

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON FRIDAY THE 24TH
DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO.C5/121/23

HELLEN AMEZAH DOGBEY

----- **PETITIONER**

VRS.

ERNEST ATTA ETORNAM DOGBEY

----- **RESPONDENT**

PARTIES

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The parties herein got married under **Part III of the Marriages Act (1884-1985)** on 25th February, 2006 at the St. Augustine Catholic Church, Ashaiman. Subsequently, the parties cohabited at Lebanon, Ashaiman and there is no issue to the marriage. There has also not been any previous proceeding regarding the said marriage in any court. The petitioner filed the instant petition on 23rd June, 2023, alleging that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation and prayed the court for the sole relief of the dissolution of the marriage contracted between the parties.

The petitioner avers that for the period they lived together as husband and wife, their relationship was normal and blissful until the problem of child bearing erupted. This problem made the couple incompatible and they started blaming each other which generated hatred between them. As a result, they could not sit down as married couple to discuss their problems. The petitioner says she got sick

and the respondent failed to care for her and this made her furious and felt rejected by the respondent and his family leading her to move out of the matrimonial home. The petitioner avers that she informed her family and a meeting was held to resolve their issues but it generated a heated argument hence their families were unable to reconcile their differences. She then opted for a dissolution of the marriage since it had become practically impossible for them to live as husband and wife. The petitioner avers that the parties have led their separate lives for about three years prior to the present petition for divorce and since then they have not had sex or shared any form of intimacy. The petitioner further says that there is no cordial relationship between them and she has lost interest and confidence in the marriage. Again, the petitioner claims that both families met and petitioner's family presented drink to the respondent's family to signify that the customary marriage had been dissolved. The petitioner maintains that all efforts made by pastors, families and friends to resolve their differences have proved futile. The petitioner therefore states that she is of the firm belief that their marriage has broken down beyond reconciliation and prays the court for the dissolution of the marriage.

Upon due service of the petition for divorce on the respondent, he entered appearance and filed an answer to the petition on 18th July, 2023. The respondent states that he is agreeable that the marriage celebrated between the parties has broken down beyond reconciliation but denied the litany of allegation of unreasonable behaviour levelled against him by the petitioner. According to him, it is the petitioner who openly told him that she was no longer interested in the marriage. The respondent further avers that although the marriage was plagued with the issue of childlessness, he was not perturbed but rather trusted in the timings of God but the petitioner did not understand him. The respondent admits that the issue of child birth made them incompatible simply because although

they lived under one roof, there was no cordial relationship expected in a marital union between them. According to the respondent, when their families met over the issue in an attempt to reconcile them, the petitioner was not prepared for reconciliation and categorically informed him that she had moved on. As a result, he has also lost interest in the marriage and thus consents to the dissolution of the marriage celebrated between them since the said marriage has broken down beyond reconciliation.

Based on the pleadings, the court set down the following issue for determination.

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**; which are adultery, unreasonable behaviour, desertion, failure to live as man and wife for two years preceding the presentation of the petition for divorce, failure to live as man and wife for a continuous period of five years preceding the presentation of the petition, and irreconcilable differences. Section 2(3) of Act 367 enjoins the courts to enquire into the circumstances alleged and only grant the decree when there is no reasonable possibility for reconciliation. In the case of **Adjetey v. Adjetey** [1973] 1 GLR 216, the court held in holding 2 that:

“On a proper construction of section 2 (3) of the Matrimonial Causes Act, 1971

(Act 367), the court could still refuse to grant a decree even where one or more of the facts set out in section 2 (1) had been established. It was therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage had broken down beyond reconciliation would not be enough.”

From the pleadings filed by the parties and the evidence led, the petitioner relies on the fact that for more than two years preceding the presentation of the petition for divorce, the parties had not lived as husband and wife and the respondent consents to the dissolution of the marriage coupled with irreconcilable differences. **Section 2(1)(1)(d)** of the Matrimonial Causes Act, 1971(Act 367), *“for the purpose of showing that the marriage has broken down beyond reconciliation, the petitioner shall satisfy the Court that the parties to the marriage have not lived as man 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 such consent shall not be unreasonably withheld, the court may grant a petition for divorce under this subsection notwithstanding the refusal.”*

To succeed on this ground, the respondent must consent to the grant of the decree for divorce; however, consent of the respondent should not be unreasonably withheld. See the case of **Addo v. Addo** [1973] 2 GLR 103 at 106. In the case of **R v. Creamer** [1919] 1 K.B. 564 at 569 the court per Darling J. said;

“In determining whether a husband and wife are living together the law has to have regard to what is called consortium of the husband and wife. A husband and wife are living together, not only when they are residing together in the same house, but also when they are living in different places, even if they are separated by the high seas, provided the consortium has not been determined”

Furthermore, the petitioner must prove that she ceased to recognise the marriage as subsisting and never intended to return and the respondent must consent to the dissolution of the marriage. The consent may be given in the answer to the petition or in the form of cross-petition. It may also take the form of consent to the dissolution during attempts at settlement.

