CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE, DISTRICT COURT '2', KANESHIE, SITTING AT THE FORMER STOOL LANDS BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS' COLLEGE, ACCRA ON 10TH NOVEMBER, 2023.

SUIT NO. A8/24/21

IVY BOATENG		
79 OUTER RING ROAD	**::**	**PETITIONER**
CAMARA, ACCRA		
VRS.		
GEORGE AMISSAH		
KORLE GONNO	**::**	**RESPONDENT**
ACCRA		

JUDGMENT

Introduction/Background

The Petitioner in her divorce petition filed on 16th of September, 2020 prayed this Court to dissolve the marriage between the parties herein. The undisputed facts are that the parties married under the Ordinance in the year 2005 at the Accra Metropolitan Assembly and cohabited thereafter in Accra. During the pendency of the marriage, the parties gave birth to two issues by name; Abraham Amissah and Benjamin Amissah who at the time of the institution of this case were 15 years and 10 years respectively. The Petitioner is a secretary by profession whereas the Respondent is a businessman. Both parties concede that their marriage has broken down beyond reconciliation but they each attribute the

state of affairs to the other. To them, several matrimonial issues remain unresolved and attempts at reconciliation by family and friends have been unsuccessful.

The Petitioner averred that the Respondent during the subsistence of the marriage did not show her any love, affection and care. She further added that the parties have lived apart as man and wife for the past seven years. According to the Petitioner, for the pain, distress and embarrassment she has been made to suffer at the hands of the Respondent, she cannot be reasonably expected to live with the Respondent.

The Respondent responded to the petition by filing a response on 27th October, 2020. He denied having behaved unreasonably, stating that it was rather the Petitioner who behaved unreasonably during their marriage. According to him, the Petitioner had been rude, quarrelsome and often verbally abused him with unprintable words. He averred that the Petitioner failed to wash his clothing and those of the children of the marriage and he did all the laundry and cooking. He stated that the Petitioner neglected all her wifely and motherly duties and rather spent her time at church after closing from work and during the weekends. The Respondent averred that the Petitioner has not been faithful during the course of the marriage. He added that he has been performing his duties religiously as a husband and a father yet the Petitioner failed to acknowledge all the efforts he puts in the marriage.

According to the Respondent, the Petitioner deserted the matrimonial home without his knowledge on 15th October, 2013 and has since not returned despite attempts made by him and his family to help the parties to resume consortium. He asserted that it is rather the Petitioner who has behaved in a manner which has caused him great pain, distress and embarrassment. He therefore prayed this Court for the following reliefs;

a. *The dissolution of the ordinance marriage contracted on the 16th May, 2005 at the Accra Metropolitan Assembly.*

b. *Custody of the children since they have been with the Respondent since the Petitioner deserted the matrimonial home in October, 2013.*
c. *Any other reliefs as the Honourable Court may deem fit.*

The parties were able to resolve the ancillary matters in respect of the suit and executed Terms of Agreement on 25th August 2023. The parties based on their terms of settlement mutually agreed as follows:

1. *That the marriage should be dissolved.*
2. *That the Petitioner had collected her personal belonging from her matrimonial home.*
3. *That the Respondent, Mr Amissah is to pay Three Hundred Cedis (GH¢ 300.00) each month for the upkeep of the two children.*
4. *That the Respondent will pay an amount of Five Hundred and Fifty cedis (GH¢ 550.00) each term for the children's school fees and intermittently when there is an increase, he will pay the difference as well.*
5. *That the Petitioner, Madam Ivy has no intention of collecting any compensation or alimony.*
6. *That they had vowed to remain in peace and contribute to the upbringing of the children.*
7. *That they pray the Honourable Court to adopt the terms as settled.*

Both parties are in agreement that the marriage be dissolved. Despite this agreement by both of them, the law is that the Court must be satisfied on all the evidence that the marriage has broken down beyond reconciliation before it can grant the Order for the dissolution of the marriage. The grant of dissolution of the marriage is not an automatic one which is solely based on parties consenting. It is trite that merely asserting that a marriage has broken down irretrievably would not suffice for the Court to grant a relief for dissolution of a marriage and that the evidence before the Court should be the guiding light of the Court. See: **Charles Akpene Ameko v Saphira Kyerema Agbenu [2015] 91**

G.M.J. 202 @ 221; Michael Kyei Baffour v Gloria Carlis Anaman [2018] 123 GMJ 95; Donkor v Donkor [1982-83] GLR 1158; Adjetey v Adjetey [1973] 1 GLR 216).

