

IN THE CIRCUIT COURT HELD AT DANSOMAN ON TUESDAY, THE 16TH DAY OF JANUARY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT, THE CIRCUIT COURT JUDGE.

SUIT NO. CCD/C4/28/23

REGINA OWUSU NSIAH

PETITIONER

VS

DANIEL KOFI EFISAH

RESPONDENT

-----JUDGMENT

-----Background:

The Petitioner in a Petition issued at the Registry of this Court on the 19/6/23 stated that she was lawfully married to the Respondent on the 6th July, 2019 at Adabraka Official Town Presby Church, Accra. After the marriage, the parties lived together for a period of time at Gbawe Telecom and later moved to stay with Petitioner's mother at Sahara Gardens, Dansoman where the marriage was blessed with one issue by name Jovanni Kwekuboakye Efisah, aged Three (3) years. It is the Petitioner's case that the marriage has broken down beyond reconciliation as the Respondent has behaved in such a way that she cannot be expected to live with him as husband and wife and stated further that the marriage had been dissolved at custom since June 2021. She prayed for the following reliefs;

- a) Dissolution of the Ordinance marriage celebrated between the parties as having broken down beyond reconciliation.
- b) Custody of the child be granted to the Petitioner with access to the Respondent.
- c) An order for the Respondent to maintain the child with an amount of Ghc500.00 a month, pay school fees and hospital expenses etc.
- d) Any other order (s) the court may deem fit and just.

The basis for the Petitioner's claim is that the Respondent adequately maintain his family and after the early stages of delivering our son, which was during the Covid 19 Pandemic, the Respondent kept returning home late during the lock down with recklessness. She stated again that the Respondent committed adultery with their next door neighbor and this has caused her to be emotionally and psychologically stressed. She stated further that the Respondent has been disrespectful and untruthful towards her and her family members of which he was once confronted by the Petitioner's mother and the Respondent vacated the matrimonial home with all his belongings leaving nothing for the Petitioner and their son to sleep on. Additionally, communication has become ineffective and sexual intimacy between the parties has ceased since 2021. The Petitioner concluded by stating that several attempts made by members of both families and well-being friends to reconcile the differences between the parties have not been successful. Consequently, the marriage was dissolved at custom and as such she prays for the dissolution of the marriage between the parties.

It is important to state that the Respondent never filed an Answer to the Petitioner but was in Court after being served with Hearing Notices of which he informed the Court to go ahead with the dissolution as he had no intention of filing any process.

Issues and Analysis

In view of the above, the following are the issues for determination;

1. Whether or not the Court ought to dissolve the marriage celebrated between the parties as having broken down beyond reconciliation.
2. Whether or not custody of the child be granted to the Petitioner with access to the Respondent.

3. Whether or not an order be made for the Respondent to maintain the child with an amount of Ghc500.00 a month, pay school fees and hospital expenses etc.

The first issue is whether the marriage ought to be dissolved on grounds that same has broken down beyond reconciliation. Indeed, the Matrimonial Causes Act, 1971 (Act 367) provides in its Section 1(2) that *“The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”*. Section 2 of Act 367 is on Proof of breakdown of marriage and Section 2(1) of Act 367 provides that *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.*

To determine whether the marriage has broken down beyond reconciliation, the Petitioner has to satisfy the Court of one or more of the grounds under section 2(1) of Act 367 as proof that the marriage has broken down beyond reconciliation. The Court also has to satisfy itself that the grounds for dissolution canvassed by the Petitioner falls within Section 2 of Act 367. Hence, the need to examine the evidence of the Petitioner as presented in Court. The Petitioner testified by repeating all of the averments contained in the Petitioner but added that when she

threatened to leave the marriage, the Respondent replied that the process should be hastened because there are many girls willing to come-in to perform my duties as a wife. She testified further that the Respondent occasionally sends her messages inviting her to proceed with the divorce proceedings. The Petitioner concluded her testimony by praying for the dissolution of the marriage. Although the Respondent informed the court that he does not intend to testify, during trial however, the Respondent cross-examined the Petitioner by asking just one question as follows;

