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.C5/101/23

ROSEMOND AMOAH ----- PETITIONER

VRS.

FRANCIS CRIFFORD MENSAH ----- RESPONDENT

PARTIES PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The parties herein go married under **Part III of the Marriages Act (1884-1985)** Cap 127 at the Gospel Ambassadors Ministry at Agona Swedru on the 17th August, 1996. Thereafter, the parties cohabited at Afienya within the jurisdiction of the Court. The marriage is blessed with four issues namely; Abigail Mensah, aged 26 years, Kezia Mensah, aged 22 years, Jochebed Mensah, aged 18 years, Francis N. Mensah, aged 14 years at the time of filing the petition for divorce. On 26th April, 2023, the petitioner filed the present petition for divorce claiming that the marriage celebrated between the parties had broken down beyond reconciliation and prayed the court for the dissolution of the marriage celebrated between the parties.

The petitioner alleges that the respondent has behaved in such a way that she cannot reasonably be expected to live with the respondent. The particulars of behaviour alleged are that the respondent is always at loggerheads with her whenever there is misunderstanding between them and this has kept on for so long thinking that respondent will change. This behaviour of the respondent

started right from the onset of their marriage and has continued till date. The petitioner further claims that she has lost interest in the marriage with the respondent and the parties are better off living separately. The petitioner avers that respondent does not have time for the family and is always busy with his job since the inception of their marriage. The petitioner says that she was optimistic that things would change but there was no improvement in the attitude of the respondent. The petitioner further states that there is total lack of love between the parties and there has not been any form of sexual intimacies between them. She states that all efforts made by pastors, counsellors, friends and members of their families to resolve their differences have proved futile and that both parties have agreed that the marriage be dissolved since the customary marriage has been dissolved by their family members and settlement has been done accordingly. The petitioner therefore maintains that the marriage celebrated between the parties has broken down beyond reconciliation.

The respondent upon service entered appearance to the petition and filed consent to the dissolution of the marriage in which he denies the allegation of unreasonable behaviour but consents to the dissolution of the marriage celebrated between the parties.

LEGAL ISSUE

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

ANALYSIS

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. 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.** The parties in the instant petition, set out to prove fact 2(1)(f) namely; *that the parties have after diligent effort been unable to reconcile their differences.* Under Act 367, a court may refuse to grant a petition for divorce notwithstanding the fact that a petitioner has proved any of the facts in **section 2(1)**, if there is reasonable possibility of reconciliation. In the case of **Donkor v. Donkor** [1982-1983] GLR 1158, the High Court, Accra, per Osei-Hwere J, held that:

"The Matrimonial Causes Act, 1971 (Act 367), does not permit spouses married under the Marriage Ordinance… to come to court and pray for the dissolution of their marriage just for the asking. The petitioner must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act for the purpose of showing that the marriage has broken down beyond reconciliation. Section 2(3), which is pertinent, provides that even if the court finds the existence of one or more of those facts it shall not grant a petition for divorce unless it is satisfied that the marriage has broken down beyond reconciliation…the petitioner is under a duty not only to plead any one or more of those facts in section 2(1) of the Act but he must also prove them. Equally the court is under a statutory and positive duty to inquire so far as it reasonably can, into the charges and counter-charges alleged. In discharging the onus on the petitioner, it is immaterial that the respondent has not contested the petition, she must prove the charges and, flowing from all the evidence before the court, the court must be satisfied that the marriage has irretrievably broken down."

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.

To prove that the marriage has broken down beyond reconciliation, the petitioner testified by herself and called no witnesses in support of her case. According to the testimony of the petitioner, she has cross-petitioned for the dissolution of their otherwise blissful marriage because there is a total lack of love between them. Again, since the inception of the marriage, they have not experienced peace in the marriage and the respondent has no time for the family. She continues to say that every effort made by her for the petitioner to mend his ways have proved futile. The petitioner adds that although they live under the same roof, there has not been any sexual intercourse between them for a considerable period of time. Further to this, diligent efforts made by their pastors, counsellors, friends and members of their families to resolve their differences have proved futile leading the parties to agree that the marriage has irretrievably broken down and that it should be dissolved.

Additionally, the petitioner testified that the respondent's niece who was staying with them destroyed their marriage certificate because she said she thought it was an ordinary paper and as such they can only produce a copy of the marriage certificate. The petitioner testified further that due to their inability to reconcile the differences between them, their families met and dissolved the customary marriage and settled all ancillary matters between them. The petitioner maintains that the behaviour of the respondent has reached a crescendo such that she cannot reasonably be expected to live with him as husband and wife. She therefore firmly states that the marriage celebrated between them has broken down beyond reconciliation.

The respondent failed to file witness stamens when ordered by the court to do so and also appeared at the trial but elected not to cross-examine the respondent on her evidence. The evidence of the petitioner remains unchallenged. In my considered opinion, when no evidence has been led to contradict the evidence of the petitioner in support of the reasons for the breakdown of the marriage, the court, under such circumstances is not required to conduct further inquiries into the facts alleged and the respondent will be deemed to have admitted the facts alleged. I am fortified in this view by the principles enunciated in the case of **Mensah v. Mensah** [1972] 2 GLR 198 at page 209, where the court held that;
"I do not think that where the respondent has refused to tender evidence in support of the facts alleged by him into the answer it would be reasonable in all cases to expect the court to conduct an inquest, unless there is reasonable ground to suspect that such an inquest is likely to show that the evidence adduced by the parties is false or perjured".

The evidence led by the petitioner in support of the breakdown of the marriage amply demonstrates that differences exist between the parties and the parties after diligent efforts have not been able to reconcile their differences. It is not disputed that the customary marriage has been dissolved signifying that the parties are at their wits' end and there is no hope that the marriage can be revived. Admittedly, upon contracting the ordinance marriage the customary marriage was converted and ceased to have any effect but the symbolic act of returning the customary drink reinforces the claim of the petitioner that various attempts made by their families to reconcile them have proved futile. The conduct of the respondent in consent to the dissolution of the marriage in his answer to the petitioner and his further act of failing to cross-examine, the legal implications of such failure having been explained to him, and his failure to lead evidence in the case shows

that the parties both consider their marriage to be irretrievably broken down with no possibility for reconciliation.

On the totality of the evidence led, I hold that the petitioner proved her case on a balance of probabilities that the marriage celebrated between the parties has broken down beyond reconciliation. I therefore grant the petition for divorce.

CONCLUSION

In sum, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I therefore 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 petitioner and the respondent on 17th August, 1996 at the Gospel Ambassadors Ministry, Agona Swedru.
2. The parties are not required to present the original copy of the marriage certificate number *38/96* for cancellation by the Registrar of the court since the parties are agreeable on the evidence that the original copy has been destroyed by the respondent's niece under the mistaken belief that it was an ordinary paper.
3. There shall be no order as to costs.

SGD.

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)