

**CIRCUIT COURT JUDGE**

**SUIT NO.C5/93/23**

**DR. SALIFU MOHAMMED** ----- **PETITIONER**

**VRS.**

**HEARA SULEMANA** ----- **RESPONDENT**

**PETITIONER'S ATTORNEY** **PRESENT**

**RESPONDENT** **ABSENT**

**RACHEL HAIZEL, ESQ. HOLDING THE BRIEF OF ANDREW APPAU  
OBENG, ESO. FOR THE PETITIONER PRESENT**

**SELASSIE KOFI FUMI, ESQ. FOR THE RESPONDENT PRESENT**

## JUDGMENT

On 27<sup>th</sup> July, 2023, the petitioner herein filed a Motion on Notice for leave to issue a divorce petition within two years of marriage, under **Section 9(2)** of Act 367 and **Order 65 Rule 3** of the High Court (Civil Procedure) Rules, 2004 (C.I. 47). The respondent vehemently opposed the grant of the application on grounds that the marriage was more than two years old since they were first married according to Islamic law before converting same to one under the ordinance which was less than two years of marriage. On 31<sup>st</sup> March, 2021, this Court ruled that the Mohammedan marriage celebrated between the parties was not valid since it was not registered as required by law. Further to this, granted that the marriage was valid, the effect of the celebration of the ordinance marriage was to convert the Mohammedan marriage to one under the Ordinance and the effect of conversion of marriages was that the rights and obligation of the parties under the marriage converted are extinguished. Since the petition was filed less than two years after the ordinance marriage, the petitioner required leave to issue the divorce petition. The court therefore granted leave to the applicant, now the petitioner to file the instant divorce petition.

Per a petition for divorce filed on 27<sup>th</sup> March, 2023, pursuant to the leave granted by the Court, the petitioner is praying this court for the following reliefs;

1. The marriage celebrated between the parties on the 9<sup>th</sup> of November, 2022 be dissolved by the Honourable Court.
2. The Respondent be ordered to return the Hyundai Sonata together with its documents to the Petitioner.
3. The parties bear their costs.

The respondent also cross-petitioned for divorce in the following terms;

1. An order that the marriage contracted between the parties be dissolved as it has broken down beyond reconciliation.
2. An Order granting the respondent Fifty Percent (50%) share in the matrimonial property i.e. A 32 Greens Estate, Tema.
3. An Order that the respondent keeps the Hyundai Sonata Car as same is a gift from the petitioner to the respondent and forms part of the standard the petitioner kept her at.
4. An order for the petitioner to pay to the respondent a lump sum financial settlement of Two Hundred Thousand Ghana Cedis (GH¢200,000).
5. Costs including Legal Costs.

### **THE CASE OF THE PETITIONER**

The petitioner states that they are both Ghanaians and that he got married to the respondent under **Part III of the Marriages Act, 1884-1985** (CAP 127) at the Ablekuma North Municipal on the 9<sup>th</sup> of November, 2022. Thereafter, the parties cohabited at A.32, Greens Estate, Tema. The petitioner is a retired lecturer whilst the respondent is also unemployed. There is no issue to the marriage. There have been no previous legal proceedings in this court or any other court in respect of this marriage. The petitioner alleges that the marriage celebrated between the petitioner and respondent has broken down beyond reconciliation. According to the petitioner, the

respondent has since the inception of the marriage behaved in a manner that the petitioner cannot reasonably be expected to live with her since the respondent has caused him much anxiety, distress, and embarrassment.

The particulars of unreasonable behaviour alleged are that the respondent allowed her two siblings and mother to move into the matrimonial home of the parties immediately after the celebration of the marriage thereby invading the privacy of the parties who were a newly-wed couple. The result was that the siblings and parents of the respondent became financially dependent on the petitioner when the respondent was well aware that the petitioner was retired and unemployed. The petitioner further claims that the respondent refused to work although she was offered a teaching job due to the best efforts of the petitioner. As a result of the unpleasant behaviour of the siblings of the respondent and the invasion of their privacy, the petitioner was compelled to evict the siblings of the respondent from their matrimonial home. This, according to the petitioner, marked the beginning of their marital woes since the respondent suddenly changed her attitude towards him and hurled insults at him in their home to the hearing of their neighbours which caused the petitioner embarrassment.

Additionally, the petitioner alleges that the respondent has made threats to harm and kill him and has repeatedly used abusive language on the petitioner even on phone calls with her friends and family. Again, the respondent usually leaves the matrimonial home around 8:30 am on certain days and returns the next morning at 5:30 am without notice to the petitioner and refuses to answer his calls for almost 24 hours which causes the petitioner to worry about her safety. Again, the respondent has on different occasions attempted to provoke the petitioner to beat her up but was unsuccessful. The respondent has confiscated a Hyundai Sonata together with its documents belonging to the petitioner without the consent of the petitioner. The petitioner also accuses the respondent of unlawful entry into his home and stealing an amount of Eight-Thousand Seven Hundred Ghana Cedis (GH¢8,700.00) as well as a gold chain worth Six

Thousand, Nine Hundred Ghana Cedis (GH¢6,900.00) Cedis all belonging to the petitioner. The petitioner states that he has ensured that the respondent is well-catered for although he is on retirement and gave the respondent a Hyundai Sonata for her use as his wife.

