

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 1ST JUNE, 2023

SUIT NO. C5/23/23

EMMANUEL KOFI BRACE - PETITIONER

VRS

PRISCILLA APPIAH KUBI - RESPONDENT

JUDGMENT

On the 23rd day of December, 2006 at the St. Martin De Porres Catholic Church, Atonsu Kumasi and in the presence of God, family and well-wishers, the parties herein celebrated their marital union under the ordinance and vowed to remain in union for the remainder of their lives until death do them part.

On the 7th day of October, 2022, the Petitioner herein, having come to the conclusion that he wanted to be released from that vow, presented the instant Petition for a dissolution of their marital union on the basis that same has broken down beyond reconciliation. There are five (5) issues of their marriage; three girls and two boys aged between fourteen and seven years.

According to Petitioner, their marriage has broken down beyond reconciliation due to the unreasonable behavior of the Respondent and all attempts by family and friends to reconcile them have failed.

He sought from the court the following reliefs;

- a) That the marriage celebrated between the parties on the 23rd day of December, 2006 be dissolved
- b) Custody of the children of the marriage to the Petitioner with reasonable access to the Respondent
- c) Any further or other reliefs which the Honourable Court may deem fit

The Respondent in her Answer admitted that from the conduct of the Petitioner, their marriage had broken down beyond reconciliation. She prayed the court for the following;

- a) That the marriage celebrated on the 23rd day of December, 2006, between the parties be dissolved
- b) Custody of the children to be granted to the Respondent with reasonable access to the Petitioner
- c) The sharing of the house located at Dawhenya opposite Devtraco right wall
- d) The sharing of the 20 acres of plots at Shai Hills
- e) Alimony of five hundred thousand Ghana cedis (GH¢500,000.00)
- f) Petitioner to be made to provide the school fees, maintenance, clothing and medical bills of the children
- g) Five thousand Ghana cedis (GH¢5000.00) as maintenance for the children every month
- h) Petitioner to provide accommodation for the children and the Respondent.

The Petitioner filed a Reply and said he did not have a 20-acre plot of land and the only house he had which was acquired prior to their marriage had been sold off to satisfy his debts.

In the course of proceedings, the parties settled the ancillary reliefs and filed terms of settlement at the Registry of this court on the 21st day of March, 2023 at 11:00am. That being so, the only issue left for the court to determine was whether or not their marriage had broken down beyond reconciliation. Both parties testified alone and did not rely on documentary evidence. The evidence was essentially oath against oath.

THE CASE OF THE PETITIONER

In his evidence-in-chief, the Petitioner contended that he and the Respondent had been living in separate rooms for over seven years until 2021 when he left the matrimonial home. There had been no conjugal relations between them for the past seven years.

The Petitioner also said that there was no trust between him and the Respondent, which made it impossible for them to live together, and all attempts by their friends, families and pastors to reconcile them had proved futile. He thus prayed the court to dissolve their marriage.

THE CASE OF THE RESPONDENT

According to the Respondent, in the course of their marriage, the Petitioner would leave their matrimonial home and return at will. The Petitioner was regularly in the habit of leaving the house for days without informing her of his whereabouts.

Finally, that the last time they had sexual intercourse was two years and five months. She prayed the court to dissolve their marriage.

CONSIDERATION BY COURT

“Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. Thus although the Respondent in her answer admits that the marriage has broken down beyond reconciliation and also alleges unreasonable behavior and adultery, the Court through evidence must satisfy itself that the marriage has broken down beyond reconciliation”. See the case of *Amekeo v. Agbenu* [2015] 91 G.M.J.

Blacks' law dictionary, (8th edition, 2004 p. 1449) defines divorce as “*the legal dissolution of a marriage by a Court.*” In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*.

In *Section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a Petitioner must establish one of six causes, that is adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner’s basis for arriving at the conclusion that their marriage had broken down beyond reconciliation was that the Respondent had behaved in such an unreasonable manner that he could not be expected to continue living with her as husband and wife.

