2009) SCGLR 185 at 190, the Supreme Court per Wood CJ, (as she was then), stated authoritatively that, ' *A party who disables himself or herself from being heard in any proceedings cannot later turn around and accuse an adjudicator of having breached the rules of natural Justice.*' .

Thus, the respondent cannot now say that the audi alteram partem rule has been breached as she was given ample opportunity to be heard. The sole issue to determine is whether the marriage celebrated by the parties has broken down beyond reconciliation.

Section 2 of the matrimonial Causes Act, Act 367 provides that;

(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:

(a) That the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent;

(b) That the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

(d) That the parties to the marriage have not lived as husband 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 that the 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 despite the refusal;

(e) that 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; or

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

The petitioner testified and narrated the events preceding the filing of this petition. He testified that the respondent and her mother introduced him to one Mr Steve as a family friend but he later found her engaging with him in sexual activities in their matrimonial home, and was in fact the respondent's Sugar Daddy.

He also testified that in 2020 respondent requested him to accommodate her cousin who was coming to Accra for business. He testified that Frank was actually the respondent's boyfriend and in one of their sexual encounters they lost their baby who died in the womb. He also testified that the respondent had an affair with one Obed, as well as a teaching Assistant, Mr. Kingsley Mensah at Movie House. He added that all attempts to reconcile their differences has proved futile. He tendered into evidence a marriage certificate as Exhibit 'A'

The testimony of the petitioner was not challenged by the respondent.

I therefore find as a fact that the respondent has committed adultery during the course of the marriage and I find on the balance of probabilities that section 2(1) (a) of Act 367 has been proved and grant the decree for the dissolution as prayed.

The Ordinance Marriage is dissolved and the marriage certificate is cancelled.

.....sgd.....

HH ELLEN OFEI-AYEH