Issue

It is evident from the foregoing that this Court is called upon to determine whether or not the marriage between the parties has broken down beyond reconciliation within the purview of the Matrimonial Causes Act, 1971 (Act 367).

Evaluation of evidence/Legal Analysis:

To prove that a marriage has broken down beyond reconciliation, the law requires a Petitioner to plead and prove to the satisfaction of the court, one or more of the six facts set out under **Section 2(1) of the Matrimonial Causes Act (Act 367)**. Those facts in a loose list are; adultery, unreasonable behaviour, desertion, not living as man and wife for two years continuously with consent to divorce, not living as man and wife for five years continuously with no consent needed and irreconcilable differences. See **Danquah vs Danquah (1979) GLR 371.**

Pleading and proving any of the facts by themselves however, are not dispositive of the quest to dissolve. That is to say, the discharge of the burden by the Petitioner on any of the facts is not in itself sufficient to obtain the decree. The court must be satisfied on all the evidence that the marriage has indeed broken down beyond reconciliation. I believe Section 2(3) of the Act is clear on the point. It states that notwithstanding that the court finds the existence of one or more of the facts specified in sub-section 1, the court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage

has broken down beyond reconciliation. In the case of **Kotei v. Kotei [1974] 2 GLR 172,** the Court held as follows (holding 2):

> *'Notwithstanding proof of one of the facts showing that the marriage had broken down the court has a discretion to refuse to grant the decree of dissolution on the ground that the marriage has not in fact broken down beyond reconciliation. The discretion given to the court was not a discretion to grant but a discretion to refuse a decree of dissolution…'*

Section 1(1) of the Matrimonial Causes Act, 1971 (Act 367) allows either party to a marriage to present a petition to the court for divorce. **Section 1(2)** of the Act further emphasizes that, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

From the pleadings and evidence adduced in Court, the parties seek to rely on **Sections 2(1)(b) and (e) of the Matrimonial Causes Act, 1971 (Act 367)** which is to the effect that;

> *"(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:*
>
> *(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or*
>
> *(e) 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."*

The Petitioner's witness statement filed on 8th December, 2020 and her Supplementary witness statement filed on 27th January 2021 were adopted by the Court as her evidence-in-chief. Petitioner's evidence was that the parties married under the ordinance on the 17th June, 2005 at the Accra Metropolitan Assembly and that the Respondent's behaviour changed immediately after the birth of their second child. She testified that the

Respondent was no longer showing her and the children love and care, that he subjected her to insults, constantly picked fights with her, disrespected her mother and had been physically abusing her sometimes in her mother's presence. According to Petitioner, all attempts at reconciliation has proved futile. She added that Respondent had failed to pay the children's school fees.

It is important that I point out at this stage that the Petitioner initially in her Petition asserted that the parties married on 16th May, 2005 which date conflicts the date she provided during her testimony. This Court has to therefore ascertain the date on which the parties married. Per Exhibit 'A', the marriage certificate tendered in evidence by the Petitioner, it is evident that the parties married on 17th June, 2005.

The Respondent's witness statement filed on 8th December, 2020 was adopted by the court as his evidence-in-chief. He testified that the Petitioner had behaved unreasonably as such, he cannot be reasonably expected to live with her. According to Respondent, he found messages from different contacts on the Petitioner's mobile phone. He added that the Petitioner without his knowledge and consent left their matrimonial home, packed all her belongings and has to this day not returned to the matrimonial home. He therefore prayed for the reliefs stated *supra*.

Unreasonable Behaviour:

A petitioner may satisfy the court that a marriage has broken down beyond reconciliation by adducing evidence that are in tandem with **Section 2(1)(b) of Act 367.** This section is to the effect that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him or her.

