

IN THE CIRCUIT COURT HELD AT DANSOMAN ON TUESDAY, THE 28TH DAY OF NOVEMBER 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT, THE CIRCUIT COURT JUDGE.

SUIT NO. CCD/C4/48/23

VERONIQUE GOZE

PETITIONER

PER HER LAWFUL ATTORNEY

YUNUSAH IDDRISU GUNU

VS

PATRICK AKWETEY GLOVER

RESPONDENT

JUDGMENT

Background:

The Petitioner, a Swiss citizen and domiciled in Switzerland, filed a Petition at the Registry of this Court on the 15/9/2023, through her Lawful Attorney praying for the dissolution of the Ordinance Marriage celebrated between the parties as having broken down beyond reconciliation. It is the Petitioner's case that the parties got married under Part III of the Marriages Act, 1884-1985 (CAP127) on the 9th day of March, 2020 and same was celebrated at the Office of Principal Registrar of Marriages as evidenced by a Certificate of Marriage numbered RGM 515/2020 and under License number A.M.A 10201283/2013. The couple had no children, although the Petitioner has Four (4) biological children.

According to the Petitioner, after the celebration of the marriage, the parties cohabited at Ablekuma in Accra as a couple before she travelled back to Switzerland Four (4) days after the celebration of the, marriage with the couple communicating frequently

on the phone until the outbreak of the COVID 19 Pandemic which restricted travelling, thus preventing her from travelling to Ghana and further resulting in the deterioration of the marital relationship between the parties. The marriage was then bedeviled with lots of quarrels and misunderstanding putting further strain on the marital relationship between the parties. Petitioner says she was also informed by a mutual friend of the parties that the Respondent was involved in an adulterous relationship with another woman which led to more quarrels and misunderstandings between the parties. It is the Petitioner's contention that due to constant quarrels and misunderstandings, the parties have agreed to dissolve the marriage as they have not lived as man and wife for the past Two (2) years and sexually intimacy has long ceased. Further to the above, attempts by both families and friends to resolve their differences have proven futile, hence her prayer for the dissolution of marriage.

The Respondent filed his Answer to the Petition on the 20/9/2023 wherein he admitted most of the averments contained in the Petition. The Respondent reiterated the fact that since the Petitioner left the shores of Ghana, there have been consistent quarrels and misunderstanding between the parties over every trivial issues thus resulting in the relationship being strained and leaving him unhappy. He concluded his Answer by insisting that the marriage between parties has indeed broken down beyond reconciliation because of the unreasonable behavior of the Petitioner and prayed for the dissolution of same.

Issue(s)

In view of the above, the main issue for determination is whether or not the marriage between the parties ought to be dissolved by the Court. 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.

Petitioner's Testimony

To prove that the marriage has indeed broken down beyond reconciliation, the Petitioner through her Lawful Attorney testified on oath by repeating the averments contained in the Petition. It is the Petitioner's case, among others, that the parties have not lived as man and wife for the past Two (2) years and sexual intimacy had long ceased. The Petitioner's Lawful Attorney concluded his testimony by informing the Court that when the Petitioner travelled back to Switzerland, Four (4) days after the marriage, there was constant communication between the couple. However, the outbreak of the COVID-19 Pandemic made it impossible for the Petitioner to visit the Respondent, of which she opted to rather spend more time with her biological children resulting in the deterioration of the marriage between the parties.

Respondent's Testimony

The Respondent also testified on oath by repeating the averments contained in his Answer and emphasized on the fact that Petitioner never visited him since she left for Switzerland despite his incessant requests. He testified further that the Petitioner's constant absence in his life has made him so lonely thereby causing him to seek comfort in the arms of another woman. He testified again that the Petitioner is aware of his relationship with another woman and this knowledge deepened the quarrels and misunderstandings already in the marriage. The Respondent concluded his testimony by praying for the dissolution of the marriage as the parties have agreed to go their separate ways.

