

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 3RD NOVEMBER, 2023.

SUIT NO. A8/8/23

JANET ADDO

OBEYEYIE :: PETITIONER

VRS.

ERIC OWUSU ADDO

PIG FARM :: RESPONDENT

JUDGMENT

The Petitioner in her petition filed on 10th August 2022 prayed the Court for the following reliefs:

- a. An order for the dissolution of the marriage in fact celebrated between the Petitioner and the Respondent on 18th of December, 2004 at the Seventh Day Adventist Church.
- b. Any order or orders deemed fit by this Honourable Court.

Per the Petition, the parties herein, a cleaner and a tiler respectively, married in the year 2004 at the Seventh Day Adventist Church, Mamobi. The parties have no child together. It is the Petitioner's case that the marriage between her and the Respondent has broken down beyond reconciliation. She averred that the parties had been staying apart for a continuous period of six years due to the Respondent's unreasonable behaviour and the parties' irreconcilable

differences. She further averred that the parties have had no conjugal relationship for that period.

The Petitioner averred that the Respondent had indicated that he was no longer interested in the marriage and had married another woman. She stated that all attempts at reconciliation had been unsuccessful and that the Respondent's conduct had caused her emotional and mental stress.

The main issue for determination by this Court is whether or not the marriage between the Petitioner and the Respondent has broken down beyond reconciliation.

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. Before the Court can dissolve the marriage, it must satisfy itself that it has been proved on the preponderance of probabilities that the marriage has broken down beyond reconciliation. See: **Charles Akpene Ameko v Saphira Kyerema Agbenu [2015] 91 G.M.J. 202 @ 221.**

In order to prove that a marriage has broken down beyond reconciliation, a petitioner shall prove to the satisfaction of the Court one or more of the six facts specified in section 2(1)(a)-(f) of Act 367. Proof of any one of these facts raises a presumption that the marriage has broken down beyond reconciliation. If any of the facts is made out, the court must grant the dissolution unless it is satisfied that the marriage has not broken down irretrievably. In proof that the marriage has broken down beyond reconciliation, the Petitioner has the burden to satisfy the court on at least any of the following facts:

- a. that the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or

- b. that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or
- c. that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or
- 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;
- 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; or
- f. that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

The Respondent was duly served with the Petition and hearing notice and made an appearance in Court on 14th October 2022 when the Court directed him to file his Answer and have same served on the Petitioner. He however never showed up in Court again and also filed no process to dispute any of the assertions of the Petitioner. The law is that there is no need for a Plaintiff [Petitioner] to call further or any evidence to prove allegations or assertions of fact in his/her claim where there is no joinder of issues. Unchallenged evidence is deemed admitted. See the cases of:

Air Namibia (Pty) Ltd v Micon Travel and Tours & Others [2015] 91 G.M.J. 173 @ 194
Agric Cattle & 2 others v Nii Tetteh Kpobi Tsuru III & 4 others [2018] 125 GMJ 1 @ 115
Fori v Ayerebi [1966] 2 GLR 627, holding 6
Takoradi Flour Mills v Faris [2005-2006] SCGLR 882, holding 1

Quagraine v Adams [1981] GLR 599

Total Ghana Ltd v Thompson [2011] 1 SCGLR 458

Samuel Adrah v. ECG [2018] 119 GMJ 143 @ 184 C.A.

The Petitioner testified by relying on her witness statement filed on 12th December 2022 which was adopted by the Court as her evidence in chief. She tendered in evidence as Exhibit 'A', the original copy of the parties' marriage certificate, attesting to the fact that the parties indeed married under Part III of CAP 127 on 18th December 2004 and as such, the Petition is in order in accordance with Section 9 of Act 367 since it was brought after seventeen years of the celebration of the marriage.

The Petitioner testified that the parties had challenges with child birth and went through some medical processes but she had to stop at a point since all the burden was on her and it was affecting her financially. She stated that she got wind of the fact that the Respondent had had a child with another woman during the pendency of their marriage but when she enquired from him, he denied it until he was later punished by the church when it came out that it was indeed true. She stated that she decided to leave the marriage at that point but the Respondent pleaded with her and she forgave him and permitted the child to be brought to stay with them.

It was the Petitioner's testimony that the Respondent stopped taking care of the family, left the house without informing her and returned anytime he wanted and these conducts compelled her to leave to stay with her brother since she was struggling financially. She testified that she informed her family about the Respondent's behaviour but he failed to turn up when they invited him for a meeting. She further testified that Respondent's family also invited him thrice but he failed again to respond to these invitations and as such the customary drinks were presented to his family. She stated that the parties had not lived together as husband and wife for six years, that the Respondent had deserted her and that he had married another woman. She concluded her evidence by praying a dissolution of the marriage, alimony and costs. I must

state that the relief sought by the Petitioner in her Petition was for a dissolution and any relief deemed fit by the Court and the Court would therefore stick to those since Petitioner cannot seek to amend her reliefs through her evidence-in-chief.

Section 2(1) (f) of the Matrimonial Causes Act, 1971 (Act 367) is to the effect that, one of the facts for establishing that a marriage has broken down beyond reconciliation is to establish that the parties to the marriage have, after diligent efforts, been unable to reconcile their differences. It was the Petitioner's evidence that there existed irreconcilable differences between the parties which diligent efforts made by both families to assist reconcile the parties had been futile. The Respondent did not honour any of the invitations extended to him by either Petitioner's family or his own family and the customary drink had to be accepted back by his family. The Court finds as a fact that the attempts at settlement of the parties' differences have not been successful despite steps taken by their family members in that respect.

It is important to also note that the parties have been living apart from each other for over six years now. 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 even 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 circumstances, the parties have lived apart for well over six years and the fact under **Section 2(1)(e) of Act 367** has been made out, pointing to a breakdown of the parties' marriage. The Respondent has deserted the Petitioner and has gone ahead to marry someone else although his marriage with the Petitioner subsists. This assertion, like all the others, he also failed to deny by way of a response or even appearing in Court to cross examine the Petitioner on her allegations, if they were fabrications.

The Respondent has been unreasonable in his conducts and it is not expected that the Petitioner will continue living with him as husband and wife.

I find that the marriage between the parties has indeed broken down beyond reconciliation and it will therefore not be in the interest of the parties to order them to resume staying together to continue their lives as a married couple having regard to their irreconcilable differences, desertion by the Respondent, unreasonable behaviour on his part and the fact that the parties have not lived together for six continuous years. The Respondent has moved on, causing the Petitioner great anguish.

The Court is satisfied from the evidence on record of the Petitioner that the marriage between the parties has broken down beyond reconciliation and in the Court's humble view, it would be pointless to refuse the prayer for dissolution of the marriage. Having found that the marriage between the parties herein has broken down beyond reconciliation, I grant the relief of the Petitioner and decree that the marriage celebrated between the parties on 18th December 2004 at the Seventh-Day Adventist Church, Maamobi, Accra is hereby dissolved.

Cost of GH¢3,000.00 is awarded for the Petitioner against the Respondent.

[SGD]
AMA ADOMAKO-KWAKYE (MS.)
(MAGISTRATE)