

.IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE  
HELD AT THE DIVORCE & MATRIMONIAL COURT "3" ON .....OCTOBER 2023  
BY HER LADYSHIP JUSTICE ELFREDA AMY DANKYI (MRS).

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SUIT NO DM/0174/2020

BETWEEN

DORINDA QUARSHIE

===== PETITIONER

AND

FESTUS MATEY

===== RESPONDENT

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*JUDGMENT*

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*BACKGROUND*

The Parties who are both Ghanaians were married under the Marriages Act. (CAP 127) at the Unique PalaceEvents Centre, Larterbiokoshie on 28<sup>th</sup> March 2015. After the marriage the parties lived together at North Kaneshie and Taifa, Accra. There are two issues of the marriage who were aged 3 years respectively at the time the Petition was filed in 2020.

In a Petition issued out of the Registry of this Court dated 3rd February, 2020, the Petitioner prayed the Court for the dissolution of the marriage celebrated between the Parties and sought the reliefs in her Petition, amongst which the Petitioner prayed for the dissolution of the marriage, the respop ent be ordered to pay maintenance, schooling, clothing, health needs, and clothing for the children of the marriage, the respondent be ordered to pay petitioner a lump sum of One Hundred Thousand Cedis and also that the matrimonial property be settled on her. The Respondent entered Appearance on 13<sup>th</sup> February, 2020 and filed an Answer to the

Petition on 2<sup>nd</sup> March, 2020 and subsequently filed an amended Answer on 21<sup>st</sup> December, 2021 seeking certain reliefs.

The Petitioner filed a Reply to the amended answer 12<sup>th</sup> January 2022. The Parties filed their respective witness statements and Case Management Conference was concluded on 14<sup>th</sup> July, 2021.

The Parties were able to settle the ancillaries with the assistance of their Lawyers and filed their terms of settlement on 30<sup>th</sup> November, 2022. The parties asked that the terms of settlement as filed should be adopted by the Court as their consent judgment which the Court is inclined to adopt as part of its judgment.

Again, it is important to mention that, despite the fact that the parties filed their terms of settlement, it was in respect of agreement on how they would share the properties acquired by them during the marriage and other ancillaries, but it was necessary for the Court to take evidence to satisfy itself that the marriage had broken down beyond reconciliation in compliance with Section 2 (3) of the Matrimonial Causes Act (1971) Act 367.

This is because, that determination lies solely within the powers of the Court as was established in the case of *Mariam Partey v Williams Partey* [2014] 71 GMJ 98 at page 122 thus; *"it appears to us that from the tenor of Sections 1 and 2 of Act 367 parties to divorce proceedings cannot file terms of settlement or consent judgment that the marriage has broken down beyond reconciliation. The only procedure prescribed by law for the dissolution of marriages by Court is provided by Section 2 (2) and (3) of Act 367 that the Court must inquire into and be satisfied on all the evidence led before it that the marriage has broken down beyond reconciliation"*.

Now the parties themselves having settled the ancillaries, the Court in compliance with Section 2 (3) of Act 367 supra took evidence from the parties to satisfy itself that, the customary marriage has indeed broken down beyond reconciliation.

### *TRIAL*

At the trial, the Petitioner relied on her witness statement and her exhibits which the Court adopted as her evidence in chief. The Petitioner testified on oath amongst others that, the marriage had broken down beyond reconciliation because the Respondent has behaved in an unreasonable manner and has caused the Petitioner so much anxiety and distress such that, the Petitioner cannot reasonably be expected to continue living with him as husband and wife.

The Petitioner particularized the unreasonable behavior of the Respondent amongst which are; that the Respondent returns home from work very late at about 2am and 4am for no good reason, respondent on some days does not return home from work and does not tell the petitioner of his whereabouts, respondent travels for funerals in the company of his concubines and gives them money whilst he has neglected to provide money for the upkeep of the home, respondent sends and receives messages from his amorous messages from his numerous concubines, parties live as strangers in the matrimonial home, on some occasions the respondent has assaulted the petitioner, respondent has become a stranger to the children as he is hardly home to spend quality time with them

The Respondent also gave evidence by his witness statement which he relied on as his evidence in chief. intimated to the Court per his evidence that, the marriage between the parties had broken down as a result of the unreasonable behavior of the petitioner and that all attempts made at reconciling them had proven futile.

