

**IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2', ACCRA ON  
FRIDAY, 17<sup>TH</sup> NOVEMBER, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE  
CIRCUIT COURT JUDGE**

**SUIT NO.: C5/15/2020**

**EMELIA ANANG  
American Town  
Accra**

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**PETITIONER**

**VRS**

**ISAAC QUARMSON  
American House  
Accra**

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**RESPONDENT**

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PETITIONER PRESENT

RESPONDENT PRESENT

NANCY TETTEH, ESQ. FOR THE PETITIONER PRESENT

LONGINUS CHINEDU, ESQ. FOR THE RESPONDENT PRESENT

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**JUDGEMENT**

On the 15<sup>th</sup> August, 2020, the Petitioner commenced this action seeking the following reliefs:

- a. Dissolution of the Ordinance Marriage between the parties.
- b. Equitable distribution of the following properties.
  1. Six bedroom self-contained with two shops and a single room with porch in front of the six-bedroom house and also a wall.
  2. The other plot has 10 rooms with porch with two shops with uncompleted rooms on top of the shops.
- c. Lump sum financial settlement.

The Respondent entered Appearance on the 27<sup>th</sup> August, 2019 through his lawyer, Longinus Chinedu Nwaehie, Esq. of Sokoto Law Consult. The Respondent filed an Answer to the Petition on the 29<sup>th</sup> August, 2019.

The matter was accordingly set down for trial on the 26<sup>th</sup> March, 2020 and the parties were ordered to file their respective Witness Statements and Pre-Trial Check Lists.

Whilst the trial was ongoing, the parties filed Terms of Settlement on the ancillary reliefs on the 13<sup>th</sup> October, 2023, signed by the parties and their lawyers. I reproduce the content below:

#### **“TERMS OF SETTLEMENT**

PURSUANT to efforts by the parties hereto together with their lawyers to settle the suit herein, the parties have agreed to settle this matter amicably upon the following terms:

1. That the Ordinance Marriage celebrated between the parties be dissolved.
2. That the Petitioner shall take 3 bedrooms with kitchen in the matrimonial home.
3. That the Petitioner shall take the shop in front of the house.
4. That the Respondent shall take the remaining rooms in the main building and the other shops.
5. That the Petitioner lays no claim to the adjoining property to the matrimonial home.
6. That there shall be no order as to costs”

The Court hereby adopts the Terms of Settlement reached by the parties and filed before this Court on the 13<sup>th</sup> October, 2023 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 got married to the Respondent on the 12<sup>th</sup> September, 2004 at the Pentecost Church, Burma Camp Worship Centre, Accra. There are two (2) adult children of the

marriage. The marriage has broken down beyond reconciliation due to unreasonable behaviour on the part of the Respondent. That the Respondent had a two-year old daughter at the time of their marriage and it was the Petitioner who took care of her until she reached the age of majority. The Respondent insults and humiliates the Petitioner in the presence of the said daughter of the Respondent. As a result of that, the said daughter disrespects the Petitioner. That the said daughter of the Respondent once assaulted the Petitioner because the Petitioner complained about her unreasonable behaviour towards her. The Respondent does not listen to any advice from the Petitioner and jumps to the defence of his daughter as well as his other family members who live in the jointly acquired property of the parties, and they treat the Petitioner with much contempt and gross disrespect. It is the case of the Petitioner that for seven years, the Respondent did not maintain the Petitioner. The Respondent threatened the Petitioner with divorce in the past years and did not eat food prepared by the Petitioner and does not also stay in the matrimonial home. The parties have not had sexual intercourse or shared any form of intimacy whatsoever for about seven (7) years. The Respondent sent some drinks with some token to the family of the Petitioner in October, 2018 with the intention to dissolve the marriage. Several attempts to resolve their differences failed.

### **THE CASE OF THE RESPONDENT**

The Respondent is a retired military officer and was on contract for the period 2013 – 2015 after retirement at the 37 Military Hospital. According to the Respondent, he used to issue out cheques to the Petitioner to withdraw for maintenance till the Respondent retired when he stopped and the Petitioner was not happy with that. That after retirement, he gave house keeping to the Petitioner but the Petitioner is not pleased with that. The Respondent gave the Petitioner lump sums of money to trade with but the Petitioner could not account for money given to her. The Petitioner demanded for money before she could offer sex to Respondent on several occasion, and so the Respondent became used

to that and decided not to request for sex from the Petitioner any longer. It is the case of the Respondent that the marriage between the parties has been dissolved customarily.

The sole legal issue that fall for determination by this Court is whether or not the marriage between the parties has broken down beyond reconciliation to decree a divorce.

### **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 *Georgina Appiah-Amponsah vrs Godfred Amponsah* (2016) JELR 107611 (HC) dated 15 June 2016, the Court held due to the irreconcilable differences 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 .....”*

The Court went on further to hold to the effect that the parties had been unable to reconcile their differences and therefore the marriage had broken down beyond reconciliation.

In this case, all the pieces of evidence put forward by the Petitioner and Respondent were denied by each other. It is not in doubt that the customary marriage between the parties has been dissolved. Also, all attempts by the families and friends of the parties to reconcile their differences failed.

From the entirety of the evidence adduced at the trial, the Court finds that the Ordinance Marriage between the parties has broken down beyond reconciliation. In the circumstances, I hereby enter judgment as follows:

- a. The Ordinance Marriage celebrated between the parties on the 12<sup>th</sup> September, 2004 at the Church of Pentecost, Burma Camp, Accra with Licence Number AMA 5151/2004 and Certificate Number COP/BCD/005/2004 is hereby dissolved.
- b. Terms of Settlement reached by the parties and filed before this Court is hereby adopted and entered as consent judgement.
- c. No order as to costs.

**(SGD) ISAAC ADDO**  
**CIRCUIT COURT JUDGE**