

IN THE CIRCUIT COURT HELD AT DANSOMAN-ACCRA ON
TUESDAY THE 20TH DAY OF JUNE, 2023 BEFORE HER HONOUR
HALIMAH EL-ALAWA ABDUL BAASIT

SUIT NO.: CCD/C4/13/23

OLIVIA ATTRAM - PETITIONER
DANSOMAN LAST STOP

VRS.

THEOPHILUS ADOTEY - RESPONDENT
DANSOMAN LAST STOP

PARTIES:

PETITIONER – PRESENT

RESPONDENT – PRESENT

COUNSEL:

NO LEGAL REPRESENTATION

JUDGMENT

Background

The Petition was filed on the 21st of March 2023 and the Petitioner prayed for the following reliefs;

- i. Dissolution of the ordinance marriage contracted between the parties as having broken down beyond reconciliation.
- ii. Custody of the Three (3) children with reasonable access to the Respondent.

- iii. An Order directed at the Respondent to maintain the Three (3) children of the marriage including but not limited to the payment of school fees, health and other necessities of life.
- iv. Any further order(s) this honourable Court may deem fit.

The Respondent filed his Answer to the Petition on the 6th of April 2023 and also Cross-petitioned for the following;

- a) For an order for dissolution celebrated between the parties in 2008.
- b) Custody of the Three (3) children between the parties be granted to the Petitioner with reasonable access to the Respondent on weekends and when they are on vacation.

Issue(s) for Determination

On 8th of June 2023, the parties executed and filed Terms of Agreement in final settlement of the matter before the Court. On the 13th of June 2023, the Court heard the case of both the Petitioner and the Respondent on oath as they gave short evidence in chief with each opting not to cross-examine the other. In view of the above, the main issue for determination is *whether the marriage between the parties ought to be dissolved by the Court.*

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”*. Section 2 of Act 367 further provides on Proof of breakdown of marriage as follows; (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 as:

- a) *that the respondent has committed adultery and that by 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 that 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 lived as man 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."*

In the instant case, the Petitioner 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 prove 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.

Petitioner per her evidence in chief, testified that she got married to Respondent at custom and same was converted into an Ordinance marriage which was celebrated at Osu Ebenezer Presbyterian Church on the 28th day of April 2008. She testified further, among others, that soon after the celebration of the marriage, the Respondent became argumentative such that she could not have any meaningful conversation without arguments. Respondent also became disrespectful to her and does not hesitate to issue threats, hurl insults and curses at her at the least provocation in the presence of her children, neighbors and at times her employees. The Petitioner testified again that after the marriage, the Respondent began to shirk his responsibilities such that he failed to adequately maintain the Respondent and the issues of the marriage. The Petitioner insisted that she went through a lot of financial hardship because the Respondent was not contributing in any way towards the maintenance of the children and the matrimonial home.

Sometime in 2010, the Respondent travelled on Two (2) occasions to an unknown location and thereafter failed to effectively communicate with her. The Respondent also frequently expressed his disinterest in the marriage anytime there was the opportunity to communicate to the extent that the Respondent had constructively deserted her for as long as the marriage has existed. The Petitioner concluded by saying that she got fed up with the mistreatment meted out to her by the Respondent and therefore left the matrimonial home on the 19th of March 2022, and the parties have since then lived separately. Additionally, all attempts made by her, family and church members to resolve and reconcile their differences have been futile as the Respondent would not want to have anything to do with the marriage and as a result, the marriage has broken down beyond reconciliation.

Thus, the court finds that the Petitioner's prayer for the dissolution of the marriage from her Petition as well as her testimony before the Court falls under Section 2 (1)(b) of Act 367 which states that '*Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent*' as well as Section 2 (1)(f) of Act 367 which provides that where a Petitioner proves '*that the parties to the marriage have, after diligent effort, been unable to reconcile their differences*'. In the case of **Ansah Vs. Ansah [1987-88] GLR 1127**, the learned Judge in emphasizing the standard of proof required by law in proof of breakdown of a marriage beyond reconciliation stated that, '*...The test under section 2 (1) (b) of Act 367 is ... the conduct must be such that a reasonable spouse in the circumstances and environment of these spouses could not be expected to continue to endure...'*. Similarly, 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. It was, however, wrong to contend that proof of total breakdown of the marriage and the possibility of reconciliation should be taken disjunctively so as to require firstly, proof of a breakdown and secondly, proof that it was beyond reconciliation*".

The aim of the instant Court is to ascertain whether the marriage has indeed broken down and relies on the evidence before the Court. On the evidence, I find that the Petitioner has proved that the marriage was fraught with challenges which she had to endure over the years. In the case of **Addo vs. Addo [1973] 2 GLR 103**, where it was opined by the Court that '*I think the Court should come to her aid and offer her a relief. For it is better, when regrettably, a marriage has irretrievably broken down to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation*'. In the circumstances, the court finds that the marriage between the parties

had indeed broken down beyond reconciliation as parties are unable to reconcile their differences and same ought to be dissolved by the Court.

Terms of Settlement

Parties after a successful mediation at the Court Connected Alternative Dispute Resolution (CCADR) Center, on the 8th of June 2023 executed Terms of Agreement and prays the Court to adopt same as their Consent Judgment in respect of ancillary reliefs prayed for by both parties. As such, parties agreed to settle the suit in the following manner;

- a. That the dissolution of the marriage be referred to Court.
- b. That both parties agreed that the Petitioner be given custody of the Three (3) issues of the marriage whilst the Respondent has access during weekends, holidays and shared vacation.
- c. That the Respondent has agreed to the following;
 - (i) **pay school fees of all the Three (3) children,**
 - (ii) **pay Sixty-Seven percent (67%) of cost of books,**
 - (iii) **pay Fifty-Percent (50%) of cost of uniforms and shoes,**
 - (iv) **Respondent shall pay Thirty-Three (33%) of cost of books as well as pay Thirty-Three (33%) of cost of uniforms.**
- d. That the Respondent has agreed to register all the Three (3) children under the National Health Insurance Scheme (NHIS) and pay **Fifty Percent (50%)** of the medical bills not covered by NHIS.
- e. That the Respondent shall pay a monthly maintenance of **Four Hundred and Eighty Ghana Cedis (GHc480.00)** with a weekly installment payment of **One Hundred and Twenty Ghana Cedis (GHc120.00)** every Monday of the week.
- f. That both parties have agreed that the maintenance allowance be paid to the Petitioner's Mobile Money Account Number **054-0925130** with the name Olivia Attram.

- g. That the Petitioner has agreed to provide accommodation for the Three (3) children whilst the Respondent will support with the rent of any amount he can.

Conclusion

The evidence shows that the parties have not lived together as husband and wife since 19th March 2022 neither have they had sexual relations since then. Additionally, attempts at reconciling the differences of both parties by the Petitioner's family and members of the church have been futile. The Court therefore finds that the marriage of the parties celebrated on the 28th day of April, 2008 at the Osu Ebenezer Presbyterian Church, Accra has broken down beyond reconciliation. The Court hereby decrees the said marriage dissolved this 20th day of June, 2023. Accordingly, the Court adopts the Terms executed by the parties on 8th of June 2023 before **Madam Diana Gyimah-Helegbe**, the Mediator herein, as Consent Judgment in relation to the ancillary reliefs in this suit.

**H/H HALIMAH EL-ALAWA ABDUL-
BAASIT
CIRCUIT COURT JUDGE**