Q: *Why do you want a divorce?*

A: *I want a divorce because you are not responsible, you do not help in maintenance of the child. Again, you cheated with our next door neighbor and I caught you and because of all these, things are not going on smoothly between us.*

It is interesting to note that the Respondent abruptly ended the cross-examination and failed to ask further questions on all the allegations levelled against him by the Petitioner. As such that aspect of the Petitioner's testimony remains unchallenged. Consequently, the Court finds that the marriage between the parties has indeed broken down beyond reconciliation pursuant to Section 2(1)(a) as the Petitioner has satisfied the Court that '*... the Respondent has committed adultery and that by reason of the adultery the Petitioner finds it intolerable to live with the Respondent;* as well as section 2 (1)(f) that '*... the parties to the marriage have, after diligent effort, been unable to reconcile their differences.*

The next issue for determination is whether or not custody of the child be granted to the Petitioner with access to the Respondent. In making a determination, the Court is guided by Section 2 (1) of **The Children's Act (1998) Act 560** states that '*...the best interest of the child shall be paramount in any matter concerning a child...*' and Section 2 (2) of Act 560 supra also provides that '*...the best interest of the child shall be the primary consideration by any Court, person, institution or other body in any matter concerned with a child...*'. It must be stated categorically that there is

no prima facie right to the custody of a child in either parent, but the Court shall determine solely which parent is for the best interest of the child, and what will best promote its welfare and happiness. In **Bentsi-Enchill vs. Bentsi-Enchill** [1976] 2 GLR, the Court held that *'the primary concern of the Court is to ensure that there are appropriate safeguards for a child's general welfare, irrespective of the interests of the parents... Normally the mother should have the care and control of young or sickly children ... or those who for some other reason need a mother's care'*. The only child of the marriage is barely Three (3) years old and that age is a tender age where a mother's care will be very much needed.

The final issue is whether or not an order be made for the Respondent to maintain the child with an amount of Ghc500.00 a month, pay school fees and hospital expenses etc. Section 22(3)(c) of Act 367 provides that a Court may order for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage'. Similarly, Section 47 (1) of Act 560 on the Duty to maintain a child states that *'...a parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessaries of health, life, education and reasonable shelter for the child'*. It is trite that in making Maintenance Orders, the Court must consider the family member from whom maintenance is claimed and he or she should be able to afford the maintenance that is claimed. Thus, that person must have the means to pay and the means test is such that the person who is liable to pay maintenance must have the MEANS and the maintenance so claimed must be REASONABLE. From the record, it is the Petitioner's case that she is currently unemployed whilst the Respondent works at a financial Institution. Both parties did not lead any evidence on their respective ages and the Respondent never disclosed his earnings. The Court however observes that the Respondent being currently in employment is in a position to adequately maintain the only child of the marriage.

Conclusion

On the totality of the evidence, the court finds and orders as follows;

1. That the marriage celebrated between the parties on 6th July, 2019 under Ordinance Marriage (CAP 127) at Adabraka Official Town Presby Church, Accra is hereby dissolved this 16th day of January, 2024 on the ground that same has broken down beyond reconciliation. The Marriage Certificate is accordingly cancelled.
2. The Petitioner shall have custody of the child of the marriage and the Respondent shall have reasonable access to the child in a manner that is best for the child and works for both parties.
3. The Respondent shall pay an amount of Five Hundred Ghana Cedis (Ghc500.00) monthly towards the maintenance of the child and shall pay school fees and medical bills of the child.
4. All other issues concerning the child shall be discussed by the parties and joint decision(s) shall be taken. Neither the Petitioner nor the Respondent shall unreasonably withhold consent on matters concerning the welfare of the child.
5. There shall be no orders as to costs.

HALIMAH EL-ALAWA ABDUL-BAASIT
CIRCUIT COURT JUDGE.