The petitioner states further that he secured a teaching job for the respondent but she refused to accept same and remains unemployed which has saddled him with the sole responsibility of maintaining the family of the respondent in his retirement. The petitioner further states that due to his advanced age, the actions of the respondent have the potential to cause damage to his physical and mental health if he continues to live with the respondent as husband and wife. Again, the actions of the respondent have caused him fear, panic, and embarrassment such that he cannot reasonably be expected to live with her as her husband.

The petitioner claims that no properties were acquired by the parties during the subsistence of the marriage. There have been several attempts by the family and friends to settle the differences between the parties which have proved futile and that the marriage has broken down beyond reconciliation.

### **THE CASE OF THE RESPONDENT**

The respondent denies the accusations and charges levelled against her by the petitioner and states that before the celebration of their marriage under the ordinance, they had customarily lived together as husband and wife under Islamic recognition from 29<sup>th</sup> December 2019. According to her, the petitioner suddenly fell sick, and with his consent, she invited her mother to the matrimonial home to help take care of the petitioner. Thus, apart from her mother who lived under the petitioner's roof solely to take care of the petitioner, she was not financially dependent on the petitioner as her father was still remitting her whilst she was in the marriage and it has been the case till date. The respondent further states that apart from the casual visits by the respondent's sister Mansura to the parties' matrimonial home, no one from her family was dependent

on the petitioner and her family members did not exhibit unpleasant behaviour towards the petitioner. The respondent states that the petitioner at one time made unsavoury remarks about her sister and herself that they were not properly brought up. When this issue came to their attention and she sought confirmation from the petitioner, he raised his voice at her which led to a heated argument between them. The respondent states further that the petitioner often threatens her with harm and death and goes to bed with a kitchen knife, including procuring a gun on his To-do List and calling her father to inform him that they will one day recover the respondent's mortal remains from Awudome Cemetery. Also, the petitioner is constantly influencing the Community 25 Police to harass the respondent. When the issues in the marriage became unbearable, she moved to a separate bedroom and developed the habit of always locking herself indoors as a safety measure

The respondent further states that when she met the petitioner, she was working as the manager of Starbite at Dansoman but the petitioner asked her to resign from her work with the complaint that she was meeting too many male patrons and promised to sponsor her through her Post Graduate Degree which never materialised. The respondent denies staying out of the matrimonial home and states that for the few times that she missed the calls of the petitioner, she immediately returned his calls to let him know that she was home. The respondent further states that there have been instances that the parties have raised their voices against each other and on one occasion, the petitioner assaulted her and later called her mother to apologise and pleaded with her for forgiveness.

The respondent states that the petitioner willingly gifted her a Hyundai Sonata as her birthday gift and an apology for the ill-treatment that he subjected her to and that the car was still in her possession. The respondent denies that the respondent found her a job and states that she is yet to sit for her licensure exams which will enable her to be in good standing to take up teaching appointments. The respondent describes the petitioner as domineering and sees her as a child whom he can order her about rather

than a wife he should love and share ideas with. Further, whatever the petitioner is complaining about is self-inflicted since the actions of the petitioner have brought untold hardship upon her as he has presently constructively deserted the matrimonial home and has not maintained her. The respondent further states that the Greens estate property was acquired when the parties were living together as husband and wife.

### **ATTEMPTS AT SETTLEMENT**

During the pendency of the suit, the parties and their respective lawyers attempted settlement and filed terms of settlement on 23<sup>rd</sup> August 2023 on the ancillary reliefs to be adopted by the Court upon the dissolution of the marriage but the parties could not reconcile their differences and both maintained that the marriage had broken down beyond reconciliation. The court therefore proceeded to take evidence to satisfy itself that the marriage had indeed broken down beyond reconciliation.

### **LEGAL ISSUE**

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

### **ANALYSIS**

Under **Section 1 Matrimonial Causes Act, 1971 (Act 367)**, the sole ground for granting a divorce petition 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 six (6) facts set out in **section 2(1) of Act 367**, namely; adultery, unreasonable behaviour, desertion, failure to live as man and wife for 2 years, failure to live as man and wife for five years and irreconcilable differences. In the case of **Danquah v. Danquah** [1979] 371, the court held that:

*“The requirements in section 2(1) of Act 367 that the petitioner must satisfy the court of one or more of those five [sic] facts therein specified to prove that the marriage has broken down beyond reconciliation would mean those facts the petitioner had both*

*pleaded and proved. It would accordingly exclude facts pleaded but not proved or facts proved but not pleaded”*

To encourage reconciliation as far as may be practicable, section 8 enjoins the petitioner to inform the court of all attempts made to effect reconciliation. A court may refuse to grant a petition for divorce even though a petitioner has proved any of the facts in **section 2(1)**, if there is a reasonable possibility of reconciliation.

