

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON FRIDAY THE 15TH DAY
OF DECEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO.C5/132/23

EBENEZER KWABENA NKRUMAH

PETITIONER

VRS.

EFUA SEKYIWAA QUAYSON

RESPONDENT

PARTIES

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The petitioner, formerly a bachelor and the respondent formerly a spinster got married on 27th November, 1997 under the Marriage Ordinance, Cap 127 at the Assemblies of God Church, Community 4 Tema. Thereafter, the parties cohabited at Tema and the marriage is blessed with three children namely; Gabriel Nkrumah, Rhoda Nkrumah and Joseph Nkrumah. The petitioner is currently unemployed and the respondent is also a trader. There was a previous proceeding regarding this marriage in this Court in suit *No. C11/151/23*, when the respondent filed a Motion Ex-parte for leave to issue divorce petition to be served outside the jurisdiction which was granted by the court on 28th April, 2023 but the respondent failed to issue the divorce petition after obtaining the leave of the court. It is subsequent to that proceeding that the petitioner, currently within the jurisdiction of the Court filed the instant divorce petition on 19th July, 2023, praying this court for the dissolution of the marriage celebrated between the parties on 27th November, 1997 at the Assemblies of God Church, Tema Community 4.

The petitioner avers that the respondent has behaved in such a way that he cannot reasonably be expected to live with her as husband and wife. The petitioner states that after the marriage, he travelled abroad to seek greener pastures to enable him to

adequately provide for his family. The petitioner states that whilst living abroad and at all times material to the marriage, he has been a responsible father and husband to the children and the respondent herein. He states that whilst living abroad, the respondent rented out his house which served as the matrimonial home without his knowledge and consent. The petitioner avers that the respondent used the money she realised to rent another house to pursue her selfish interest. The petitioner alleges that he was reliably informed later that the respondent was having amorous relationship with another man. Based on that, he travelled to Ghana to verify the allegation and upon arriving in Ghana, he called the respondent several times to pick him up from the airport to the house but to avail no until his sister intervened to send him home.

The petitioner further avers that when he requested the respondent to take him to where she had relocated to, she initially refused and when she finally took him to the house, he observed some unusual behaviour on the part of the respondent. When he confronted her on the allegation of infidelity, she admitted being in an amorous relationship with another man. He then advised the respondent to end the relationship in order not to jeopardise their marriage. The petitioner further claims that the respondent mentioned all that the other man was doing for her that he was not doing and he asked her to end the relationship and that he would mend his ways. The petitioner further states that he called the other man and begged him to end the relationship with the respondent. The petitioner says although it was not easy complying with the demands of the respondent, he tried his best due to the love he has for the respondent but she continued in her relationship with the said man. The respondent and her family members later returned the customary drinks to his family which signifies that the customary has been dissolved.

The petitioner states that all efforts made by friends and families to reconcile their differences have proved futile. The petitioner says that the respondent informed him that she has moved on and she is now married to that man in question. Consequently,

the petitioner states that he is of the firm belief that the marriage has broken down beyond reconciliation and ought to be dissolved.

The respondent filed appearance on 26th July, 2023 and filed consent to the dissolution of the marriage in which she denies the allegations made against her but states that she fully consents to the dissolution of the marriage. The court proceeded to take evidence for the petitioner to prove that indeed the marriage has broken down beyond reconciliation to warrant a decree for the dissolution of the marriage.

LEGAL ISSUE

Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

ANALYSIS

Under Section 1 of the Matrimonial Causes Act, 1971(**Act 367**), the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts set out in **Section 2(1) of Act 367**, namely, adultery, unreasonable behaviour, desertion, failure to live as husband and wife for at least two years, failure to live as man and wife for five years and irreconcilable differences. To promote reconciliation as far as may be practicable, **Section 8** enjoins the petitioner to inform the court of all attempts made to effect reconciliation. Further to that, Act 367 imposes an obligation on the court to enquire carefully into the facts alleged and shall refuse to grant the petition if there is a reasonable possibility for reconciliation.