The petitioner, in her testimony before the court maintains that along their marital journey, the respondent behaved unreasonably which caused her so much pain and makes it impossible for her to remain married to the respondent. The petitioner states that she believes that the marriage between them has irretrievably broken down. The petitioner attributes their marital woes to their inability to have children. This issue, according to her, robbed them of the joy in the marriage which made them incompatible and they started blaming each other. The relationship between the parties has deteriorated to the point that the parties cannot see eye to eye. According to the petitioner, due to the challenges in the marriage, she got sick and the respondent refused to care for her. She therefore felt rejected by the respondent and his family which caused her to move out of the matrimonial home. Consequently, for three years prior to the presentation of the petitioner for divorce, they had not lived as husband and wife since there has not been any conjugal relationship between them and there is no possibility of them resuming cohabitation as husband and wife.

Additionally, the petitioner testified that both families of the parties had a meeting to resolve the issues in the marriage but their families were not successful at reconciling their differences since she opted for the dissolution of the marriage. Based on the fact that she has lost trust, interest and confidence in the marriage,

her family presented the customary drinks to the respondent's family to signify that the customary marriage has been dissolved. She maintains that every effort made by pastors, families and friend to resolve their differences has proved futile and that the marriage has broken down beyond reconciliation.

The respondent on his part testified that their marriage has broken down beyond reconciliation but did not deny the allegation of unreasonable behavior and maintains that it is the petitioner who stated that she was no longer interested in the marriage. The respondent admits that at a point they became incompatible and there was no relationship between them though they lived under the same roof. Thus, for three years, the marriage has not been consummated. During the period of their separation, due to irreconcilable differences between them, a meeting was held over their issues but the petitioner was not prepared for any reconciliation and she informed him of her intention not to continue in the marriage. He states that he agrees that they have an unhealthy marital relationship and it would be better to have the marriage dissolved for them to move on in life. He further admits that the customary marriage has been dissolved since various attempts made by their families and friends to resolve their differences have proved futile. In the circumstances, he wholly consents to the dissolution of the marriage celebrated between them since the said marriage has broken down beyond reconciliation.

From the evidence adduced by the parties, what occasioned the problems in the marriage is their inability to have children. It is settled law that the inability of parties to have children is not a ground for the dissolution of the marriage. Thus, in the case of **Mensah v. Mensah** [1972] 2 GLR 198, the Court held at page 206 that *“the inability of a spouse to have an issue is not a difference; there may*

however be a difference between the spouses as to how to remedy the situation.”

The court further held that:

“In seeking to prove failure to reconcile differences, differences must be distinguished from disputes. The differences must be between spouses. They must be such as to make it impossible for the marriage to subsist. Where neither spouse desires a child, failure to have one is not a difference; neither can the courts introduce barrenness or sterility as essential facts under section 2(1) in relation to monogamous marriage. But where neither barrenness nor sterility is admitted and a hopeless disagreement arises as to how to have a child, and a desire for a child is strongly manifested by either spouse, a difference exists under section 2(1) (f).”

In the instant case, the differences between the parties caused the petitioner to abandon the matrimonial home which has resulted in the failure of the parties to live as husband and wife for a continuous period of three years immediately preceding the presentation of the petition for divorce. The respondent has not opposed the dissolution of the marriage but appreciates the challenges they faced in the marriage and in the answer to the petition and in his evidence before the court consents to the dissolution of the marriage. There is also ample evidence that various attempts made by the parties to reconcile their differences have proved futile. The petitioner has returned the customary drink to the respondent's family evidencing the fact that the marriage celebrated between the petitioner and respondent has irretrievably broken down. I accordingly hold that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce.

CONCLUSION

In conclusion, I hold that the marriage between the parties has broken down beyond reconciliation. I accordingly grant the petition for divorce and 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 25th February, 2006, at the St. Augustine Catholic Church, Ashaiman.
2. The Registrar of the court shall cancel the original copy of the marriage certificate number 01/06.
3. There shall be no order as to costs.

SGD.
H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)