

**IN THE CIRCUIT COURT 3 HELD AT ACCRA ON FRIDAY THE 3RD DAY OF
NOVEMBER, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.),
CIRCUIT COURT JUDGE**

SUIT NO. C5/207/2023

MARIAN NAA ODARKOR WRIGHT

PETITIONER

VRS

REV FR. MAJ. (RTD) EARLAND LARYEA

RESPONDENT

**PETITIONER PRESENT AND REPRESENTED; RESPONDENT
PRESENT AND UNREPRESENTED**

JUDGMENT

The Petitioner filed the Petition on March 17, 2023. The parties to this suit got married under the Marriage Ordinance (cap 127) on July 27, 2019 at the Christ Anglican Church, Legon, Accra. The parties have no issue of the said marriage even though the Petitioner had one child from her previous marriage and the Respondent had two children from his previous marriage. The Petitioner is seeking the dissolution of the marriage on the grounds that the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition.

The Petitioner prayed to the court that the marriage celebrated between the parties be dissolved. The Respondent has not contested that Petition.

Section 2(1) of Act 367 stipulates the facts which a petitioner or a cross-petitioner may rely on to prove that the marriage which is sought to be dissolved has broken down beyond reconciliation are as follows,

- a. That the Respondent has committed adultery and by the reason of such adultery the Petitioner finds it intolerable to live with the Respondent; or
- b. That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; or
- c. That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or
- d. 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 such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a Petition for divorce under this paragraph notwithstanding the refusal; or
- e. That the Parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f. That the parties have after diligent effort been unable to reconcile their differences.

The Petitioner was therefore called upon to prove her claim. Petitioner filed her Witness Statement on August 10, 2023 and relied on it as her evidence to the court.

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under **section 2(1)(e) of the Matrimonial Causes Act, 1971 (Act 367)** “That the Parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition”

At the close of the trial, the legal issue that fell for determination by the court was;

Whether or not the marriage celebrated between the parties on July 27, 2019 at the Christ Anglican Church Legon, Accra has broken down beyond reconciliation.

The Petitioner tendered in evidence Exhibit A which is the Marriage Certificate to prove that she was indeed married to the Respondent. According to the Petitioner the parties have no child between them in their marriage even though each party have their own children. Petitioner further stated that after their marriage they co-habited at Kotobabi Accra. It is Petitioner's case that the parties have not lived as husband and wife continuously for the past two years. She further stated that the Respondent indicated to her he does not want the parties to have any children as they both have children from their previous marriage and then suggested they use their resources to take care of the children they already have from their previous marriage. Again, the Respondent stopped eating from the matrimonial home and would bring food prepared from another home which is not from a restaurant to the matrimonial home. Petitioner tendered exhibit B series which are photographs of the type of food referred to in evidence. The Respondent did not contribute to the maintenance of the home and it was the Petitioner who provided food for the home. However, after two years the Respondent lived alone in the matrimonial home. The Respondent would not wear his wedding ring which depicted he was not interested in the marriage. Further to that, the parties did not have sex eventhough they lived together at Laterbiokoshie in their matrimonial home. The two always slept in different rooms. This behaviour of the Respondent caused the Petitioner psychological and physical distress. The Petitioner therefore prayed that their marriage be dissolved.

The Petitioner did not call any Witness.

The Respondent was present in court throughout the proceeding but indicated he will neither contest the petition nor testify in court.

Addo v Addo 1973 2 GLR 103 it was stated “It is now settled that a wife has a right to the consortium of her husband and these rights are reciprocal. However, a wife has no greater right to force herself upon her husband than he has to compel her to cohabit with him: see *Nanda v. Nanda* [1967] 3 All E.R. 401. An incident of consortium is the mutual right to sexual intercourse. But a wilful refusal to have intercourse at all will entitle the party suffering as a result of it to leave the other and such conduct if it injures the other’s health will support a charge of cruelty under the old law and it seems today, a charge that the behaviour of the Respondent is such that the petitioner cannot reasonably be expected to live with him.

The Petitioner in her evidence that the parties even though they lived in the same matrimonial home, they did not have sexual intercourse for some period which caused her to relocate to her father’s house at Adenta. This was to prevent the psychological distress the situation brought to her. This piece of evidence has not been contested. The court on the authority of the above cited case, that the behaviour of the Respondent constitutes unreasonable behaviour.

After taking the evidence of the Petitioner as a whole, the court is of the opinion that the Petitioner have been able to prove to the satisfaction of the court the grounds under **section 2(1)(d) of the Matrimonial Causes Act, 1971 (Act 367)**. “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 such consent shall not be unreasonably withheld, and where the court is satisfied that it has been so withheld, the court may grant a Petition for divorce under this paragraph notwithstanding the refusal.”

The court therefore finds that the marriage celebrated between the parties herein has broken down beyond reconciliation and same is dissolved.

DECISION

1. The marriage celebrated between the Petitioner herein, Marian Naa Odarkor Wright and the Respondent, Reverend Father Earland Laryea on July 27, 2019 at the Christ Anglican Church, Legon, Accra, has broken down beyond reconciliation and same is dissolved. The marriage certificate with registration No. CAC/2/2019 is hereby cancelled and a Decree of Divorce is hereby granted.
2. The court makes no order as to cost

LEGAL REPRESENTATION

ALEXANDER ADJEI FOR THE PETITIONER

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT JUDGE)**