His evidence however manifested that they had not lived together as husband and wife for more than seven years prior to the presentation of the Petition and also that all

attempts made to reconcile had failed. As any one of the six grounds when proven would suffice as a basis for holding that their marriage has broken down beyond reconciliation, I would first analyse the evidence on the parties not having lived together as husband and wife for a period of seven years.

The parties to this action have been married since 2006 and have five children who are still minors. As at the date of filing this petition, they had been married for more than fifteen years.

It is my opinion that when parties have been married for a reasonably lengthy period and have issues of the marriage, when they seek to go their separate ways, a court of competent jurisdiction in making enquiries as to the breakdown of the marriage must seek to promote cordiality and civility between the parties during and after the court proceedings. That is healthy not only to the parties and their future relationship as co-parents but to society as a whole.

To borrow the words of *Sarkodee J (as he then was)* in the case of *Addo v. Addo [1973] 2 GLR 103*, which he himself quoted from *The Law Commission Report; Reform of the Grounds of Divorce. The Field of Choice, para. 15. (Cmd. 3123)* "For it is better: "When regrettably, a marriage has irretrievably broken down to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation."

It is he who asserts who bears the burden of proof and so the burden of persuasion lies on him to lead cogent and positive evidence to establish the existence of his claim in the mind of the court. See the case of *Takoradi Flour Mills v. Samir Paris [2005-6] SCGLR 882 and Ackah v. Pergah Transport Ltd (2010) SCGLR 728*.

The evidence of the Petitioner was that he and the Respondent had not lived together as husband and wife for more than seven years, that they had not had any conjugal relations during that period, that they occupied separate rooms and he had not eaten any food prepared by the Respondent as well. Further that since 2021, he had vacated the matrimonial home.

The Respondent admitted that the Petitioner refused to eat any food that she prepared for the past seven years and they had also not shared the same room during that period. She however disputed that they had not had sexual intercourse for over seven years. She said the last time they had sex was two years and five months preceding the presentation of the Petition. She conceded that the Petitioner had vacated the matrimonial home and only returned when he desired. She does not only consent to a dissolution of the marriage but cross-petitions for same to be granted to her.

Section 2 (1) (d) of the Matrimonial Causes Act, 1971, (Act 367) provides that;

2. (1) For the purpose of showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the court of one or more of the following facts:

(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 that 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

It is a legal known that there is no better proof of a fact than an admission by the opposing side and there can be no objection to a decision made by a court in reliance on such an admission. See the decision of the Supreme Court in the case of *Opoku & Ors (No.2) v. Axes Co Ltd. (No 2) [2012] 2 SCGLR 1214.*

Although the Respondent cross-petitioned for a dissolution of the marriage on the basis of the unreasonable behavior of the Petitioner, she admits that they have not lived as husband and wife for more than two rather than seven years as is being claimed by the Petitioner.

Proof that parties have not lived together as husband and wife for two years preceding the presentation of the petition is sufficient to hold that a marriage has broken down beyond reconciliation. The Respondent by her admission of same together with her own act of cross-petitioning for a dissolution signifies that she consents to a divorce. That establishes *Section 2 (1) (d) of Act 367.* I find that there is sufficient cause to hold that their marriage has broken down beyond reconciliation on that ground alone.

Consequently, I hereby decree a dissolution of their marriage celebrated on the 23rd day of December, 2006 at the St. Martin De Porres Catholic Church, Atonsu, Kumasi. Their marriage certificate issued to them in recognition of their marriage is hereby cancelled. The registrar is to notify the administrator of the church of the cancellation to enable them amend their records accordingly.

Let the terms of settlement which was filed at the Registry of this Court on the 21st day of March, 2023 at 11:00am and which was duly signed by the parties and their lawyers herein, be and same is hereby adopted as consent judgment. The usual default clause applies.

(SGD)

**H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)**

WINSTON HAYFORD HOLDING THE BRIEF OF JAMES ENU FOR THE
PETITIONER PRESENT

PAUL SELORM KPODOVIA FOR MODESTO KPODOVIA FOR THE RESPONDENT
PRESENT