

IN THE HIGH COURT OF JUSTICE, ACCRA HELD ON 13TH OCTOBER 2023,
BEFORE HER LADYSHIP JUSTICE ELFREDA AMY DANKYI (MRS), HIGH
COURT JUDGE, SITTING IN DIVORCE AND MATRIMONIAL CAUSES
DIVISION THREE.

SUIT NO: DM/0251/2018

DANIELLA MAWUSI NTOW SAPONG (MRS.) - PETITIONER

VS

ERIC KWADWO NTOW SAPONG - RESPONDENT

JUDGMENT:

By her Petition filed in this Court, the Petitioner seeks a dissolution of the marriage celebrated between the parties on 11th May, 1999, under the Marriages Act, 1884 – 1985 (CAP 127), at the Marriage Registry, Kumasi Metropolitan Assembly, Kumasi. The Petitioner also prays for any other order the Court deems fit to grant. The Petitioner and the Respondent are Ghanaian Citizens resident in Ghana. After the marriage the parties cohabited at Teshie Nungua, Accra.

There are three issues of the marriage namely; Emmanuel Kwasi Larbi Sapong aged nineteen (19) years, Chris Osei Larbi Sapong aged eighteen (18) years and Erica Sapomaa Larbi Sapong aged fourteen (14) years at the time that the petition was filed. The issues are still in school.

The Petitioner prays for the following reliefs;

- a. That the marriage celebrated between the parties on the 11th May, 1999 be dissolved.
- b. That the Petitioner be granted custody of the issue of the marriage namely; Emmanuel Kwasi Larbi Sarpong aged nineteen years, Chris Osei Larbi Sarpong aged eighteen years and Erica Sarpomaa Larbi Sarpong aged fourteen years who are already in the Petitioner's custody,
- c. That the Respondent be ordered to maintain the issues of the marriage by giving the Petitioner Four Thousand Five Hundred Ghana Cedis per month towards feeding and also provide the issues of the marriage with other necessities of life
- d. That the Respondent be made to pay the costs of and incidental to this suit.
- e. Any further relief/ reliefs as to this Honourable Court might deem fit in the circumstance.

The Respondent who was served with the Petition failed to file an Appearance, within the time required by the Rules of Court. The pleadings having closed, the Petitioner applied to set the suit down for trial. The Respondent who was served with the Notice to set the suit down for trial, also failed to attend Court. This Court gave directions for filing of Witness Statements and for a Case Management Conference to be held. The Petitioner filed her Witness Statement and Case Management Conference was held and the suit adjourned for trial. The Respondent who was served with Hearing Notice, failed to attend the trial.

The only issue for determination in this suit, is whether or not the marriage celebrated between the parties has broken down beyond reconciliation.

By Section 1 (2) of the Matrimonial Causes Act of 1971 (Act 367), the sole ground upon which an order for dissolution of a marriage can be made, is that the marriage has broken down beyond reconciliation. Section 2 (1) of the said Act, however, requires that the Petitioner prove one or more of the facts set out in the said Section as follows:

2. (1) *For showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the Court of one or more of the following facts:*

(a) That the Respondent has committed adultery and that by reason of the adultery the Petitioner finds it intolerable to live with the Respondent;

(b) That the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent;

(c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition;

(d) That the parties to the marriage have not lived as husband 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 the 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 despite the refusal;

(e) 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.

The general position of the law is that, a Court ought to inquire so far as is reasonable, into the facts alleged by the Petitioner and Respondent, to satisfy itself on the evidence, that the marriage between the parties has broken down beyond reconciliation. This requirement is provided for by Sections 2 (2) and 2 (3) of Act 367, as follows:

“(2) On a Petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the Petitioner and the Respondent.

(3) although the Court finds the existence of one or more of the facts specified in subsection (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.”

Therefore, notwithstanding the Respondent did not attend the trial, the Petitioner must establish on her evidence that the marriage between the parties has indeed broken down beyond reconciliation, in accordance with Section 2 (1) of Act 367, *supra*.

The particulars of breakdown averred to by the Petitioner are infidelity on the part of the Respondent and the inability of the parties to reconcile their differences.

According to the Petitioner, all efforts she has made to sustain the marriage between the parties and reconcile their differences were thwarted by the Respondent, who caused her anxiety and emotional distress, as he continued to engage in acts of infidelity with their maidservant and has two children with her. According to the Petitioner the Respondent is currently living with the said maidservant.

The evidence of the Petitioner on the breakdown of the marriage was uncontroverted, thereby amounting to an admission of same. It is settled law that where evidence on oath is unchallenged, same amounts to an admission. See: **MANTEY & ANOR V.**

BOTWE [1989 – 90] 1 GLR 479; IN RE; ASHALLEY BOTWE LANDS; AGBOSU V. KOTEY [2003 – 2004] SCGLR 420 per WOOD JSC.

Therefore, as I have no reason to disbelieve the Petitioner's testimony, I accept same as being the facts pertaining to the marriage of the parties.

Upon the evidence adduced before the Court, I am satisfied that the parties have not lived as husband and wife for a period exceeding two years preceding the commencement of this Petition. The Respondent has committed adultery.

The Respondent who has been served with all processes and has failed to attend this Court, has clearly evinced an intention not to contest the prayer for the dissolution of the marriage. I am also satisfied that the parties have been unable to reconcile their differences. In the circumstances, this Court is entitled to dissolve the marriage between the parties, as having broken down beyond reconciliation, by virtue of sections 2 (1) (a) and 2 (1) (f) of Act 367, supra.

Accordingly, it is hereby decreed, that the marriage celebrated between the Petitioner and Respondent on 11th May, 1999 in Kumasi, under the Marriages Act, (CAP 127) be and is hereby dissolved forthwith. The Marriage Certificate is cancelled.

The Petitioner prays this Court to grant her reliefs are stated supra. The Court hereby grants Petitioner her reliefs in part as follows;

1. Emmanuel Kwasi Larbi Spong currently twenty-four (24) years, Chris Osei Larbi Spong currently aged twenty-three (23) years and Erica Larbi Spong now aged twenty (20) years are young adults now and they can decide which

parent they wish to stay with. Reasonable access is given to the parent who does not have the young adults under his/her roof.

2. Respondent will pay for the school fees, extra curricula activities, medical bills of the children as and when they fall due.
3. Respondent will give petitioner maintenance of Four Thousand Ghana Cedis at the end of each month beginning October, 2023.
4. Respondent will pay for the necessities of life for the children of the marriage till they are well employed.
5. Respondent will pay to the Petitioner One Hundred Thousand Cedis (GH ₵100,000.00) as alimony.
6. Respondent will pay for the legal suit.
7. Costs of Five Thousand Ghana Cedis awarded against the Respondent in favour of Petitioner.

(SGD.)

ELFREDA AMY DANKYI (MRS)
JUSTICE OF THE HIGH COURT.

COUNSEL:

EVELYN AHINSAH HOLDING THE BRIEF OF REXFORD NII
NORTEY LOKKO FOR THE PETITIONER

NO LEGAL REPRESENTATION FOR THE RESPONDENT

