

A4/07/2022

JOSEPHINE NANA ABA BAIDEN

PETITIONER

VRS.

BENJAMIN MENSAH

RESPONDENT

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**JUDGMENT**

This is a divorce petition between Josephine Nana Aba Baiden (afterwards referred to as the Petitioner) and Benjamin Mensah (afterwards referred to as the Respondent)

The parties are both Ghanaians and were married under Part 3 of the Marriages Act, 1884-1985 (CAP 127) on 9<sup>th</sup> August, 2008 at the Pentecost, Sarfo Memorial Temple Church, Community 2, Tema.

There are no issues between them but both parties had children of their own.

On 19<sup>th</sup> July 2021, the Petitioner filed a petition for divorce praying the Court for the following.

- a. An order for the dissolution of their ordinance marriage contracted on the 9<sup>th</sup> August, 2008 at Pentecost Church, Sarfo memorial Community 2, Tema for us to go our separate ways and lives (sic)
- b. Any orders that the Court may deem fit.

The Respondent filed an Answer on 2<sup>nd</sup> November, 2021 denying some of the averments made by the Petitioner but admitting that they have been separated for a while and that the marriage has broken down beyond reconciliation. He did not cross petition.

## ISSUE

The main issue for determination in this instant petition is whether or not the marriage has broken down beyond reconciliation.

## ANALYSIS AND APPLICATION OF THE LAW

Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides.

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2 (1) (a) to (f) of Act 367 makes a catalogue of facts to be established as proof of breakdown of marriage. For the purposes determining this instant petition the relevant portions are reproduced below:

2. Proof of breakdown of marriage.

(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:

...

c) That the parties to the marriage have not lived as husband 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.

In this instant petition the fact that can be gleaned from the Petitioner's petition filed and witness statement are that after the marriage ceremony she and her daughter from a previous relationship as well as the Respondent and his daughter from a previous relationship went to live in the Respondent's brother's house. As was expected there

were interferences and misunderstandings and the Respondent's brother forcefully ejected them one day.

According to the Petitioner, the Respondent left the petitioner and the children stranded and went to stay in a girlfriend's home and she had to go to look for accommodation somewhere to stay and up to date they have been separated.

In the Petitioner's divorce petition she stated that at least for the past 6 years that the Respondent opted out of the marriage and was asked to file for a divorce but he has not done so. Also in paragraph 28 of same, she avers that as a result of long separation she is no longer interested in the marriage. The Respondent admits in his answer paragraph 2 that there has been a long separation. In his witness statement paragraph 12 he states "we are now separated for the past seven (7) years and all attempts made by her uncle and our counsellor to resolve the differences in the marriage have proved futile.

It is therefore undisputed that the parties have been separated for at five years immediately preceding the presentation of the petition. The Respondent has left the Petitioner never intending to return to the marriage. He regarded it as an as were shell and this empty legal shell should not be allowed to stand but should be destroyed see the case of *Kotei Vs. Kotei (1974) 2GLR 172* and on this ground alone the marriage could be regarded as having broken down beyond reconciliation and for a decree for dissolution to be made on grounds of Sec 2(1) (e) of Act 367.

Again parties have admitted that they have not been able to resolve their differences despite diligent attempts at reconciliation.

First, the Petitioner in her petition for divorce paragraph 23 states that the church counsellor called her for a discussion, also in paragraph 25, that the church invited them on two occasions for settlement and reconciliation but the Respondent maintained his stand that he wanted a divorce, the family also tried to resolve the matter but without success. In paragraph 14 of Petitioner's witness statement she reiterates the unsuccessful

attempts at reconciliation and the Respondent's witness statement as reproduced above attests to that fact that the parties have not been able to reconcile their differences, thereby satisfying section 2(1)(f) of Act Act 367.

To conclude, I find that the marriage between the parties has broken down beyond reconciliation on grounds of long separation caused by the Respondent and the inability of the parties to reconcile their differences. The marriage contracted on 9<sup>th</sup> August, 2008 between the Petitioner and Respondent at the church of Pentecost Safo Memorial Temple, Community 2, Tema is hereby dissolved. Certificate of marriage COP/TSD/M15/2008 is hereby cancelled.

The Petitioner did not demand any form of compensation or financial provision and from the facts of the case she as a caterer has had to expend more financially in terms of keeping the home and she had to initiate this divorce proceeding which comes at a cost. Having regard to this and for the fact that the Respondent has wasted her time all these years of absence. I award an amount of Gh¢10,000.00 for the petitioner as compensation and costs.

.....(SGD).....

**H/W NAOMI AKYIANO ESQ. (MS.)**

**DISTRICT COURT MAGISTRATE**