The test for unreasonable behavior as held in the case of *KNUDSEN V KNUDSEN* [1976] 1 GLR 204, CA was,

*“The behavior of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of one act, if it is of sufficient gravity or of a persistent course of conduct or series of acts of differing kinds, none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so”*

Despite the fact that the parties relied on the unreasonable behavior of each other as one of the grounds for the dissolution of the marriage, Section 2 (3) of Act 367 supra provides that, “Notwithstanding that 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 that on all the evidence the marriage has broken down beyond reconciliation”.

From the evidence adduced by the Court, it can be seen that, there are instances of unreasonable behavior on the part of the parties, furthermore, the Parties have not lived together as man and wife since December, 2020, a period of almost three years now, and all efforts at reconciliation having failed, these acts are all in consonance with Section 2(1) (b), and (f) of Act 367 supra and therefore provides enough justification for this Court to dissolve the marriage existing between the parties herein.

The instant case being a civil suit per the authority of *Barima Gyamfi And Anor V Ama Badu* 1963 2 GLR 597 SC the Petitioner who petitioned for the dissolution of the marriage bore the onus to establish her case on the preponderance of probability. The standard of proof in a divorce petition; like this is to be measured in line with the

yardsticks outlined in Section 2 (1) of Act 367 supra. The petitioner herein has discharged the burden of proof that laid on her.

Thus on the totality of the analysis so far, the Court is satisfied that, the marriage between the parties has in fact broken down beyond reconciliation. The Petitioner's petition for dissolution of the marriage is granted. Accordingly, the marriage contracted between the parties on 28<sup>th</sup> March, 2015 is hereby dissolved and the marriage certificate is cancelled.

### *PROPERTY SHARING*

Having dissolved the marriage, what is left now is the sharing of the properties acquired by the parties during the pendency of the marriage. But as has been pointed out earlier, the parties before the commencement of trial, agreed to settle the ancillaries out of Court and filed their Terms of Settlement regarding the ancillary reliefs, praying for same to be adopted by the Court.

The Terms of Settlement signed by the Parties and filed on 30<sup>th</sup> November, 2022 is hereby adopted as the Consent Judgment of the parties. The Court enters judgment and makes the final orders having incorporated the Terms of Settlement reached between the parties which is reproduced as follows;

### **TERMS OF SETTLEMENT**

- i. That the marriage between the parties on 28<sup>th</sup> March, 2015 be dissolved.
- ii. That the Petitioner shall be given custody of the two children of the marriage until they reach the age of eighteen years with reasonable access to the respondent.
- iii. That matrimonial home situated at House No. 8, KNUST Road be settled on the Respondnt

- iv. That the Respondent transfers his twentyfive percent shares in We Naturals Compant Limited to the Petitioner.
- v. The plots of land situate at Santeo – est Legon Hills and Kwabenya purchased by the petitioner be settled on her.
- vi. Respondent’s two cars, Toyota Sienna and Toyota Camry should be settled on the Respondent and the petitioner .s Ford Flex car should be settled on her.
- vii. The respondent should be made to pay for the school fees and medical bills of the two children of the marriage until they graduate fro the University.
- viii. The respondent to provide a monthlky maintenance of Onr Thousand Two Hundred Ghana Cedis (GHC 1, 200.00) which shall be reviewed yearly until the children attain the age of eighteen (18) years.
- ix. The parties bear their respective legal costs.
- x. It is further agreed that these terms shall be filed in Court as consent judgment.

JUSTICE ELFREDA AMY DANKYI (MRS)

*JUSTICE OF THE HIGH COUR*

*DIVORCE & MATRIMONIAL COURT “2”.*

COUNSEL:



































































































































































































A. The Petitioner and the children of the marriage shall continue to live in the Respondent's property namely House No. A 65, Adjei Kodjo, Tema until the last child attains the age of maturity (i.e. 18 years), or until the children permanently move out of the house, provided that:

- i. The Petitioner shall move out of the said property forthwith if and when she remarries;
- ii. Petitioner shall not allow any male partner or husband to live in the said property;
- iii. That the Petitioner shall keep the house in a tenantable condition for the duration of her stay in the property.
- iv. That house No A 65, Adjei Kodjo, Tema shall not be either rented or sold in part or wholly to a third party during the Petitioner's stay in the said property.





















































































































































































