

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/C4/44/23

IBRAHIM HARUNA

PETITIONER

VS

RUKAYA LEAPER

RESPONDENT

JUDGMENT

Background:

The Petitioner herein filed a Petition at the Registry of this Court on the 11/9/2023 praying for the sole relief of the dissolution of the marriage celebrated between the Petitioner and the Respondent on the 4th day of August, 2017 under the Ordinance Marriage Cap 127 at Principal Registrar of Marriages Office at Accra. The basis of the Petition is that upon the celebration of the marriage, the Petitioner has been unable to have sexual intercourse to his satisfaction and in one instance, he experienced severe pains in his penis but later realized the Respondent wore a suspicious bead around her waist but later removed it. Petitioner stated further that he discussed the issue further with the Respondent but she remained unbothered and suggested that the Petitioner see a doctor which he did. However, the Respondent who claims to be a woman of God often leaves the matrimonial bed to the floor to pray at midnights but rains insults. The Petitioner stated further that the Respondent informed family and friends that he was impotent and traumatizing him emotionally and physically. The marriage produced no children and on the 15th June,

2019, the Respondent vacated the matrimonial home in the Petitioner's absence and all attempts at involving families to resolve the matter was futile as the Respondent's family was very disrespectful to his family and it was made clear to him that the Respondent was no longer interested in the marriage. He concluded his Petition by stating that he believes that the marriage has broken down beyond reconciliation especially when the marriage was customarily dissolve 4th of December, 2019.

The Respondent in her Answer to the Petition which she filed on the 2/10/23 denied most of the averments contained in the Petition and stated that the Petitioner physically abused her since the inception of the marriage. She stated further that she has to often beg the Petitioner for sexual intercourse which often results in verbal attacks. Respondent concluded her Answer by praying that she wants the Court to grant the divorce because she believes that the marriage is broken down beyond reconciliation Respondent and she has no intention to prolong matters and that she is happy where she is now.

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 testified by repeating the averments contained in the Petition but added that parties have not lived as husband and wife for the past Five (5) years and have had no intimacy. The Respondent in her Witness Statement also repeated the averments contained in her Answer and concluded her testimony by praying for the Court to grant the divorce because she believes that the marriage is broken down beyond reconciliation. During trial, each party opted not to cross-examine the other and as such the testimony of each party remains unchallenged.

In view of the above, the main issue for determination is whether the marriage has indeed broken down beyond reconciliation. The evidence on record shows that the marriage lacked sexual intimacy and the importance of sexuality and intimacy in marriages cannot be overemphasized as it plays a huge role in marriage by strengthening the bond between partners, increasing their long-term relationship satisfaction, and enhancing their well-being and positive emotions. Additionally, communication and mutual respect are important factors for sexual satisfaction and intimacy in a relationship which is clearly absent in the relationship between the parties before this court as evidence on record shows. In the case of **Addo vs. Addo** (1973) 2 GLR the Court held '*a willful refusal to have sexual intercourse at all will entitle the party suffering as a result of it to leave the other and the denial will support a charge of unreasonable behavior*'.

Additionally, the Petitioner testified that the Respondent has for the past Five (5) years deserted the marriage. Desertion has been defined in "**BROMLEY'S FAMILY LAW**", 11th Edition at Page 218 as consisting of '*the unjustified withdrawal from cohabitation without the consent of the other spouse and with the intention of remaining separated permanently*'. 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*'. In the case of **Kotei vs. 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 case of **Hughes vs. Hughes** (1973) 2GLR 342, the Court held that “*for the conduct of the wife to amount to desertion, the Court had to be satisfied that it was an unjustifiable withdrawal from cohabitation and that she had the intention of remaining separated from him*”. The testimony of the Petitioner is that the couple have not lived as man and wife for the past Five (5) years as the Respondent vacated the matrimonial home and all attempts at getting the Respondent to return to the matrimonial home have been futile. It is clear that the Respondent’s desertion was without the consent of the Petitioner. I find that the Respondent was in desertion for at least Five (5) years prior to the filing of the Petition in terms of section 2 (1) (c) of Act 367 which stipulates as follows: ‘*...that the Respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition*’.

Conclusion

The evidence on record shows that indeed the marriage between the parties celebrated on the 4th August, 2017 in the Office of the Principal Registrar of Marriages at Accra has broken down beyond reconciliation. The court hereby decrees the said marriage with Certificate No. RGM 1257/2017 per Licence No. AMA 1017705445/2017 dissolved this 14th day of November, 2023. A copy of the Divorce Certificate is to be served on the Registrar of Marriages for the amendment of his records.

Petitioner present

Respondent absent

No Legal Representation for both parties.

HALIMAH EL-ALAWA ABDUL-BAASIT

CIRCUIT COURT JUDGE

