

IN THE CIRCUIT COURT HELD AT DANSOMAN ON TUESDAY, THE 7TH DAY OF NOVEMBER 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT, THE CIRCUIT COURT JUDGE.

SUIT NO. CCD/C4/27/23

DANIEL NII AMO QUARSHIE

PETITIONER

VS

ISAAC KOFI ARTHUR

RESPONDENT

JUDGMENT

Background:

The Petitioner herein filed a Petition at the Registry of this Court on the 15/6/2023 stating that he got married to the Respondent on 24th September, 2016 at custom and same was converted to an Ordinance Marriage under CAP 127 at Winner's Chapel Ghana, Avenor-Accra. Upon celebration of the marriage, the Respondent lived in the Volta Region whilst the Petitioner lived in Accra of which the couple had one issue of the marriage who is now aged Five (5) years. It is the Petitioner's case that the marriage has broken down beyond reconciliation and prays for the following reliefs;

- a. The marriage celebrated between the parties be dissolved.
- b. The Respondent be granted custody of the child of the marriage with access to the Petitioner for the child to spend school holidays with the Petitioner.
- c. The Petitioner bears the maintenance of the child of the marriage.
- d. Any other relief(s) that the Honourable Court may deem fit to grant the Petitioner.

The basis of the Petitioner's claim is that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her as she has caused the Petitioner so much anxiety and distress. The Petitioner particularized the Respondent's unreasonable behavior to include the fact that she is disrespectful, uses abusive words on the Petitioner anytime there is a misunderstanding between them and spreads false stories about the Petitioner to his family members bringing the reputation of the Petitioner won in the minds of right thinking people. The Petitioner stated further that the Respondent has since deserted him when she was transferred to work in Ho which the Petitioner agreed to so that within a year, Respondent works a transfer back to Accra. However, after the year, the Respondent stopped visiting the Respondent anytime she is in Accra with the reason that he Petitioner should rent an apartment outside his family house, yet the Respondent did not visit the Petitioner when he relocated to Sowutuom and Dansoman subsequently. It Petitioner's case therefore that he Respondent has refused to come back to the matrimonial home and has evinced an intention not to cohabit with the Petitioner anymore despite all attempts by family members of both parties and revered Ministers.

The Respondent entered Appearance through her Lawyer Emile Atsu Agbakpe on the 3/6/23 but failed to file any subsequent process in respect of the instant Petition despite being served with several Hearing Notices and all other Court processes being filed by the Petitioner. The Court accordingly proceeded to hear the case of Petitioner since Respondent, after being duly served, failed to appear before the court to exercise the rights available to her as part of the civil practice in our Courts.

Analysis:

Under section 1(2) of the **Matrimonial Causes Act, 1971, (Act 367)**, the sole ground for the grant of a decree of divorce is that the marriage has broken down

beyond reconciliation. Section 2(1) of Act 367 supra, specifies facts, one or more of which a Petitioner must establish for the purposes of showing that the marriage has broken down beyond reconciliation. From the evidence, the Petitioner, through his Lawful Attorney testified by repeating the averments contained in the Petition and considers the marriage as broken down beyond reconciliation. In his Evidence in Chief, sworn on oath, the Petitioner emphasized on the fact that there have been series of misunderstanding between he and the Respondent which has no end in sight because the Respondent is disrespectful to him. However, the last straw that broke the camel's back as far as the marriage is concerned is that the Respondent has deserted the marriage.

