

IN THE HIGH COURT OF JUSTICE, ACCRA HELD ON 17TH NOVEMBER 2023,
BEFORE HER LADYSHIP JUSTICE ELFREDA AMY DANKYI (MRS), HIGH
COURT JUDGE, SITTING IN DIVORCE AND MATRIMONIAL CAUSES
DIVISION THREE.

SUIT NO: DM/0609/2021

MARIAN NYARKOA OWUSU - PETITIONER

VS.

NANA DJAN AMANIAMPONG - RESPONDENT

JUDGMENT:

This is a wife's petition for dissolution of marriage. The Petitioner and Respondent are both Ghanaian citizens. The parties got married on 14th May, 2016 under the Marriage Ordinance (Cap 127) at the Action Chapel International Church, Spintex, Accra. After the said marriage the parties cohabited at Westlands, and Awoshie, Accra. There are two issues of the marriage namely; Ryan Ohene Amaniampong aged 4 years, Anne Marie Pokua Amaniampong 4 years as at the time that the petition was filed.

The Petitioner caused this Petition to issue on 28th September, 2021, 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 8th October, 2021. The Respondent filed an Answer and Cross-Petition on 25th October, 2021. The pleadings in the suit having

closed, the suit was set down for trial. The Petitioner filed a Witness Statement, pursuant to the orders of the Court. The evidence of the Petitioner 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 (2) 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 stated that the Respondent is verbally abusive, the parties have not lived as man and wife since the year 2017. Respondent is in the habit of disrespecting the Petitioner. Respondent has on several occasions told the Petitioner that he is no longer interested in the marriage.

Respondent did not file a Witness Statement but stated the unreasonable behavior of the Petitioner in his Answer. It is obvious that the parties have not lived as husband and wife for seven (7) years preceding this Petition.

By Section 2 (1)(e) of Act 367, where the the parties to the marriage have not lived as husband and wife for a continuous period of at least five (5) years immediately preceding the presentation of the Petition the marriage can be dissolved.

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 28th

September, 2003 in Accra, under the Marriages Act (CAP 127) be and is hereby dissolved forthwith. The Marriage Certificate is cancelled.

On 9th November, 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 Consent Judgment between the parties as follows:

A. The Petitioner shall have custody of the issues of the marriage.

B. The Respondent shall have access to the issues of the marriage in the following manner:

i. The Respondent shall have access to the issues two (2) weekends in a month.

ii. The Respondent shall have access to the issues on public holidays

iii. The Respondent shall have access to the issues on half of all school holidays.

C. The parties agree that in the event of the Respondent being unable to pick up the issues on the afore mentioned times notice shall be given to the Petitioner not less than 24 hours prior to the agreed day.

D. The parties agree that in the event that the issues would not be available to be picked up by the Respondent on the afore mentioned times notice shall be given to the Respondent not less than 24 hours prior to the agreed day.

- E. The parties agree that in the event that the Petitioner shall require that the Respondent take or collect the issues on a day other than the afore mentioned times notice shall be given to the Respondent not less than 24 hours to the intended day.
- F. The parties agree that at no point shall the issues be taken out of the jurisdiction of this court by either party without the prior consent of the other party which consent shall not be unreasonably withheld.
- G. The Respondent shall pay for the educational expenses of the issues of the marriage.
- H. The Respondent shall pay for the medical expenses of the issues of the marriage when they fall due.
- I. Either party shall notify the other party **immediately** a medical emergency arises with regards to the issues and same is brought to his or her notice.
- J. The Respondent shall pay not less than **one thousand two hundred Ghana Cedis (GH¢1,200.00)** for the maintenance of the issues of the marriage which amount shall be reviewed upward in line with prevailing economic trends.
- K. The parties agree to both provide clothing for the issues of the marriage.

THE PARTIES AGREE FURTHER;

- i. That the terms contained herein shall constitute Terms of Settlement to be adopted by the court in its final judgment as Consent Judgment.
- ii. That clauses A to K above as agreed shall be in full and final settlement of this action.
- iii. That parties shall each bear their cost of the suit.
- iv. That the terms of settlement shall be subject to the usual default clauses.

(SGD.)

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

COUNSEL:

CECILIA NAA OFORLEY OTOO HOLDING BRIEF FOR SELALI WOANYA FOR THE
PETITIONER

KWEKU KWAKYE MAMPHEY FOR THE RESPONDENT