

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.C5/51/23

DINAH MENSAH

PETITIONER

VRS.

PROSPER KWEINORTEY DOKU

RESPONDENT

PARTIES

PRESENT

EDMUND AMAKO, ESQ. FOR THE PETITIONER PRESENT

ANTHONY DZIDZOR GBEZE, ESQ. HOLDING THE BREIF OF OSCAR

ASANTE- NNURO, ESQ. FOR THE RESPONDENT ABSENT

JUDGMENT

FACTS:

The parties lawfully got married under **Part III of the Marriages Act (1884-1985) CAP. 127** on the 5th of March 2016 at the Dawhenya Assembly of the Church of Pentecost. After the marriage, the parties cohabited at Ashaiman and subsequently relocated to Ada within the Greater Accra

Region. The petitioner is a professional teacher, whilst the respondent is a mechanical engineer. There are no issues to the marriage, and there have been no previous proceedings in this or any court regarding the said marriage.

The petitioner filed the instant petition for divorce on 8th December, 2022, alleging that the monogamous marriage celebrated between herself and the respondent has broken down has beyond reconciliation and prays the court for the following reliefs;

- a. Dissolution of the marriage celebrated between the Petitioner and the Respondent.
- b. Reasonable financial provision as determined by the court.
- c. Costs, including legal fees.

The respondent also filed an answer and also cross-petitioned as follows;

- a. That the marriage between the petitioner and the respondent be dissolved.
- b. Financial settlement or compensation in favor of the respondent as the court deems fit and just.
- c. Cost coverage, including legal fees.
- d. Any other reliefs as this Honourable Court may deem just.

The petitioner contends that the respondent has behaved in such a way that he cannot reasonably be expected to live with him as husband and wife. The

petitioner further states that the unreasonable behaviour of the respondent has caused the petitioner significant anxiety, embarrassment and distress that the petitioner cannot reasonably be expected to live with him as husband and wife. The petitioner asserts that the respondent has failed to provide maintenance for the petitioner as expected of a husband. The respondent constantly nags and verbally abuses her without provocation. The respondent also shares intimate matters of the couple with his family members and others without her consent. Additionally, the respondent has abandoned her for the past two years and despite attempts made by family and friends to reconcile the parties, they have not been able to reconcile their differences.

The respondent agrees with the petitioner that the marriage has broken down beyond reconciliation but denies the allegation of unreasonable behaviour. The respondent states that it is rather the petitioner who has behaved in a way that he cannot reasonably be expected to live with her. The respondent further avers that the petitioner has not shown any marital or spousal love and care for the past three years, except for constant resentment towards the respondent. Additionally, the respondent states that the petitioner has ceased to have any form of intimate relationship with him for a long period of time. According to the respondent, despite his meager resources, he has always maintained the petitioner, even though she receives salary as a trained teacher and government employee. However, the petitioner fails to appreciate the

financial support that he gives to the family. The respondent further states that the petitioner has, on several occasions, emotionally and verbally abused him without just cause particularly when he tried to resolve their marital challenges. The respondent states that the petitioner is rather the cause of the breakdown of the marriage. The respondent reveals that the petitioner even threatened him with a kitchen knife, and it was only through the intervention of the petitioner's mother that the situation was diffused. This was all in retaliation for the respondent seeking the help of church elders to save the marriage. Additionally, the respondent states that they have to keep their thoughts and concerns to themselves to avoid unnecessary arguments and insults in an attempt to satisfy the petitioner and her unreasonable actions.

The respondent also claims that the petitioner makes important decisions without involving, discussing, or seeking his consent, which is crucial in any marriage. Furthermore, the respondent reveals that the petitioner unilaterally underwent a medical procedure (IVF) to conceive without the knowledge of the respondent. In addition, the respondent asserts that the petitioner was unreasonable by failing to inform the respondent of the age of her pregnancy when asked by the doctor in the respondent's presence. The respondent further explains that the petitioner explicitly stated that she would only answer the question in the absence of the Respondent. After the he discovered the IVF procedure that the petitioner underwent, there has not been any

sexual intimacies between them.

Furthermore, that the church elders attempted to intervene to save the marriage but were unsuccessful due to the petitioner's objections. Lastly, the petitioner became angry when the respondent involved the church to resolve their differences and demanded that the respondent stay out of her sight for seeking help from the church.

Based on the pleadings and the evidence led, the court set down the following issues for determination.

LEGAL ISSUE

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

ANALYSIS

Section 1 of the Matrimonial Causes Act, 1971 (Act 367), provides that 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 stipulated under **Section 2(1)** of Act 367, namely; adultery, unreasonable behaviour, desertion, failure to live as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the petition, failure to live as man and wife for a continuous period of five years

immediately preceding the presentation of the petition and lastly, irreconcilable differences. In the case of **Kotei v. Kotei** [1974] 2 GLR 172, the court held in its holding 1 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.”

