

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON
TUESDAY THE 30TH DAY OF MAY, 2023 BEFORE HER HONOUR
HALIMAH EL-ALAWA ABDUL BAASIT

SUIT NO.: CCD/C4/05/23

JOYCE KEMEGBEY
HSE NO 48,
GEN ACHAMPONG HIGH ST., - PETITIONER
GA-642-8120 - DANSOMAN

VRS.

EDWIN OCLOO - RESPONDENT
HOUSE NO. 56, KOKROBITEY ST.
MAMPROBI-ACCRA

PARTIES:

PETITIONER – PRESENT

RESPONDENT – ABSENT

COUNSEL:

NO LEGAL REPRESENTATION

JUDGMENT

Background

The Petition was filed on the 22nd day of February 2023 and the Petitioner prayed for the dissolution of the marriage celebrated under the Ordinance marriage Cap 127 at Evangelical Presbyterian Church at Adenta on the 2nd of May, 1998 between the Petitioner and Respondent. It is the Petitioner's case that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him as husband and wife. The Petitioner averred that since the inception of the marriage there has been no peace in the marriage as the Respondent does not respect her views in any decision and will quarrel

with her over every issue they discuss. Additionally, the Respondent has been irresponsible since day one of the marriage and he intentionally refused to perform his role as husband in home.

The Petitioner averred further that she has totally lost interest, trust and confidence in the marriage and parties have agreed to live their separate lives for the past years. The Petitioner concluded by stating that all effort made by pastors, families and friends to resolve our differences have proved futile as broken down beyond reconciliation and must be dissolved. The Respondent filed an Affidavit of Consent on the 6th day of April 2023 where he deposed that he is not opposed to the grant of the Petitioner's action because he is no more interested in the marriage. He deposed further by praying the court to accept his consent to dissolve the said marriage with or without his presence in court.

Issue(s)

On the 17th of May 2023, the court heard the case of the Petitioner on oath as she gave short evidence in chief but the Respondent failed to appear in Court although he had been duly notified as required by law. Consequently, the main issue for determination is **whether the marriage between the parties ought to be dissolved**. It is to be noted that, the failure of the Respondent to appear at trial to cross examine the Petitioner on the evidence or challenge same either in cross examination or by contrary evidence does not exonerate the Petitioner from satisfying the court that the marriage has broken down beyond reconciliation. The Standard of proof in civil case such as the present action is proof on the preponderance of probabilities. This is statutory and has received countless blessing from the Courts of this land in plethora of authorities. See **sections 11(4) and 12 of the Evidence Act, 1975, NRCD 323**.

Section 12(2) of NRDC 323 defines preponderance of probabilities to mean that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence. In the case of **Adwubeng vs. Domfeh** (1997-98) 1 GLR 282, it was held per holding 3 as follows: “...sections 11(4) and 12 of NRCD 323 clearly provided that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities”. Similarly, it is trite that the failure of a party to deny a material averment constitute an admission of same and such implied admitted fact requires no further proof. As the Supreme Court in the case of **Fori vs. Ayirebi and Other** [1966] GLR 627 held “when a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact”.

Analysis:

The Matrimonial Causes Act, 1971 (Act 367) provides in its Section 1(2) that “The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”. 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. The court also has to satisfy itself that the grounds for dissolution canvassed by the Petitioner falls within Section 2 of Act 367. To this end, the Petitioner per her evidence in chief testified among others that she was legally married to the Respondent on the 2nd of May 1998 and there are Three (3) issues of the marriage. She testified further that the Respondent has been irresponsible since the day of the marriage as he intentionally refused to perform his role as husband neither does he respect her views in any decision which often leads to quarrel over

every little issue. The Petitioner informed the court further that both parties agreed to live separately for a while and when they tried to revive the marriage, they realized that they both lacked compatibility. The Petitioner concluded her testimony by stating that the marriage had been dissolved at custom in 2016 and there has not been intimacy for the past Seven (7) years.

In view of the above, the Petitioner's ground for seeking dissolution of the marriage therefore falls under Section 2 (1)(e) of Act 367 which provides that the Petitioner proves 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...*'. It has been held in the case of **Kotei vs Kotei** [1974] 2 GLR 172 that "*once one of the grounds specified in section 2 (1) of Act 367 was proved, a decree of dissolution should be pronounced in favour of the Petitioner*". The Court held further that "*Notwithstanding proof of one of the facts showing that the marriage had broken down, the court had a discretion to refuse to grant the decree of dissolution on the ground that the marriage had not in fact broken down beyond reconciliation... The burden was not on the Petitioner to show that special facts or grounds existed justifying the exercise of the court's discretion; once he or she came within any one of the provisions specified in section 2 (1) (e) and (f) of Act 367, the presumption was in his or her favour.*"

Conclusion

It is not in dispute that the parties have not lived together as husband and wife for the past Seven (7) years or more neither have they had sexual relations within the period. Additionally, attempts at reconciling the differences of both parties have been futile. Under section 2 (1)(e) 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 (5) years preceding the Petition, the parties have not lived together as husband and wife.

Per the record, the parties have not lived as husband and wife for a period of over Seven (7) years immediately preceding the presentation of this Petition, that is, since 2016. Parties having failed to live as husband and wife for a period of about 7 years immediately preceding the presentation of the Petition satisfies the court that the marriage celebrated between parties herein has broken down beyond reconciliation and same cannot be salvaged. The court therefore finds that the marriage between the parties celebrated on the 2nd day of May 1998 at the Evangelical Presbyterian Church, Adenta, Accra has broken down beyond reconciliation. The court hereby decrees the said marriage dissolved this 30th day of May, 2023.

SGD.
H/H HALIMAH EL-ALAWA ABDUL-BAASIT
CIRCUIT COURT JUDGE