The parties testified in line with their pleadings and repeated their averments on oath to show that their marriage has been bedevilled with unsurmountable challenges. The evidence led by the parties is therefore characterised by accusations and counter-accusations of unreasonable behaviour allegedly exhibited towards each other in the course of their marriage. In the spirit of their settlement, the lawyers of the parties did not conduct rigorous cross-examination on the various allegations some of which border on criminality to enable the court to make findings of fact on same. A common thread that runs through the evidence of the parties is that the marriage has been plagued with differences which the parties after diligent efforts have not been able to reconcile within the meaning and intendment of **Section 2(1)(f)** of Act 367.

From the facts alleged in the petition for divorce the petitioner set out to prove fact contained in **Section 2(1)(f)** of Act 367 which states that:

*“For the purposes of showing that the marriage has broken down beyond reconciliation, the petitioner shall satisfy the Court that the parties after diligent effort have been unable to reconcile their differences.”*

To succeed under **section 2(1)(f)**, there must be evidence that irreconcilable difference exists between the parties within the meaning and intendment of **section 2(1) (f)** of the Matrimonial Causes Act, 1972(Act 367). In the case of **Mensah v. Mensah** [1972] 2 GLR 198 -209 @ 206 the court held that for **Section 2(1) (f)** to apply, the following elements must be present;

- (a) There should exist differences between the parties.
- (b) They should have made diligent efforts to reconcile these differences, and
- (c) They should have been unable to effect the reconciliation of the differences.

The court further held at page 207 of the report that;

*“The section does not require that there should be disputes between the parties; it only requires that there should be differences...Secondly, the differences must be between the parties... Thirdly, the differences should be such as would make it impossible for the marriage to subsist...Differences which cannot possibly affect the subsistence of the marriage are not sufficient. Evidence of petty quarrels and minor bickerings which are but evidence of that frailty which all humanity is heir to is not sufficient. The differences must be real and not imaginary; they should be so deep as to make it impossible for the parties to continue a normal marital relationship with each other.”*

The petitioner’s Lawful Attorney, testified to the various problems in the marriage and the alleged unreasonable behaviour exhibited by the respondent in the said marriage. The petitioner’s Attorney maintains that due to the petitioner’s age, the actions of the respondent have the potential to cause damage to his physical and mental health if he continues to live with the respondent as husband and wife and that the parties have accepted that the marriage has broken down beyond reconciliation. Consequently, the parties have further agreed to the dissolution of the marriage and filed Terms of Settlement on 23<sup>rd</sup> August 2023 to be adopted as part of the judgment of the Court on the ancillary reliefs should the marriage be dissolved. The respondent is also agreeable that they have had differences from the outset of the celebration of their Islamic marriage and the subsequent conversion to one under the ordinance. She also maintains that various attempts made by the petitioner and the respondent to reconcile their differences have proved futile.

On the totality of the evidence led by the parties in support of the breakdown of the marriage, I hold that serious differences exist between the parties and that the parties



after diligent efforts, have not been able to reconcile their differences. I therefore hold that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

## **CONCLUSION**

In conclusion, I hold that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly 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 ordinance marriage celebrated between the petitioner and the respondent on 9<sup>th</sup> November 2022.
2. The parties shall present the original copy of the marriage certificate for cancellation by the Registrar of the court.
3. The Terms of Settlement filed by the parties on 23<sup>rd</sup> August 2023, in the Registry of this Court and admitted and marked as **Exhibit “1”** is hereby adopted as consent judgment on the ancillary reliefs. Per the parties' Terms of Settlement;
  - i. The respondent shall keep the Hyundai Sonata with registration number **GW 155-18** together with its documents. The petitioner shall ensure that ownership of the car is formally transferred to the respondent by executing the appropriate documents.
  - ii. The petitioner shall pay the sum of Ten Thousand Ghana Cedis (GH¢10,000) as financial provision to the respondent on the 8<sup>th</sup> of September 2023.
  - iii. The petitioner shall also pay an amount of Two Thousand Ghana Cedis (GH¢2,000) towards the maintenance of the respondent for a period of five months commencing from 30<sup>th</sup> September 2023 and ending on the 30<sup>th</sup> January 2024.
  - iv. The petitioner shall withdraw all complaints filed at the Tema Police Station against the respondent for unlawful entry and stealing.
  - v. Each party shall not lay claim to any other property acquired by either party

during the marriage of the parties.

- vi. The Terms of settlement embody the entire understanding of the parties in respect of matters contained or referred to in it and there are no promises, terms, conditions, or obligations, oral or written, express or implied other than those contained in the Terms of Settlement.

**SGD.**

**H/H AGNES OPOKU-BARNIEH  
(CIRCUIT COURT JUDGE)**