It is instructive to note that Section 2 (1) (e) of Act 367 provides that the Respondent has deserted the marriage, the Petitioner must show *“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’*. The testimony of the Petitioner is that the couple have not lived as man and wife for the past Five (5) years and all attempts at getting the Respondent to return to the matrimonial home have been futile. In the case of **KOTEI v. KOTEI** (1974) 2GLR 172, *the court held that proof of Five (5) years continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offense and who cannot be blamed for the dissolution of the marriage. The Court further held that if a party can provide evidence that the parties have not lived as man and wife for a continuous period of at least five years, it may be possible to obtain a decree of divorce.* In the instant case, the Petitioner testified on oath that the Respondent after being transferred to Ho in the Volta Region has since refused to work a transfer back to Accra. Indeed, the Proof of Service of all court processes showed that the Respondent is in the Volta Region, but since the Respondent failed to avail herself for the divorce proceedings despite being notified, the Petitioner's testimony remains unchallenged. The following transpired when the Petitioner was asked questions by the court;

Q: *What is the main reason for the divorce Petition?*

A: *My Lady, please my wife had deserted the marriage for some quite now. She initially asked me to move from where we were staying which is my own apartment, given to me by my Dad and for that reason, if I do not move, she would not come to me and that has been back and forth until I gave in and then left and rented a two bedroom apartment at Sowutuom. Even though, she works in Ho, in the Volta Region, she still insisted I rent a place of which I did.*

Q: *For how long has she deserted the marriage?*

A: *She had deserted the marriage for about five [5] years now.*

Q: *Do you remember the last time you had sexual intercourse?*

A: *My Lady, I do not remember.*

Q: *So within the five years she left the marriage, you have never had sex?*

A: *Within the five years that she deserted the marriage, in 2019 when I rented the apartment, she came there once and complained that the place was far.*

Q: *Did you have sex within that period?*

A: *No.*

In spite of the above, the evidence on record shows that the marriage celebrated between the parties produced One (1) child of the marriage. It is the Petitioner's case the Respondent does not allow him access to the child. Again, the following ensued when the Petitioner was questioned by the court.

Q: *When was the last time you saw your son?*

A: *December, 2022.*

Q: *Why that long period?*

A: *My Lady, I had to go to my Reverend Minister to plead with him to settle our Issue, so the Minister invited her and she obliged and came. She came with my son, they were then on vacation.*

Q: *Do you communicate regularly with your son?*

A: *No*

Q: *When was the last time you spoke with him?*

A: *If I could remember, that would be around July, 2023.*

From the above, the court observes that the Respondent has denied the Petitioner access to his child and it is important to state that the Respondent has no right whatsoever, including morally and legally, to deny the child access to his father and/or to prevent the child from having a normal and healthy father and child relationship. It is a fundamental principle as encapsulated by the Welfare Principle as espoused in the **Children's Act, 1998 (Act 560)** that it is in the best interest of the child to grow up having a healthy relationship with both parents. In fact, Section 6 of Act 560, *supra*, is on Parental duty and responsibility and Section 6(1) provides that *'No parent shall deprive a child his welfare whether – a) The parents of the child are married or not at the time of the child's birth; or b) The parents of the child continue to live together or not.*

The Petitioner herein however prays that he has reasonable access to the child whilst the Respondent has custody. The Court shall accede to his request and shall consider a time arrangement that provides for the child to have some substantial and significant time with the Petitioner who is his biological father so as to build a meaningful relationship with the child.

Conclusion

On the totality of the evidence before this Court, I find that the marriage has broken down beyond reconciliation and Order as follows;

1. That the marriage celebrated between the parties on 24th September, 2016 under Ordinance Marriage (CAP 127) at Winner's Chapel Ghana, Avenor-Accra is dissolved this 7th day of November 2023.
2. The Respondent shall have custody of the child with reasonable access to the Petitioner in the following manner;
 - (i) The child shall be with the Petitioner during school vacations. The Petitioner shall pick the child up the weekend upon vacation but shall return the child back to the Respondent at least One (1) week before resumption of school.
 - (ii) The Petitioner is at liberty to visit the child anytime he deems fit whenever the child is with the Respondent but must adequately notify the Respondent of his intentions to visit the child and the Respondent must not unreasonably withhold consent.
3. The petitioner shall be responsible for maintenance of the child.
4. There shall be no Orders as to costs.

Petitioner present

Respondent absent

No Legal Representation for both parties.

HALIMAH EL-ALAWA ABDUL-BAASIT

CIRCUIT COURT JUDGE.

