

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

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**SUIT NO.C5/120/23**

**KOFI BUACHIE**

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**PETITIONER**

**VRS.**

**AMA OSEI BOADUM**

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**RESPONDENT**

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**PETITIONER ATTORNEY**

**PRESENT**

**RESPONDENT**

**PRESENT**

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**NO LEGAL REPRESENTATION**

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**JUDGMENT**

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**FACTS:**

The petitioner and the respondent are both Ghanaians ordinarily resident in the United Kingdom got married under **Part III of the Marriages Act (1884-1985)** at the Tema Metropolitan Assembly on the 9<sup>th</sup> day of February, 2010. There is one issue to the marriage namely; Victoria Akua Adoma Osei Boadum. The petitioner had two children prior to the celebration of the marriage to the respondent. The respondent currently has custody of the only issue of the marriage. The petitioner states that at the time of their marriage, they were both living in the United Kingdom and came down to Ghana to have the marriage celebrated after which they both went back to the United Kingdom.

On 23<sup>rd</sup> June, 2023, the petitioner, suing through his Lawful Attorney, filed the instant petition for divorce pursuant to leave granted by the court on 16<sup>th</sup> June, 2023, alleging that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation and prayed the court for the dissolution of the marriage celebrated between them and access to the child of the marriage.

The petitioner states that in the year 2014, he filed a Divorce Petition before the Circuit

Court which was struck out for want of prosecution. The petitioner states that the respondent has behaved in such a way that he cannot reasonably be expected to live with her as a result of the behaviour. The petitioner states that a year after the marriage, the respondent exhibited gross disrespect towards the petitioner and the respondent has been too jealous to the extent that she does not want the petitioner to talk or have anything to do with the opposite sex. The respondent would always pick up unprovoked quarrels with the petitioner whenever she sees the petitioner in a conversation with the opposite sex. In the year 2016, the parties herein visited Ghana and when the respondent met his two children from a previous relationship in Ghana, her attitude towards their marriage changed for the worse.

The petitioner further avers that the respondent has denied him sex for five (5) years and the parties herein do not do things in common as married couples ought to do. The petitioner further states that communication between the parties has broken down. The respondent leaves the matrimonial home unceremoniously to spend some days with her family and friends without informing the petitioner. The parties herein are not living under the same roof for more than five years now. The petitioner states that the long absence of the respondent has caused him emotional trauma and that all efforts made by families and friends to resolve their differences have proved futile. According to the petitioner, the customary marriage has been dissolved and the petitioner has totally lost interest and confidence in the marriage and cannot reasonably be expected to wait in vain for the respondent who does not believe in the existence of their marriage.

The notice of the petition for divorce and all subsequent processes were served on the respondent at her address in the United Kingdom but she failed to enter appearance and to defend the suit. The court therefore granted leave to the petitioner's attorney to lead evidence to satisfy the court that indeed the marriage celebrated between the parties has broken down beyond reconciliation.

## **LEGAL ISSUE**

1. Whether or not the Court has jurisdiction to determine the divorce petition between the parties.
2. Whether or not the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.
3. Whether or not the court can grant access to a child resident in the United Kingdom.

## **ANALYSIS**

### **ISSUE 1: Whether or not the Court has jurisdiction to determine the divorce petition between the parties.**

**Section 31** of the Matrimonial Causes Act, 1971(Act 367) provides the general matrimonial jurisdiction and states that the Court shall have jurisdiction in proceedings under Act where either party is a citizen domiciled in Ghana or has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings. In the case at bar, both the petitioner and the respondent are Ghanaian citizens ordinarily resident in the United Kingdom. The parties met and fell in love in the UK and returned to Ghana to celebrate their marriage under the Ordinance. The parties are still resident in the United Kingdom but the petitioner has filed the instant petition for divorce praying the court for the dissolution of the marriage and access to the only child of the marriage. Per the provisions in **Section 31** of the Matrimonial Causes Act, 1971(Act 367), the court has jurisdiction to determine the issue between the parties since they are both Ghanaian citizens and they celebrated the marriage in Ghana.

### **ISSUE 2: Whether or not the ordinance marriage celebrated between the parties has broken down beyond reconciliation.**

Under 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. See **Section 1** of Act 367. To succeed, a petitioner is required to plead and prove one of the

facts set out in **Section 2(1)** of Act 367 namely, adultery, unreasonable behaviour, desertion, failure to live as man and wife for two years, failure to live as man and wife for five years, irreconcilable differences.

