

IN THE CIRCUIT COURT HELD AT DANSOMAN ON TUESDAY, THE 17<sup>TH</sup> DAY OF OCTOBER 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT, THE CIRCUIT COURT JUDGE.

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SUIT NO. CCD/C4/34/23

GENEVIEVE AMI ALORNYO

KING STREET, DODOWA

BAWALESHIE – ACCRA

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PETITIONER

VS

LORD KWAME MENSA DARKO

GA -579-3857 SAHARA DOWN,

DANSOMAN – ACCRA.

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RESPONDENT

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### JUDGMENT

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#### Background:

The Petitioner filed the instant Petition on the 5/7/23 and prayed for the following reliefs;

- i. Dissolution of the Ordinance marriage contracted between the parties as having broken down beyond reconciliation.
- ii. An Order granting custody of the children to the Respondent with access to the Petitioner on public holidays, weekends, school vacations and any other moment deemed reasonable by the honourable Court.
- iii. Any further Order(s) this honourable Court may deem fit.

The basis of the Petitioner's claim is that the Petitioner, a Pastor got married to the Respondent, a Public Servant under the Part III of The Marriages Act, 1884 – 1985 (CAP 127) on to the 3/02/2007 at Christ the King Church, Accra and both lived as man and wife

until they began to live separately from the 4/7/2022. The marriage produced Three (3) issues who aged 14 years, 12 years of age and 7 years respectively. The Petitioner contends that the marriage contracted between the parties has broken down beyond reconciliation as a result of the respondent's unreasonable behavior towards the petitioner. The Petitioner then enumerated the particulars of unreasonable behavior to include the fact that the couple had a normal marital relationship until 2018 when she became a Pastor and that was when the Respondent's behavior towards her changed. She stated that the Respondent became argumentative, verbally, physically emotionally and psychologically abusive. She listed the forms of abuse to include accusing her of not contributing financially to the maintenance of the family, blocked all means of communication, refused her entry into the matrimonial home and has since denied her access to the children.

According to the Petitioner, a family meeting was organized in September 2022 between both families to resolve their issues but Respondent's family insisted on the need to dissolve the marriage at custom whilst the Petitioner's family insisted that the court dissolves the marriage. She continued that having been unable to resolve their differences, the Petitioner sought the assistance of Domestic Violence and Victim's Support Unit (DOVVSU) of the Ghana Police Service to get her items out of the matrimonial home. She concluded her Petition by praying for custody of the children on the basis that the Respondent is abusive towards the children and has no meaningful employment to absolutely maintain the children. She concluded further by stating that the behavior of the Respondent is such that she can no longer be expected to remain married to her and that the marriage of the parties has broken down beyond reconciliation despite attempts by family members and the church to resolve the differences between the parties.

### **The Respondent's Answer to the Petition**

The Respondent filed an Answer to the Petition on the 28/7/23 where he denied most of the claims made by the Petitioner and stated that the marriage produced Four (4) children but one of them died and the rest are aged 14, 12 and 7 years respectively. It is the Respondent's case that the breakdown of the marriage is as a result of the Petitioner's religious bigotry, laziness, dirtiness, reckless, irresponsibility, disrespect, wastefulness, strange traditional Christian believes and morally reprehensible behavior that has led to total breakdown of the marriage. He stated that Two (2) years into the marriage, that is sometime in 2009, the Petitioner started behaving strangely by abandoning the marital home and all marital activities to spend all her time in church. Whenever he complained about her behavior, the Petitioner always gives religious and superstitious reasons making it difficult to have meaning conversation with her. The body and mind dichotomy becomes the means of communication; hence petitioner claims of argumentative. He stated further that Petitioner has never worked in the life span of the marriage except for Two (2) years of a service as an English teacher a secondary school and therefore does not contributing to the maintenance of the household but rather extremely wasteful of the scarce resources at the marital home. He continued by stating that the Petitioner neglected all household chores including cooking for the family, keeping the house neat and tidy, among others and attributed the Petitioner's laziness, irresponsibility, unkempt attitude to strange Christian practices which is condoned by Petitioner's family. He concluded by praying that should custody of the children be awarded to the Petitioner, the children will not receive the best of care and further indicated his resolve to build a Three (3) bed room self-compound house within 36 months after the final dissolution of the marriage.

In a Reply to the Respondent's Answer, filed on the 3/8/23 wherein she denied most of the Respondent's assertions and insisted she has been able to combine her religious

beliefs with marital responsible to the best of her ability but because the Respondent lacks religious education, hence his difficulty in understanding her activities at the church. She concluded by agreeing that the issues can stay with the Respondent together with a Social Care Giver while the Petitioner is looking for a better living situation. The Petitioner says that during the period the issues should stay with her during the holidays and on weekends. The Respondent then filed an Answer to the Petitioner's Reply but same has no basis per the Rules of Procedure as it is only the Petitioner who can reply a Respondent's answer.

### **Analysis**

In view of the processes so far filed, the issues for determination is whether the marriage between the parties have broken down beyond reconciliation. Per the laws of Ghana, a marriage can be considered to have broken down beyond reconciliation when the parties have made diligent efforts but have been unable to reconcile their differences. This can be established through evidence presented in court, such as testimonies or documentation. The court has the jurisdiction to dissolve the marriage under the **Matrimonial Causes Act, 1971 (Act 367)**. In such cases, the court may also make orders regarding child custody, maintenance, and other related matters. The sole ground of the breakdown of a marriage is that it has broken down beyond reconciliation as stipulated by section 1(2) of the Matrimonial Causes Act, supra and Section 2(1) of the same enactment gives the grounds which must be proved to the satisfaction of the court that a marriage has broken down beyond reconciliation. These include Section 2(1) (b) which says that the Petitioner cannot reasonably be expected to live with the Respondent because of the Respondent's behavior and that the parties, after diligent efforts have been unable to reconcile their differences as stipulated in Section 2(1) (f) of Act 367.