In the case of **Mensah v. Mensah** [1972] 2 GLR 198, the court held in its holding 1 that:

“Under Act 367, s. 2(2) the court has to inquire into the facts alleged by the parties. However, the court does not have to hold such inquest in all cases. Where the evidence of a petitioner stands uncontradicted an inquest is not necessary unless it is suspected that the evidence is false or the true position is being hidden from the court.”

The petitioner in the instant case relies on the fact that the parties have irreconcilable differences between them and after diligent efforts, the parties have been unable to reconcile their differences. To succeed under **section 2(1)(f)**, there must be evidence that irreconcilable difference exists between the parties within the meaning and intendment of **section 2(1)(f)** of the Matrimonial Causes Act, 1972(Act 367). In **Mensah v. Mensah** [1972] 2 GLR 198 -209 @ 206 the court held that for section 2(1) (f) to apply, the following elements must be present;

- (a) There should exist differences between the parties.*
- (b) They should have made diligent efforts to reconcile these differences,*
- (c) They should have been unable to effect the reconciliation of the differences.*

The petitioner repeated all his averments on oath stating that after their marriage in the year 1997, he travelled outside the country in search of greener pastures. Whilst living abroad, the respondent rented out their matrimonial home and then secured an alternative accommodation with the rent proceeds. According to him, he received reports of the respondent engaging in extra marital affairs and when he came to Ghana to ascertain this information for himself, the respondent failed to take him to her new accommodation. The petitioner further testified that later, when the respondent sent him to her place of abode, he noticed that the respondent was living with a man. The respondent then gave him a litany of things that the said man was doing that he was not doing. He then pleaded with the respondent to quit the relationship with the said man and in turn, he would amend his ways and continue doing all that was lacking on his part but the respondent remained adamant and continued in her relationship with the said man. When various attempts to reconcile their differences proved futile, they

both agreed to the dissolution of the marriage and the respondent's family returned his customary drinks. For sometime now, they have not lived together as husband and wife.

The respondent also testified in her evidence in-chief that they got married under the Marriage Ordinance (Cap 127) at the Tema Metropolitan Assembly on the 5 day of December, 2002. The respondent explained that they in fact got married in the year 1997 at the Assemblies of God Church, Tema Community 4 but the said marriage was validly dissolved by a court. When the petitioner returned from abroad, he again sought her hand in marriage and they remarried this time at the Tema Metropolitan Assembly. Indeed, the marriage certificate filed in the Registry of this court confirms the contention of the respondent that they got married in the year 2002 and that marriage is the subject matter of the divorce petition in this court. The respondent is agreeable that this second marriage celebrated between the parties has broken down beyond reconciliation and that she has given her full consent to the dissolution of the marriage celebrated between the parties. Based on that, the respondent chose not to cross-examine the petitioner on the various allegations leading to the breakdown of the marriage. The petitioner also elected not to challenge the evidence of the respondent that the marriage in issue here was contracted in the year 2002 although they had been previously married to each other in the year 1997 but the same marriage was dissolved.

On the totality of the evidence led before me, I find that the ordinance marriage subsisting between the parties was contracted on 5th December, 2002 at the Chamber of the then Tema Municipal Assembly. The court also finds as a fact that differences exist between the parties and the parties after diligent efforts have not been able to reconcile their differences. I therefore hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I therefore grant the petition for the dissolution of the marriage celebrated between the parties on 5th December, 2002.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly enter judgment for the petitioner in the following terms;

1. I hereby grant a decree for the dissolution of the marriage celebrated between the parties on 5th December, 2002 under the Marriage Ordinance, Cap 127 at the Chamber of the Tema Municipal Assembly.
2. I hereby order for the cancellation of the marriage certificate *No. ROM/0622/2002*.
3. There shall be no order as to costs.

SGD.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**