

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 18TH DAY
OF AUGUST, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE

SUIT NO.C5/67/23

DAVID AMOAKO ----- PETITIONER

VRS.

BETTEY DJANGMAH ----- RESPONDENT

PETITIONER PRESENT

RESPONDENT ABSENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The petitioner and the respondent got married under the Ordinance Marriage Cap 127 at St. Peter's Methodist church, Ashaiman on 20th day of January, 2007.

The Petitioner is a staff of Electricity Company of Ghana and the respondent works with Ghana Textiles Printing Company Limited, Tema. After the marriage, the parties cohabited at Ashaiman for three years. Petitioner previously filed a divorce suit against the respondent in court regarding the said marriage which was subsequently discontinued when the petitioner

travelled. There is no issue in the marriage but prior to the marriage, the petitioner had three (3) children and the respondent also had two (2) children from their previous relationships. On 16th January, 2023, the petitioner filed the instant petition for divorce alleging that the marriage celebrated between the parties has broken down beyond reconciliation and prayed the court for the sole relief of the dissolution of the marriage.

The petitioner avers that the respondent has behaved in such a way that he cannot continue to live with her as husband and wife. According to the petitioner, the parties are generally incompatible and there is no relationship between himself and respondent. The respondent has caused him so much anxiety, distress and embarrassment due to the respondent behavior demonstrated during the subsistence of the marriage. The petitioner avers that the respondent has on several occasions acted in ways that show that she is no longer interested in the marriage.

Additionally, the petitioner states that for twelve (12) years immediately preceding the presentation of the petition for divorce, she and the respondent had not lived together as husband and wife and there has not been any form of sexual intimacies between them. The petitioner further states that the respondent has exhibited inconsiderate behavior towards him and has ceased all forms of communication with her. Again, the petitioner states that since the

marriage, he has not enjoyed the period that they have lived together as husband and wife and various attempts made by him to reconcile their differences have proved futile since the respondent is not prepared to change her attitude. Again, all efforts made by pastors, families and friends to resolve their differences have proved futile. The petitioner further avers the attitude and behavior shown by the respondent indicates that she is no longer interested in the marriage. The respondent left the matrimonial home in the year 2010 and all attempts made for her to return to the matrimonial home have proved futile and that the marriage has broken down beyond reconciliation.

The respondent is agreeable that the marriage celebrated between herself and the petitioner has broken down beyond reconciliation but denies the allegation of unreasonable behaviour levelled against her by the petitioner. The respondent maintains that it is rather the petitioner who has behaved in such a way that she cannot reasonably be expected to live with him and has caused her anxiety, distress, and embarrassment. The respondent also admits that for 12 years preceding the presentation of the petition for divorce, they have not lived as husband and wife.

The respondent says that two years after the wedding, she found out during counseling that the petitioner's ex-girlfriend called Pat had lodged a

complaint to the church to forbid the petitioner from marrying her. The church, after an arbitration with Pat and the petitioner, asked him to compensate Pat with an amount of GH¢500.00. The Respondent claims that two years after their wedding, she found out that the petitioner had started dating his ex-girlfriend Pat again. As a result, the petitioner started treating her badly and that he goes out and comes in as and when he pleases. The respondent says she became sick just around that time, but all her efforts to seek medical attention proved futile. She later found out that the sickness was a spiritual one, and that it is the Petitioner's girlfriends who had put the sickness on her. Initially, she did not believe that story, but wherever she went seeking help, she was told the same story. The respondent says she became worried and scared of losing her life if she continued to stay in the marriage so she left the matrimonial home without even telling the petitioner since the petitioner was not ready to listen to her.

The respondent further says that when she left the matrimonial home, the petitioner initially was not calling to even check on her. Also, anytime the petitioner called her, he heaped insults on her which was worsening her health condition hence, her decision to block the petitioner from communicating with her. The respondent also accused petitioner of being in an amorous relationship with the said Pat and one Lizzy who lives in Accra. The respondent also prays the court for the dissolution of the marriage.

LEGAL ISSUE

Whether or not the 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. See **Section 1** of the Act 367. To succeed, a petitioner is required to 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 petitioner in the instant petition has set out to prove fact 2(1) (e) namely.

"that he and the respondent have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition." The

parties are also mandated to inform the court about all attempts at reconciliation and the court shall refuse to grant a petition for divorce if there

is a reasonable possibility for reconciliation. See **Section 2(3)** of Act 367 and

the case of **Adjetey & Adjetey** [1973] I GLR 216 at page 219. 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, Cap. 127 (1951 Rev.), 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 fact **2 (1)(e) of Act 367**, all that the petitioner is required to prove is that for a continuous period of five years immediately preceding the presentation of the petition for divorce, he and the respondent had not lived together as husband and wife. The law does not require proof of any matrimonial offence and there is no need to establish blame. Proof of not having lived together as husband and wife for a continuous period of at least five (5) years coupled with inability of the parties to effect reconciliation to resume cohabitation as husband and wife shall suffice. In the case of **Kotei v. Kotei [1974] 2 GLR 172**, where a husband petitioned for divorce alleging that he and the respondent wife had not lived as husband and wife for six years,

and that the marriage had broken down beyond reconciliation and should be dissolved. It was the petitioner's case that he had recognised and continued to recognise that the marriage was at an end and that he never intended to take back his wife. In resisting the petition, the respondent asserted that she still loved her husband, that she was still waiting for the husband to send for her and was willing to make attempts at reconciliation if the proceedings were adjourned for that purpose. The High Court per Sarkodie J, espousing on **section 2(1) (e)** of the 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 further held at page 176 as follows;

"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 testified in line with his petition for divorce that he works with Electricity Company of Ghana and the respondent also works with Ghana

Textiles Printing Company Limited, Tema. According to his testimony, he got married to the respondent on 20th day of January, 2007, under the Marriage Ordinance Marriage Cap 127 at St. Peter Methodist Church, Ashaiman. Prior to the marriage, he had three children and the respondent also brought two children into the marriage. The petitioner testified that they are generally incompatible and there has not been communication between them. As a result, they have not lived as husband and wife for some time now. The petitioner states that since the year 2010, the respondent left the matrimonial home and various attempts for her to return to the matrimonial home have proved futile. There have also not been any sexual intimacies between them and the conduct of the respondent shows that she is no longer interested in the marriage. The petitioner states that all efforts made by pastors and marriage counselors of the respondent's church to resolve their differences have proved futile. The petitioner therefore states that he is of the firm conviction that the marriage celebrated between the parties has broken down beyond reconciliation.

The respondent after filing an answer to the petition failed to attend the trial to lead evidence and also to challenge the respondent on his testimony before the court. The Supreme Court in the case of the **Republic v. High Court (Human Rights Division Ex- parte Akita** [2010] SCGLR 374 at 384, per Brobbey JSC held that "*a person who has been given the opportunity to be heard but*

deliberately spurned that opportunity to satisfy his or her own decision to boycott proceedings cannot later complain that the proceedings have proceeded without him or her and plead in aid "the audi alteram partem rule".

The testimony of the petitioner that for more than 12 years immediately preceding the presentation of the petition for divorce they have not lived as husband and wife remains uncontradicted. The proof of five years continuous separation with failure of the parties to reconcile their differences entitled the petitioner to the grant of the petition and proof of a matrimonial offence on the part of the respondent becomes superfluous. Under the circumstances, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce.

CONCLUSION

In sum, 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 as follows;

1. I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent on 20th January, 2007 at St. Peter's Methodist Church, Ashaiman.
2. The petitioner shall present the original copy of the marriage certificate for cancellation.

3. No order as to costs.

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)