

IN THE DISTRICT COURT HELD AT AKIM ODA ON 27TH OCTOBER 2023 BEFORE HER WORSHIP
ADELINE OWUSUA ASANTE (MS.). SITTING AS THE DISTRICT MAGISTRATE

A4/16/2023

PETER BOAKYE ASUBONTENG - PETITIONER
AKIM SWEDRU

VRS

JOYCE AKOSUA AFRAKOMA - RESPONDENT
AKIM SWEDRU

JUDGEMENT

Per the Petition filed on 8th February 2023, the Petitioner prays for:

An order dissolving the Ordinance marriage between the parties and the marriage certificate be cancelled.

According to the Petition, the parties herein married on 20th April 2000 at the Registrar of Marriages Office, Kumasi. There are three issues of the marriage at the time of filing the Petition. Whilst the Petitioner herein is a farmer, the Respondent is a trader. The parties after the said marriage cohabited in Accra. It was averred that the marriage has broken down beyond reconciliation.

It is the Petitioner's case that the marriage was a happy one until a misunderstanding ensued between the parties wherein their respective family members tried to resolve the differences between them but all efforts proved futile. In August 2014, the Respondent met the Petitioner's family and presented a bottle of schnapps at Akim Swedru in accordance with Akan customs to customarily dissolve the marriage. However, since the marriage was under ordinance, it has become necessary to bring this petition to dissolve the marriage which has become an empty shell for both parties to have peace of mind and move on with their respective lives. Petitioner further alleged that the Respondent has caused him much anxiety and stress and prays for the dissolution of the ordinance marriage.

In Respondent's Answer filed on 28th February, 2023, the Respondent admitted virtually all the facts alluded to in Petitioner's petition. However, the Respondent stated that after the dissolution of the customary marriage 9 years ago the parties had not lived together as a couple since she relocated to Tafo Kumasi whilst the Petitioner is at Akim Swedru and prayed for the dissolution of the marriage too.

The only issue for consideration from the pleadings is:

Whether or not the marriage between the Petitioner and the Respondent has broken down beyond reconciliation?

A Petitioner must prove that at least one of the six marital offences exist as provided for in sections 2(1) (a)-(f) of Act 367. These marital offences include: *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, irreconcilable differences*. The discharge of this burden is not in itself sufficient to obtain a decree of divorce as the Court must satisfy itself from the evidence adduced that the marriage has broken down beyond reconciliation. See ***Danquah vs. Danquah [1979] GLR 371***.

The Petitioner seeks to rely on section 2(1) (e) of Act 367 which is to the effect that the parties have not lived together as man and wife for a continuous period of five (5) years immediately before the filing of the petition. Thus, it behooves on the petitioner to establish that they have not lived as man and wife for a continuous period of five (5) years and the consent of the Respondent is not required.

The Petitioner testified by relying on his witness statement filed on 16th March 2023 which was a repetition of the averments in his petition. According to the Petitioner, the marriage between the parties had broken down beyond reconciliation due to a misunderstanding which ensued between the parties for which reason parties had not been able to settle their differences even with the assistance of their respective family members and for which reason the Respondent left their matrimonial home to her hometown in 2013. In August 2014, the customary marriage was dissolved.

The Respondent also testified by way of a witness statement filed on 24th March 2023 which was also a repetition of the averments in her answer. Both parties did not subject each other to cross examination.

Section 2(2) of Act 367 mandates a court to reasonably inquire into the facts alleged by the Petitioner and the Respondent. Similarly, section 2(3) of Act 367 directs the judge to adopt an inquisitorial approach in its probe to determine whether the marriage has truly broken down beyond reconciliation. See the case of ***Marian Partey vs. Williams Partey [2014] 71 GMJ 98 CA***

Tasked with this obligation, this court sought to embark on a probing spree to determine whether the marriage has broken down beyond reconciliation vis a vis the facts and evidence adduced. It came to light that sometime in 2013, the Respondent committed adultery for which reason a misunderstanding ensued. Subsequently, the families of both parties tried to help settle their differences but this proved futile as the Respondent left the matrimonial home to her hometown and sometime thereafter she presented divorce drinks to the family of the Petitioner to dissolve the marriage in August 2014.

The Petitioner informed the court that he initially did not want to tell this court what led to the sudden misunderstanding as he did not want it to seem he was disgracing the Respondent but that they had not lived together as man and wife after the adulterous incident for the past 9 years as he was hurt. The Respondent corroborated these averments by the Petitioner as being the truth.

Despite the commission of adultery by the Respondent resulting in the separation of the parties, it is worth noting that non-commission of a marital offence by a Respondent under section 2 (1) (e) is immaterial. See the case of ***Kotei v. Kotei [1974] 2 GLR 172***

I find as a fact that the marriage has broken down beyond reconciliation and it will not be in the interest of both parties to order them to resume consortium as the parties have lived apart for so long, 9 good years.

I hold that the marriage celebrated between the parties on 20th April 2000 at the Registrar of Marriages Office, Kumasi is hereby dissolved and the marriage certificate is accordingly cancelled. There will be no order as to cost.

(SGD)

ADELINE OWUSUA ASANTE (MS.)
(MAGISTRATE)

Parties

Petitioner Present

Respondent Present