

**IN THE HIGH COURT OF JUSTICE, ACCRA HELD ON 25TH OCTOBER 2023,
BEFORE HER LADYSHIP JUSTICE ELFREDA AMY DANKYI (MRS), HIGH
COURT JUDGE, SITTING IN DIVORCE AND MATRIMONIAL CAUSES
DIVISION THREE.**

SUIT NO: DM/103/2019

FELICIA ESSIBUAH

- PETITIONER

VS.

BERNARD KOFI ESSIBUAH

- RESPONDENT

JUDGMENT:

This is a wife's Petition for dissolution of marriage. The Petitioner and Respondent who are Ghanaian citizens domiciled in Ghana, got married on 11th June, 2011 under the Marriage Ordinance (Cap 127) at the International Central Gospel Church (ICGC) Christ Temple, Accra. After the said marriage the parties cohabited at Mataheko and Bubuashie, Accra until the parties separated in 2017. There is one issue of the marriage.

The Petitioner caused this Petition to issue on 14th January, 2019 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 has proved futile.

The Respondent entered appearance on 21st February, 2018 March 2023 and filed an Answer and Cross-petition on 13th March, 2019. By his Answer, he denied the Petitioner's assertions and cross-petitioned for the reliefs as stated below:

- a. An order for paternity test to be conducted to ascertain the biological father of the child of the marriage, Nana Kobina Odwenmafo Essibuah
- b. An Order for the respondent to continue with the payment of (GH¢ 200.00) as monthly maintenance for the child.
- c. An order for the Respondent to be granted reasonable access and to be consulted on issues concerning the welfare of the child of the marriage if the paternity test turns out that the respondent is the only issue of the marriage Nana Kobina Odwenmafo Essibuah aged four at the time that the petition was filed.

The Respondent by his Answer and Cross-Petition averred that the marriage between the parties has broken down, due to the unreasonable behaviour of the Petitioner and irreconcilable differences between the parties.

The Petitioner filed a Reply and Answer to Cross-petition on 4th April, 2019. The pleadings in the suit having closed, the suit was set down for trial. The parties filed Witness Statements, pursuant to the Orders of the Court. The evidence of the parties was taken.

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 and attempts at reconciliation has proved futile. Petitioner testified by her Witness Statement amongst others that upon her return after the birth of their son the Respondent refused to allow her and their son into their matrimonial home and asked her to go and live with her mother but she refused. The Respondent then adopted a quarrelsome and violent disposition on all issues relating to their marriage. Respondent was having an extra marital affair with a lady, Respondent has a shameless borrowing habit, Respondent refuses to eat the Petitioner's food and denying her consortium.

The evidence of Respondent is that sometime after the arrival of the Petitioner and their son he told her that he made it known that he would not admit any relative to come and live in the house but yet Petitioner's mother came to live with them without his consent, Petitioner and her mother developed authoritative and disrespectful attitude towards Respondent. Petitioner's mother was the one giving instructions and command at home to the extent that they determined when the Respondent should come home from work, what Respondent should eat, when to go out and how monies should be used at home, Petitioner is lazy and dirty and refused to observe basic hygiene amongst others.

It is obvious that the parties had several disagreements and efforts by family to assist the parties to reconcile their differences, proved futile. The parties

have not lived as husband and wife for about six years as at the time the petition was filed.

By Section 2 (1) (e) (f) of Act 367, supra, 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, and where the parties have been unable to reconcile their differences, after diligent effort, and have lived apart for six years, the Court may proceed to dissolve the marriage.

As the parties have lived apart for six years and also been unable to reconcile their differences, after diligent effort, I find that the marriage celebrated between them has broken down beyond reconciliation.

Upon the evidence adduced before the Court therefore, as 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 11th June, 2011 in Accra, under the Marriages Act (CAP 127) be and is hereby dissolved forthwith. The Marriage Certificate is cancelled.

On 19th October, 2022, 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 Judgment between the parties as follows:

- A. That the court orders the dissolution of the Ordinance marriage contracted between the parties on the 11th day of June, 2011.
- B. That Petitioner shall be granted custody of the child, Nana Kobina Odwenmafo Essibuah with reasonable access and/or visitation rights to the Respondent.
- C. That Respondent shall maintain the child with the sum of Two Thousand Ghana Cedis (GH¢2,000.00) every quarter of the year subject to review when it becomes necessary.
- D. That the said amount of (Gh¢2,000.00) is a constitute of school fees, child maintenance and any other ancilliary expenses where necessary of every quarter of the year.
- E. All payments by the Respondent shall be made promptly into the child's account with the following details.
- Felicia Essibuah "in trust for" Nana Kobina Odwenmafo Essibuah
GCB Bank PLC
Boundary Road Branch
Account No. 1161220000015
- F. That the petitioner shall be responsible for accommodation (rent) and the medical bills of the child.
- G. That the Respondent shall have access to or visit the child once every quarter outside Petitioner's home subject to Petitioner's availability
- H. That each party shall bear his or her own legal fees in this action.

(SGD.)

ELFREDA AMY DANKYI (MRS)

JUSTICE OF THE HIGH COURT

COUNSEL:

ABIGAIL RAMA WILLIAMS FOR THE PETITIONER

RESPONDENT IS SELF-REPRESENTED - ABSENT