Analysis:

It must be emphasized that during trial, each party opted not to cross examine the other. 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 evidence on record shows that the Petitioner left the Respondent Four (4) days after the celebration of the marriage and till date is yet to return to the matrimonial home. The failure of the Petitioner to return to the matrimonial home amounts to desertion on the part of the Petitioner. In the case of **Hughes vs. Hughes** (1973) 2 GLR 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 evidence as adduced by the parties, shows that the Petitioner left the matrimonial home in 2020 and her sole reason was the travel restrictions as a result of the COVID 19 Pandemic. It is understandable that during the COVID-19 Pandemic, many countries and regions imposed quarantines, entry bans, or other travel restrictions for citizens of or recent travelers to the most affected areas. However, these travel restrictions have since been eased, but the Petitioner is yet to return to the matrimonial home. Indeed, Section 2 (1) (c) of Act 367 provides that to prove that the marriage has broken down beyond reconciliation, the Petitioner must show *'that the Respondent has deserted the Petitioner for a continuous period of at least Two (2) years immediately preceding the presentation of the Petition'*. However, for section 2 (1) (c) of Act 367 to apply, there must have been at least 2 years of desertion by the Respondent prior to the filing of the Petition. The Petitioner left the matrimonial home in 2020, it has been Three (3) and she is yet to return. I am therefore

satisfied that the conduct of the Petitioner amounts to desertion which is a ground for dissolution of marriage.

Additionally, the Petitioner further alleged adultery on the part of the Respondent. The Respondent on the other hand admitted to having committed adultery when he stated emphatically that due to the absence of the Petitioner, he had no option to enter an amorous relationship with another woman. From the testimony of the parties therefore, it is evident that during the pendency of the marriage, the Respondent engaged in adulterous relationships with another woman, other than the Petitioner. Adultery is recognized as one of the grounds for dissolution of marriage under Section 2(1)(a) of the Matrimonial Causes Act 1971 (Act 367). The learned Justice **Hafisata Amaleboba** in the case of **Comfort Nimako Annor vs. Stephen Annor**; Suit No: DM/00083/2015, held that *'...the fact that the Respondent committed adultery, is not sufficient ground for dissolution of the marriage. By section 3 of Act 367, if the Petitioner continued to live with the Respondent for more than Six (6) months after the alleged adultery, then she cannot rely on same for purposes of dissolution of the marriage...'* In this instant case however, the evidence on record shows that the Petitioner left the matrimonial home sometime in 2020, Four (4) days after the celebration of the marriage and has since not returned. The Respondent however committed the adultery during the subsistence of the marriage and within the period in which the Petitioner had left the matrimonial home, thus satisfying one of the grounds for the dissolution of marriage as encapsulated in Section 2 of Act 367. Thus, the Court finds it that the marriage has indeed broken down beyond reconciliation on grounds of desertion, adultery and the fact that the parties have been unable to reconcile their differences. In the case of **Kotei vs Kotei** [1974] 2 GLR 172, the court held 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'*.

Conclusion

It is the courts contention that on the totality of the evidence presented before the court, the union between the parties in the name of marriage had indeed ceased to exist. The Court is satisfied that the marriage has broken down beyond reconciliation. I will grant the order for the dissolution of the parties' marriage not only on grounds of desertion but adultery as well as the fact that parties after diligent efforts have been unable to reconcile their differences. It is therefore decreed that the marriage celebrated between the Petitioner and the Respondent under the Marriage Ordinance (Cap 127) at the Office of the Principal Registrar of Marriages, Accra on the 9th of March, 2020 be and is hereby dissolved forthwith on the ground that same has broken down beyond reconciliation. The Marriage Certificate is cancelled.

Petitioner absent, Lawful Attorney present.

Respondent present.

Mitsui Odidja holding the brief of Yvonne Amegashie for the Petitioner present.

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