The Cambridge Advanced Learner's Dictionary (4th Edition) has defined behaviour generally as "the way that a person behaves in a particular situation or under particular

conditions. **Baker P in Katz v Katz [1972] 3 All ER 219** put it as follows: *"behaviour is something more than a mere state of affairs or state of mind, such as for example a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating the husband's love, or not being as demonstrative as he thinks she should be. Behaviour in this context is action or conduct by one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct, and, in my view, it must have some reference to the marriage."*

Unreasonable behaviour in marriage can take several forms such as threats, assault or violence, insults, non-maintenance, infidelity, amongst others. In dealing with behaviour, the question, is whether the petitioner can reasonably be expected to live with the respondent. The court ought to take cognizance of the personalities of the individuals before it and evaluate the impact of the respondent's conduct on that particular petitioner, having due regard to the history of the marriage and their relationship. See the case of **Livingstone-Stallard v Livingstone-Stallard; Knudsen v Knudsen [1976] 1 GLR 204; Mensah v Mensah [1972] 2 GLR 198**.

From the evidence of the Petitioner herein, it is Petitioner's case that the Respondent has behaved in such a manner that she can no longer be reasonably expected to live with him. Respondent however denied the allegations of unreasonable behaviour levelled against him. The Petitioner therefore had to do more than to merely assert that the Respondent had behaved unreasonably during the pendency of the marriage. She did not lead any evidence nor call any witness to prove her allegations of unreasonable behaviour she levelled against the Respondent.

The Respondent also levelled allegations of unreasonable behaviour against the Petitioner. According to him, he returned from work somewhere in October 2013 to realize that the Petitioner has packed out of the matrimonial home without his knowledge and consent. This piece of evidence was not denied by the Petitioner. This Court find as

a fact that Petitioner's conduct of leaving the matrimonial home unannounced was unreasonable. Petitioner's conduct is one undeserving of a married woman. Unreasonable behaviour is an objective test and this court believes that the Respondent has been able to prove to the satisfaction of the Court the allegation of unreasonable behaviour levelled against the Petitioner. This Court is therefore minded to conclude that the Petitioner has behaved unreasonably towards the Respondent and has made it intolerable for the parties to live together, a fact this Court has found. Based on these findings, the court is satisfied that unreasonable behaviour under section 2(1)(b) of Act 367 has been properly established.

Not having lived together for at least five years

Section 2(1)(e) of Act 367 makes the fact of not having lived together as husband and wife for a continuous period of at least five years before the filing of the Petiton for divorce one of the facts that shows that a marriage has brokendown beyond reconciliation.

In the case of **Kotei v. Kotei [1974] 2 GLR 172**, where the parties had not lived as man and wife for over six years but the Respondent asserted that she loved the Petitioner and was willing to attempt settlement, the Court per Sarkodee J. held that proof of five years' continuous separation permitted the marriage to be dissolved even against the will of a spouse who had committed no matrimonial offence. He further noted that no blame needed to be attributed to either party in relying on this fact.

In the present suit, Respondent's case is that the Petitioner in 2013 unceremoniously moved out of their matrimonial home without a word to him and same without his consent. The Petitioner in her Petition had stated that cohabitation had come to an end as the parties had ceased staying together for seven years. The Petitioner abandoned Respondent, the children of the marriage and their matrimonial home. The Petitioner did

not challenge this piece of evidence adduced by the Respondent. The parties have lived apart from each other for about ten years now. In the Court's opinion, this is enough years for both of them to live separately and carry on with their lives without involving the other partner. Obviously, there is no intention by the parties to resume consortium to continue living together as man and wife.

The number of years they have lived apart is sufficient to constitute a ground for divorce. The Court finds as a fact that the parties have not lived as man and wife since the year 2013. This fact having been established, the Court concludes on this issue that the marriage has broken down beyond reconciliation.

Conclusion

From the totality of the evidence adduced in the trial by the parties, it is this Court's opinion that the marriage between the parties has broken down beyond reconciliation owing to the unreasonable behaviour of the Petitioner and the fact that the parties have not lived together as husband and wife for the past 10 years. This is so material that, it will be erroneous for this Court to rule that the marriage should still subsist.

In the light of the foregoing, I hold that:

1. **The marriage celebrated between the parties on 17th June, 2005 at the Accra Metropolitan Assembly, Accra is hereby dissolved;**
2. **The Court enters consent judgment on the basis of the terms of settlement duly executed by the parties on 25th August 2023 as reproduced *supra* and incorporates same as part of this judgment which parties are to adhere to same.**

[SGD]
AMA ADOMAKO-KWAKYE (MS.)

(MAGISTRATE)