

IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2', ACCRA ON THURSDAY, 5TH OCTOBER, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

SUIT NO.: C5/107/2023

CHARLES TETTEH ASHONG
Suing Per His Lawful Attorney
Samuel Kotei
House No. 6
Taifa-Burkina

PETITIONER

VRS

FOSTER TAWIAH
Kasoa, Accra

RESPONDENT

PETITIONER'S ATTORNEY PRESENT

RESPONDENT PRESENT

NII ASHIE KOTEL, ESQ. HOLDING THE BRIEF OF HANS AWUDE, ESQ. FOR THE PETITIONER PRESENT

JACOB DICKSON BANI, ESQ. HOLDING THE BRIEF OF JUSTICE KWEKU SALLAH, ESQ. FOR THE RESPONDENT PRESENT

JUDGEMENT

The venerable Dotse JSC in the case of Gladys Mensah v. Stephen Mensah [2012] 1 SCGLR 391 quoted Lord Denning in his book, "LANDMARKS IN THE LAW" Butterworths, 1954, writes at page 176 "*on change in attitude of the British people to Divorce*" as follows:

"There is no longer any binding knot for marriage. There is only a loose piece of string which the parties can untie at will. Divorce is not a stigma. It has become respectable. One parent families abound."

The learned Supreme Court Judge stated in the same judgement that the above quotation can equally be said to be applicable to the Ghanaian society as well.

On the 10th November, 2022, the Petitioner commenced this action by a Divorce Petition seeking the following reliefs:

- i. That the marriage celebrated at the Registrar General Department (Registrar of Marriages Office) on the 4th January, 2019 be dissolved on the grounds that it has broken down beyond reconciliation.
- ii. That custody of the issues of the marriage be granted to the Respondent with the right of reasonable access being conferred on the Petitioner.
- iii. That each party shall bear his or her own legal fees and cost associated with the instant suit.

The Respondent entered Appearance on the 21st November, 2022 through his lawyer, John-Mark Nuku Alifo, Esq. of Manna Goldfield Legal Consultancy. The Respondent filed an Answer to the Petition signed by her lawyer on the 13th December, 2022 and set up the following Cross Petition:

- a. An order for the dissolution of the Marriage celebrated with the Respondent on the 4th January, 2019.
- b. An order that the Petitioner pays to the Respondent a one-time alimony of One Hundred and Fifty Thousand Ghana Cedis as financial settlement upon the dissolution of the marriage.
- c. Custody of the two issues of the marriage with reasonable access to the Petitioner.
 - i. An order that the Children spend the last weekend of each month beginning 5pm Friday to 5pm Sunday with the Petitioner.
 - ii. An order for the Children to spend the first part of every school vacation with the Petitioner.

- d. An order for Petitioner to pay GH¢3,000 for the maintenance of the children which shall be reviewed upwards every 2 years until the children are 18 years.
- e. An order that the Petitioner pays for the School Fees and Medical Bills of the children.
- f. An order that Petitioner returns to the custody and possession of the Respondent, Travel Passport and Birth Certificates of the children.
- g. An order that Petitioner pays the cost of legal fees of Respondent.
- h. Any further orders that this court may deem fit.

The matter was accordingly set down for trial on the 16th March, 2023 and the parties were ordered to file their respective Witness Statements and Pre-Trial Check Lists.

Before the trial commenced, the parties filed Terms of Settlement before this Court on the 15th August, 2023. For the avoidance of doubt, I reproduce Paragraph B of the Terms of Settlement as follows:

“TERMS OF SETTLEMENT

B. NOW IT IS THEREFORE AGREED AS FOLLOWS:

- 4. That the Petitioner pays only Ten Thousand (GH¢10,000.00) out of the One Hundred and Fifty Thousand Cedis (GH¢150,000.00) to the lawyers of the Respondent.
- 5. That the Petitioner in addition to the GH¢10,000.00 stated in (4) above pay an amount of Five Thousand Ghana Cedis (GH¢5,000.00) to the Respondent to defray cost incurred so far on the account of the instant suit.
- 6. That custody of the two children of the marriage be granted to the Respondent with reasonable access to the Petitioner, namely that:

i. The Children spend every weekend of each month beginning 5:00pm Friday to 4:00pm Sunday with the Petitioner whenever he is in Ghana while school is in session.

ii. The Children to spend every school vacation with the Petitioner any time the Petitioner is in Ghana at the time when the children are on vacation.

iii. In the event that the Petitioner is unable to visit Ghana when the Children are on vacation, the Children will be allowed to spend the vacation with the Petitioner abroad when he wants to.

7. The Petitioner continues to pay for the school fees and learning materials and medical bills of the two children of the marriage.

8. The Petitioner pay an amount of Two Thousand Ghana Cedis (GH¢2,000.00) for the maintenance of the children to be reviewed by December, 2023 taking into consideration the cost of living in Ghana and thereafter every two years.

