

IN THE HIGH COURT OF JUSTICE, ACCRA HELD ON 20<sup>TH</sup> NOVEMBER 2023,  
BEFORE HER LADYSHIP JUSTICE ELFREDA AMY DANKYI (MRS), HIGH  
COURT JUDGE, SITTING IN DIVORCE AND MATRIMONIAL CAUSES  
DIVISION THREE.

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SUIT NO: DM/0525/2022

DZIFA MAGDALENE ATIASE - PETITIONER

VS.

BRIGHT YAO ATIASE - RESPONDENT

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**JUDGMENT:**

This is a wife's petition for dissolution of marriage. The Petitioner and Respondent are both Ghanaian citizens. The parties got married on the 8<sup>th</sup> of April, 2006 under the Marriage Ordinance (CAP 127) at the EP Church, Abossey Okai Accra. After the said marriage the parties cohabited at Nungua, Accra. There are two issues of the marriage namely; Austin Deladem Atiase aged 14 years and Lesley 7 Delase Atiase 10 years as at the time that the petition was filed.

The Petitioner caused this Petition to issue in September, 2022, on the ground that the marriage between the parties has broken down beyond reconciliation. She attributed the breakdown of the marriage to the unreasonable behavior of the Respondent and attempts at reconciliation by clergy, family and friends has proved futile.

The Respondent entered Appearance on 14<sup>th</sup> December, 2022. The Respondent filed an Answer and Cross-Petition on 19<sup>th</sup> December, 2022 claiming the following reliefs;

- a) 50% shares in Cheerfield Montessori to be transferred top Respondent
- b) 50% interest in all the landed properties acquired during the subsistence of the marriage be transferred to Respondent.
- c) 50% of all shares in any company established by the parties during the pendency of the marriage.

The Petitioner filed a Reply and an Answer on 14<sup>th</sup> February, 2023.

The pleadings in the suit having closed, the suit was set down for trial. The parties filed a Witness Statement. Case Management Conference was concluded on the 31<sup>st</sup> of May, 2023. The evidence of the Petitioner was taken on 17<sup>th</sup> October, 2023.

In view of the Terms of Settlement filed, the only issue for determination is whether or not, the marriage 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:

*(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:*

*(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."*

Being a Matrimonial Cause, the Court is duty bound, regardless of the Terms of Settlement filed and in accordance with sections 2 (2) and 2 (3) of the Matrimonial Causes Act, 1971 (Act 367), to inquire into the marriage of the parties, by hearing their testimony, for a determination, as to whether or not, the marriage celebrated between the parties, has broken down beyond reconciliation.

From the evidence adduced before the Court by the Petitioner, there is no dispute that the parties had differences. Petitioner attributed the breakdown of the marriage to the unreasonable behavior of the Respondent. Petitioner testified amongst others that after the birth of their first son in 2008 the Respondent without notice left the matrimonial

home in 2009 deserting the Petitioner and the new born baby. The Petitioner in a state of panic distress and anguish sought the assistance of family, friends and pastors who implored on the Respondent to return to his matrimonial home in 2011. The Petitioner became saddened when the Respondent refused to give reasons for his conduct. This incident brought a lot of mistrust in the marriage as it also became difficult to establish a meaningful dialogue with Respondent. The Respondent took a hostile attitude making it difficult for the parties to communicate cordially as husband and wife even to discuss pertinent issues relating to the marriage. Her further testimony is that the Respondent neglected the Petitioner by refusing to show care and affection towards her especially when the Petitioner lost her third pregnancy. Respondent has not committed himself to providing the basic necessities of life such as food, clothing, accommodation, medical care, school fees for the children as the Petitioner has been solely responsible for the provision of the basic necessities of life for the children from their infancy to date.

Respondent per his witness statement also attributed the breakdown of the marriage to the unreasonable behavior of the Petitioner. According to the testimony of the Respondent amongst others the parties were having a blissful marriage till Petitioner's mother and sister moved into the house. The mother and sister interfered so much in the marriage that his views and opinions no longer mattered in the marriage. The sister of the petitioner insulted and treated him with disdain to the point that he asked his in-laws to leave the house but Petitioner and his mother in law insisted that they will not leave. Respondent said he was schooling after work and by the time he got home the Petitioner had locked the gates and he could not enter the house. Respondent said he sought audience with pastors of their church to assist with counselling but it failed to work due to the non-co-operative attitude of the Petitioner. Respondent said he also

asked his father-in-law to intercede but the Petitioner walked out on them when the issue was to be addressed.

It is obvious that the parties had differences and have not lived as husband and wife for five years preceding this petition.

By Section 2 (1)(e) of Act 367, where 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 the marriage can be dissolved. In addition where the parties have been unable to resolve their differences, the marriage can be dissolved. The Court is of the opinion that not having lived as husband and wife for a period of five years preceding the marriage and having failed to resolve their differences in the marriage, the Court will dissolve the marriage.

Upon the evidence adduced before the Court therefore, I find that the marriage celebrated between the parties has broken down beyond reconciliation. It is hereby decreed that, the marriage celebrated between the Petitioner and the Respondent on in April, 2006 Accra, under the Marriages Act (CAP 127) be and is hereby dissolved forthwith. The Marriage Certificate is hereby cancelled.

On 7<sup>th</sup> of July, 2023, the parties filed Terms of Settlement praying that same be adopted by this Court. This Court hereby adopts the said Terms of Settlement and enters consent Judgment between the parties as follows:

Whereas the Respondent has represented to the Petitioner that he has no legal or equitable interest in any property acquired by her during the subsistence of the marriage and the Petitioner has represented same to the Respondent

Whereas the Petitioner has agreed to waive her claim to alimony, the Respondent has accepted same.

The Parties hereby agree as follows;

1. MAINTENANCE FOR THE ISSUES OF THE MARRIAGE

A. To be determined by the Honourable Court.

2. COSTS

(a) Each party shall bear their own legal cost.

(b) Parties agree to have share custody for vacation and the Respondent to have two weekends in a month custody.

3. The said terms shall be in full and final settlement of all and any claims arising out of the dissolution of the Parties' marriage.

4. The terms hereby agreed shall be adopted as a consent judgment of the Court.

The Court hereby orders maintenance of One Thousand Ghana Cedis for the two children of the marriage per month with an upward review every year depending on the economic challenges. The Respondent will pay the school fees and other educational bills and medical bills of the children as and when they fall due.

Upon the agreement between the parties for the court to make a determination in respect of maintenance the Court orders the Respondent to pay GH¢2,500.00 for the two issues of the marriage which is subject to a yearly review of five percent (5%). The

Respondent shall pay the school fees, educational and medical bills of the children as and when they fall due.

**(SGD.)**

**ELFREDA AMY DANKYI (MRS)**

**JUSTICE OF THE HIGH COURT.**

**COUNSEL:**

WISDOM SENEADZA FOR THE PETITIONER

SAMUEL OSEI SARPONG FOR THE RESPONDENT.