The parties are also mandated to inform the court about all attempts made at reconciliation and the court shall refuse to grant a petition for divorce if there is a reasonable possibility for reconciliation. Also, the court has a statutory duty to enquire into all the facts alleged in support of the fact that the marriage has broken down beyond reconciliation and the court shall decline to grant a dissolution of the marriage if there is a reasonable possibility for reconciliation. See the case of **Donkor v. Donkor** [1982-1983] GLR 1158. This legal proposition is amplified in the case of **Danquah v. Danquah** [1979] GLR 371, where the court held in its holding 2 that:

*“The Matrimonial Causes Act, 1971 (Act 367), imposed on the court a species of restriction which was unique. For having established by section 1 (2) that the sole ground for granting a petition should be that the marriage had broken down beyond reconciliation and having by section 2 (1) laid down those facts the proof of which should, prima facie, show that the marriage has so broken down, section 2 (3) authorised the court to grant a petition for divorce only when the court was satisfied, on all the evidence, that there has been an irreconcilable breakdown of the marriage.”*

The petitioner in the instant petition has set out to prove that for at least five years immediately preceding the presentation of the petition for divorce, they have not lived as man and wife. To succeed under **Section 2 (1)(e)**, the petitioner is required to prove that for a continuous period of five years immediately preceding the presentation of the petition for divorce, she and the respondent had not lived together as man and wife. The law does not require proof of any matrimonial offence committed by the other spouse and there is no need to establish blame. Proof of not having lived together as man and wife for a continuous period of at least five (5) years coupled with inability of the parties to reconcile to resume cohabitation as husband and wife shall suffice. In the case of **Kotei v. Kotei** [1974] 2 GLR 172, where the High Court presided over by

Sarkodie J, (as he then was) in espousing on **section 2(1) (e)** of Act 367 held @ 175-176 that:

*“Proof of five years’ continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage”.*

The court continued to say at page 176 that:

*“There must be a total breakdown of the consortium vitae. Mere physical separation is not sufficient; a petitioner has to prove not only the factum of separation but also that he or she has ceased to recognise the marriage as subsisting and intended never to return to the other spouse... Therefore, it seems the state of mind of the parties needs to be considered, that is, whether they treated the marriage as at an end. It may not matter whether the state of mind of one of the parties was not communicated to the other.”*

The petitioner’s Lawful Attorney, Benjamin Amoah testified on behalf of the petitioner and tendered in evidence as **Exhibit “A”**, a notarised power of Attorney. The petitioner’s Attorney testified in line with the petition for divorce that after their marriage, the respondent behaved unreasonably and due to the unreasonable behaviour, she was compelled to commence divorce proceedings before the Circuit Court Tema, in the year 2014 but was struck out for want of prosecution. The respondent states that the petitioner has behaved in such a way that the petitioner cannot reasonably live with her as husband and wife. Again, the respondent exhibited gross disrespect in the marriage towards the petitioner by insulting him in public which causes disaffection to the petitioner. The respondent has denied the petitioner sex for over five years and do not do things in common as married couples. The respondent is too jealous to the extent that when she sees the petitioner in conversation with the opposite sex she rains insult and curses without any provocation. The respondent does not have a good relationship with his other two children and in the year 2016, when the parties visited Ghana and she met them, her commitment to the marriage changed for the worse. The respondent always unceremoniously left the matrimonial home to spend some days with her family

and friends. The parties herein have not lived together as husband and wife under the same roof for over five years. The respondent is living a separate life which is causing the petitioner emotional trauma. The petitioner's attorney further testified that all efforts made by family members to reconcile the parties have proved futile. The petitioner therefore states that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation and ought to be dissolved.

**ISSUE: Whether or not the court can grant access to a child resident in the United Kingdom.**

The petitioner also prays for access to the only child of the marriage since the respondent who has access has denied him access to the child of the marriage. Presumably, the child is outside the jurisdiction and since she lives with the respondent who lives in the United Kingdom.

Under **Section 22** of the Matrimonial Causes Act, the court on its own motion or on an application by a part award custody of a child, regulate the right of access to the child and provide for the education and maintenance out of the property or income of either or both parties. This means that the issue of maintenance of children is a shared responsibility between the parties legally liable to maintain the child. In the case of **Ofori v. Ofori** [1981] GLR 745, the court held in its holding 2 that:

*“Under Act 367, s. 22 the court had power, either on its own initiative or on application of either party, to make in respect of any child any order which it thought reasonable and for the benefits of the child. The custody order might be awarded to any person, regulate the right of access of any person to the child and provide for the education and maintenance of the child out of property or income of either or both parties to the marriage. An order of custody might even be made although the child was already out of the jurisdiction. And under section 25 (2) of Act 367, the court might order any person to return a child to the jurisdiction.”*

I must emphasise that every child has a right of access to the parent unless the right of the child was being abused or that it will be detrimental to the welfare of the child to have access to the parent. The petitioner states, without challenge that the respondent who has custody of the child has denied him access to the child. The petitioner does not contest custody of the child but only wants access to the child. The evidence does not state the distance between where the petitioner resides in the United Kingdom and where the child lives with the respondent in the United Kingdom. The court also does not have the benefit of the school calendar of the child to properly manage access to the child. The respondent therefore shall maintain custody of the child with reasonable access to the petitioner. The child shall spend half of her vacation period with the petitioner.

### **CONCLUSION**

In conclusion, I hold that the Ordinance Marriage celebrated between the petitioner and the respondent 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 ordinance marriage celebrated between the petitioner and the respondent on 9<sup>th</sup> February 2010, at the Tema Metropolitan Assembly.
2. The Petitioner shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. I hereby grant custody of the only issue to the marriage namely; Victoria Akua Adoma Osei Boadum to the respondent with reasonable access to the petitioner. The child shall spend half of her vacation period with the petitioner and the parties shall jointly contribute towards the maintenance of the child.
4. There shall be no order as to costs.

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