To prove that the marriage has indeed broken down beyond reconciliation, the Petitioner testified on oath, relying on her Witness Statement that she is a lady Pastor at Action Worship Centre a branch of Action Chapel International whilst the Respondent works at National Development Planning Commission (NDPC) and the marriage produced Four (4) children with one now deceased. She testified further that the marriage was a blissful marriage until sometime in 2013 when I received a call from God to into ministry although she was previously employed as a Teacher at Kollege Senior High, Darkuman Junction but later lost the job. It is the Petitioner's case that the Respondent has behaved in such a manner that it she cannot reasonably be expected to live with him as a husband. Unreasonable behavior in the context of matrimonial causes has been described as conduct that is sufficiently grave and weighty to justify a finding that the Petitioner cannot reasonably be expected to live with the Respondent. Mere trivialities would not suffice as the Respondent's behavior must include actions that are sufficiently grave and weighty to justify a finding that the Petitioner cannot reasonably be expected to live with the respondent. (See the case of **Mensah v. Mensah (1972) 2 GLR 198**). The Petitioner narrated the incidences of Respondent's unreasonable behavior to include the fact that the Respondent disapproved of her intention to join the ministry because it will put a financial strain on the family resources and when she ignored his disapproval, the Respondent would often express his displeasure towards all church related activities resulting in series of misunderstanding of which the Respondent became abusive towards her. These included the Respondent insulting her in the presence of the children, beating her up for returning late from church and shutting her down whenever she was praying. She testified further that for peace to reign, she left her church to join Respondent's church which later collapsed of which she joined Action Worship Center, Dansoman. In an attempt to punish her, the Respondent would lock her out of the matrimonial home for her involvement in church activities after the usual Sunday service. She testified that sometime in 2014, whilst at a prayer meeting, the Respondent sent her

an SMS text message warning her not to return home of which she sought the intervention of her church elders to plead with the Respondent, but he refused to listen of which she had to spend the night at her mother in-law's house but the incidence of locking her out of the matrimonial home persisted.

The Petitioner testified in addition that on the 9/5/2022, there was a fire explosion in the kitchen which involved her and their first child of which they both sustained severe burn injuries from this accident and were subsequently admitted to the Burn's Unit of the Korle – Bu Teaching Hospital. This resulted in the death of the first child and she was on admission for several months but the Respondent remained unsupportive during this period and continuously blamed her for the accident. She stated that although the Respondent paid some of her medical expenses, he hardly visited her at the hospital nor showed sympathy towards her and when she was eventually discharged from the Hospital on the 14/7/2022, the Respondent asked her to relocate to her mother's house for her recovery without providing any form of financial or emotional support. She testified further that the Respondent blocked all forms of communication, denied her access to her children and belongings, and all efforts at resolving the issues between them by the families proved futile. The Respondent further attempted dissolving the marriage at custom but same was rejected by the Petitioner's family at a family meeting sometime in September 2022 where the Respondent was unnecessarily rude and belligerent and later stormed out of the meeting in anger. She concluded her testimony by stating that since the family meeting on 24/9/2022, the Respondent refuses to have anything to do with her and by his actions showed that he is no longer interested in the marriage. As a result, she is left with no option but to file this divorce petition to seek a dissolution of the marriage together with other reliefs before this court.

The Respondent failed to cross examine the Petitioner on all the allegations she levelled against him. It is important to state that cross-examination serves the purpose of challenging and testing the credibility, reliability, and accuracy of a witness's testimony. It allows a party to question the opposing party's witness in order to clarify or challenge their version of events, highlight inconsistencies or contradictions in their testimony, and elicit information that supports their own case. It is trite that when a party fails to cross-examine a witness on a particular matter, it is deemed to be an acknowledgment of that averment by the party. This means that the court will consider the averment as admitted by the party who failed to cross-examine. Indeed it was also held in the case of **Quagraine vs Adams** [1981] GLR 599, the court held that *'where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by failure to cross-examine. Therefore, if a party fails to cross-examine a witness on vital matters testified to in the witness box, it will be deemed as an admission of those matters. As a result, the party may not need to call further evidence on those matters.*

The Respondent informed the court of his intention not to file any Witness Statement and urged the court to adopt the Petitioner's testimony as captured in her Witness Statement. Thus, the Petitioner's testimony remains unchallenged.

### **Conclusion**

In view of the Petitioner's testimony, the failure of the Respondent to cross examine the Petitioner as well as the failure of the Respondent to testify before this Court, it is thus clear from the evidence that due to irreconcilable differences, the marriage has broken down beyond reconciliation. I find that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent as provided in Sections 2(1) (b) of Act 367. I further find that after diligent efforts, the parties have been unable to reconcile their differences in accordance with Section 2 (1) (f) of Act 367. I am

satisfied from the evidence that the marriage has broken down beyond reconciliation and order as follows;

- (a) I decree, the marriage celebrated under the Marriage Ordinance (Cap 127) between the Petitioner and the Respondent at Christ the King Church, Accra, on the 3<sup>rd</sup> day of February 2007 is hereby dissolved this 17<sup>th</sup> day of October 2023.
  
- (b) I award custody of the children to the Respondent with reasonable access to the Petitioner on weekends, public holidays and during school vacations.

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