

IN THE CIRCUIT COURT (11) HELD AT ACCRA ON TUESDAY, THE 11TH DAY OF
APRIL 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT
SITTING AS AN ADDITIONAL CIRCUIT COURT JUDGE

SUIT NO. C5/349/2022

CAROLINE ANTWI
H/NO 681/6, ANOMATU ROAD,
TESHIE, ACCRA

PETITIONER

VS

MICHAEL ANTWI
H/NO B 593/4, JONES NELSON RD,
ADABRAKA, ACCRA

RESPONDENT

CONSENT JUDGMENT

Background:

The Petition was filed on the 19th of July 2022 and the Petitioner prayed for the following reliefs:

- a) That the marriage celebrated between the parties on the 2nd of August 1998 be dissolved.
- b) That custody of Pereza Antwi aged 15 years be granted to the Petitioner with reasonable access to the Respondent.
- c) Each party to bear his/her legal cost.

The basis of the Petition is that the marriage between the parties has broken down beyond reconciliation because the Respondent after the marriage has not worked and remained unemployed of which the Respondent resorts to these of insinuations aspersions against the Petitioner in the matrimonial home. The Petitioner left the matrimonial home in October, 2019 to live with

her mother at Teshie and comes to work as a dressmaker at Adabraka. The Petitioner stated further that the Respondent at one time falsely accused her of adultery but could not substantiate these allegations. The families of both Parties and the Elders of Petitioner's church have not been able to resolve the differences between them as the marriage has become an empty shell. She concludes by stating that they have not been on talking terms neither have they had any sexual relationship since 2019.

The Respondent filed an Answer to the Petition on the 8th of November 2022 and admitted that there has not been any sexual relationship between the parties since the Petitioner left the matrimonial home on the 31st March, 2019. He added that he does not want to explain the details as he is not willing to contest the claims made by the Petitioner. He prayed for the Dissolution of the Ordinance Marriage contracted between the parties as having broken beyond reconciliation. The Respondent further indicated that he is agreeable to custody of Pereza Antwi aged 15 years being granted to the Petitioner with reasonable access to him as well as each party to bearing his/her legal cost.

DETERMINATION

On 12th of December 2022, the parties executed and filed Terms of Settlement in final settlement of the matter before the court. On the 8th of March 2023, the court heard the case of the Petitioner on oath as she gave a short evidence in chief with the Counsel for the Respondent opting not to cross-examine the Petitioner. In view of the above, the main issue for determination is whether the marriage between the parties ought to be dissolved.

Analysis:

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". Petitioner therefore 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. Petitioner per her evidence in chief testified that she got married to Respondent in the year 1998 under the Marriage Ordinance and there are Three (3) issues out of this marriage. According to Petitioner, they cohabited at Adabraka with the Respondent remaining largely unemployed throughout the marriage. The Petitioner testified further that she has not been able to tolerate the uncouth attitude of the Respondent who resorts to aspersions against her and she has not found happiness in the atmosphere of lack of respect and love. She testified again that she provides money for the upkeep of the children but she left the matrimonial home in 2019 with the last child and there has not been any sexual relationship between them since then. The Petitioner concluded her testimony by stating that families of both parties and elders of her church have been unable to resolve the differences between them and as a result, the marriage has broken down beyond reconciliation. Petitioner's ground for seeking dissolution of the marriage therefore falls under Section 2 (1)(f) of Act 367 which provides that where a Petitioner proves *'that the parties to the marriage have, after diligent effort, been unable to reconcile their differences'*.

It has been held in the case of **Kotei vs Kotei [1974] 2 GLR 172** that *"once one of the grounds specified in section 2 (1) of Act 367 was proved, a decree of dissolution should be pronounced in favour of the petitioner. It was, however, wrong to contend that proof of total breakdown of the marriage and the possibility of reconciliation should be taken disjunctively so as to require firstly, proof of a breakdown and secondly, proof that it was beyond reconciliation"*. Per holding 2 of the same case, it was held that *"Notwithstanding proof of one of the facts showing that the*

marriage had broken down the court had a discretion to refuse to grant the decree of dissolution on the ground that the marriage had not in fact broken down beyond reconciliation. The discretion given to the court was not a discretion to grant but a discretion to refuse a decree of dissolution. The burden was not on the petitioner to show that special facts or grounds existed justifying the exercise of the court's discretion; once he or she came within any one of the provisions specified in section 2 (1) (e) and (f) of Act 367 the presumption was in his or her favour."

Terms of Settlement

The parties on 12th of December 2022 executed terms of agreement and prays the court to adopt same as their Consent Judgment in respect of ancillary relief prayed for by the Petitioner. Parties per the said Terms, agreed to settle the suit in the following manner;

- a. That, the marriage contracted under the Marriage Ordinance between the parties on 2nd August, 1998 be dissolved as same having broken down beyond reconciliation.
- b. That, the custody of the third child of the marriage, Perez Antwi, aged 15 years be given to the Petitioner with reasonable access to the Respondent.
- c. That, each party shall bear his/her own costs and legal fees in respect of this cause.
- d. That, the terms herein shall be adopted and entered by the Honourable Court as Consent Judgment.

Conclusion

It is not in dispute that the parties have not lived together as husband and wife since October 2019 neither have they had sexual relations since the 2019. Additionally, attempts at reconciling the differences of both parties by the elders of the church have been futile. The court therefore finds that the marriage between the parties celebrated on the 2nd of August 1998 at the Apostolic Church Lane Assembly, Ayalolo in Accra Mighty has broken down

beyond reconciliation. The court hereby decrees the said marriage dissolved this 11th day of April, 2023. Accordingly, the court adopts the Terms executed between the parties on 12th of December 2022 as Consent Judgment in relation to any ancillary reliefs in this suit.

COUNSEL

- 1. Peter Boafo Esq for the Petitioner present.**
- 2. Jane Techie-Menson for the Respondent present.**

**H/H HALIMAH EL-ALAWA ABDUL-
BAASIT**

CIRCUIT COURT JUDGE