Funds to be remitted on the 1st Day of each month.

9. That the Petitioner maintains possession of the birth certificates of the children, keep the original of same and make available photocopies of same to the Respondent.

10. That the Petitioner maintains possession of the American travel passport of the children and shall make travel passports of the children available to the Respondent any time the Respondent want same to travel with the children after which travel the Respondent shall return same to the Petitioner.

11. That the Court adopts this Terms of Settlement as the judgement of the Court in the matter.

12. The terms of settlement contained herein shall constitute the full, and final settlement of all the reliefs indorsed in the Petitioner save relief (i) of the Petition and relief (a) of the Cross Petition."

On the 31st August, 2023, the Court adopted the Terms of Settlement filed by the parties before this Court as Consent Judgement. On the issue of the dissolution of the marriage, the court took evidence to satisfy itself on section 2(3) of the Matrimonial Causes Act, 1971 (Act 367). Section 2(3) of Act 367 reads:

“Although 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.” (Emphasis mine)

In the case of *Charles Akpene Ameko vrs Saphira Kyerema Agbenu* [2015] 99 GMJ 202 His Lordship Justice Dennis Adjei, J.A. succinctly put thus:

“The trial Circuit Judge dissolved the marriage without evidence. The combined effect of sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a Court to dissolve a marriage, the court shall satisfy itself that it has been proved on the preponderance of probabilities that the marriage has broken down beyond reconciliation. That could be achieved after one or more of the grounds in section 2 of the Act have been proved.”

The learned Justice continued thus:

“The failure by the trial Circuit Judge to take evidence in the matter before dissolving the marriage is contrary to sections 1 and 2 of the Matrimonial Causes Act and it is therefore a nullity.”

The Court further held through Her Ladyship Justice Avril Lovelace-Johnson J.A. (as she then was) at page 209 that:

“It being a nullity, every proceedings which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect to stand there. It will collapse”.

THE CASE OF THE PETITIONER

The Petitioner testified through his Attorney per a Power of Attorney which was tendered in evidence and marked as Exhibit 'A'. The Petitioner's case was that he got married to the Respondent under the Ordinance at the Registrar of Marriages Office, Accra on the 4th January, 2019. That prior to the Ordinance marriage, the parties cohabited for five (5) years. The marriage is blessed with two (2) issues aged 7 and 3 years. It is the case of the Petitioner that the marriage between the parties has broken down beyond reconciliation. The parties have not had sexual intercourse for the past ten (10) months and they heavily disagreed on everything conversations about their children. The Respondent has blocked/barred the Petitioner's calls making it difficult for the Petitioner to communicate with the issues of the marriage. That the Respondent verbally abused and disrespected the Petitioner.

THE CASE OF THE RESPONDENT

It is the case of the Respondent that after their marriage, the Petitioner left for Ohio in the United States of America for greener pastures and visited Ghana almost every year. Anytime the Petitioner visited Ghana, they lived together with the issues of the marriage as husband and wife either in her apartment or the Petitioner's family house. That for sometime over the past six months, the Petitioner gradually withdrew from communicating with the Respondent with his persistent excuses that he needed some time alone and that the Respondent need not to worry about him because he was very fine. The Respondent states that on few occasions, she confronted the Petitioner about his staying out late into the night and also his extramarital affairs anytime he was in Ghana. These confrontations worsened their marital woes and increased the unacceptable and disgraceful conduct and despicable attitude shown by the Petitioner towards the Respondent.

THE LAW AND EVALUATION OF THE EVIDENCE

Sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) reads:

1. Petition for divorce

(1) A petition for divorce may be presented to the Court by either party to a marriage.

(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

2. Proof of breakdown of marriage

(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.

(2) On a petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

(3) Although 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.

In the case of Mensah vrs Mensah [1972] 2 GLR 198, Hayfron-Benjamin J. (as he then was) held that:

"..... it is therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough"

Furthermore, even though the court may find in existence more of the facts specified in the provisions above, the law do not require the court to decree divorce unless it was satisfied, on all the evidence, that the marriage has indeed broken down beyond reconciliation.

From the totality of the evidence adduced at the trial and the pleadings filed, it is not in dispute that the parties have after diligent efforts being unable to reconcile their differences. The families of both parties made several attempts to reconcile the parties but

all proved futile. In the circumstances, I hold that the marriage celebrated between the parties has broken down beyond reconciliation.

Following from the above, I hereby enter judgement in favour of the Petitioner as follows:

- a. The Ordinance Marriage celebrated between the parties on the 4th January, 2019 at the Office of the Registrar of Marriages is hereby dissolved. Accordingly, Marriage Certificate No. RGM 038/2019 and Licence No. SL 1819045 is cancelled.
- b. Terms of Settlement (supra) is hereby adopted and entered as consent judgement.
- c. No order as to costs.

(SGD) ISAAC ADDO

CIRCUIT JUDGE

5TH OCTOBER, 2023