Additionally, **section 2(3)** of Act 367, enjoins the court to inquire into the facts alleged in support of the dissolution of the marriage. The court shall refuse to grant dissolution of the marriage notwithstanding the fact that any of the facts are proved if there is a reasonable possibility for reconciliation. Thus, in the case of **Adjetey & Anor v. Adjetey** [1973] 1 GLR 216, the court held in holding 2 that:

“On a proper construction of section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367), the court could still refuse to grant a decree even where one or more of the facts set out in section 2 (1) had been established. It was therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage had broken down beyond reconciliation would not be enough.”

The parties in the instant petition made mutual allegations of unreasonable behaviour against each other and also relied on the failure to live as husband

and wife for a continuous period of two years immediately preceding the presentation of the petition for divorce.

The petitioner in the instant petition set out to prove that for two years immediately preceding the presentation of the petition for divorce, she and the respondent had not lived as husband and wife within the meaning and intendment of **section 2(1)(d)** of Act 367. Under **Section 2 (1) (d)** of the Matrimonial Causes Act, 1971 (Act 367), not living together as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition for divorce can be proof that the marriage has broken down beyond reconciliation. To succeed on this ground, the respondent must consent to the grant of the decree for divorce; however, consent of the respondent should not be unreasonably withheld. See the case of **Addo v. Addo** [1973] 2 GLR 103 at 106. In the case of **R v. Creamer** [1919] 1 K.B. 564 at 569 the court per Darling J. said;

“In determining whether a husband and wife are living together the law has to have regard to what is called consortium of the husband and wife. A husband and wife are living together, not only when they are residing together in the same house, but also when they are living in different places, even if they are separated by the high seas, provided the consortium has not been determined”

Furthermore, the petitioner must prove that she ceased to recognize the marriage as subsisting and never intended to return and the respondent must

consent to the dissolution of the marriage. The consent may be given in the answer to the petition or in the form of cross-petition. It may also take the form of consent to the dissolution during attempts at settlement.

The petitioner testified on oath that, she a spinster at the time lawfully got married to the respondent on 5th March, 2016 at the Church of Pentecost, Dawhenya Assembly. According to the petitioner, there is no issue to the marriage. She maintains that the marriage celebrated between them has broken down beyond reconciliation due to the respondent's unreasonable behavior including verbal abuse and neglect towards her for the past two years prior to the presentation of the petition for divorce. As a result, they have not been living together as husband and wife and prays the court to dissolve the marriage. Under cross-examination by Counsel for the respondent, the petitioner reiterated her position that they have not lived together as husband and wife for a continuous period of four years and that there have not been any sexual intimacies between them. The petitioner also admits that she underwent the medical procedure to have a child without the consent of the respondent and maintains that various attempts made by their families to resolve their differences have proved futile.

The respondent is agreeable that the marriage has broken down beyond reconciliation and also repeated the allegations contained in the answer to the

petition and the cross-petition on oath. The respondent maintains in his evidence in-chief that there has not been spousal love and care between them for the past three years and there has not been any sexual intimacies between them. The respondent further testified that the petitioner verbally and emotionally abused him several times when he tried to attempt settlement of their differences. The respondent further testified that the petitioner unilaterally underwent IVF procedure to get pregnant without his consent. The petitioner also threatened him with a knife when he tried to involve church elders to assist them resolve their differences. The respondent therefore maintains that the marriage celebrated between the parties has broken down beyond reconciliation. The respondent under cross-examination by Counsel for the petitioner testified contrary to the contents of his cross-petition and his testimony on oath that the marriage has not broken down beyond reconciliation and that he agreed to the dissolution of the marriage because the petitioner petitioned for divorce.

The evidence led by the parties shows that for more than two years immediately preceding the presentation of the petition for divorce, the petitioner and the respondent had not lived together as husband and wife. The respondent in his answer to the petition consents to the dissolution of the marriage and when the court adjourned proceedings for the parties to reconcile their differences, the parties were unable to do so and consented to

the dissolution of the marriage. The parties have by their evidence shown that there are differences that exists between them and various attempts made by the families and friends to reconcile the differences between the parties have proved futile. I therefore hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation and I accordingly grant the petition and the cross-petition for divorce.

On the issue of the ancillary reliefs, the parties and their lawyers during the pendency of the suit attempted settlement but were unable to reconcile their differences to resume cohabitation as husband and wife but agreed on terms to be adopted by the court upon dissolution of the marriage. The terms of settlement signed by the parties and their respective lawyers and filed in the Registry of this court is hereby adopted as consent judgment on the ancillary reliefs.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I therefore grant the petition and the cross-petition for divorce and enter judgment in the following terms;

1. I hereby grant a decree for the dissolution of the marriage celebrated between the parties on 5th March, 2016 at the Dawhenya Assembly of

the Church of Pentecost.

2. The parties shall present the original copy of the marriage certificate number *COP/DAW/0002963/1/2016* for cancellation by the Registrar of the Court.
3. The Terms of Settlement filed in the Registry of this court on 28th April, 2023 is hereby adopted as consent judgment on the ancillary reliefs. Per the parties' own terms of settlement, the parties agreed not to request or demand any form of compensation upon dissolution of the marriage. I therefore make no order as to financial provision.
4. No order as to costs.

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)